

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, C. C-36**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EDWARD COLLINS CONTRACTING LIMITED, H & E DESIGNS LTD.,
CLASSIC SECURITY LTD., FGC HOLDINGS LTD. AND
51037 NEWFOUNDLAND & LABRADOR INC.**

**Twelfth Report of Grant Thornton Limited,
in its Capacity as Monitor**

December 21, 2023



Grant Thornton

**Grant Thornton Limited,
Monitor**

Suite 300 - 15 International Place
St. John's, NL A1A 0L4

Twelfth Report of the Monitor

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Introduction

1. Pursuant to an order of the Supreme Court of Newfoundland and Labrador (the "**Court**") made on October 5, 2022 (the "**Initial Order**"); Edward Collins Contracting Limited ("**ECC**"), H&E Designs Ltd. ("**H&E**"), Classic Security Ltd. ("**Classic**"), FGC Holdings Ltd. ("**FGC**") and 51037 Newfoundland and Labrador Inc. ("**51037**") (collectively, the "**Company**") were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the "**CCAA**").
2. The Initial Order appointed Grant Thornton Limited as monitor (the "**Monitor**") in the CCAA proceedings and granted a stay of proceedings (the "**Stay Period**") initially expiring on October 17, 2022. On October 17, 2022, the Court issued an Amended and Restated Initial Order ("**ARIO**") which affirmed the terms of the Initial Order.
3. This is the Eleventh Report of the Monitor (the "**Eleventh Report**"). Additional background information on the Company and the CCAA Proceedings along with all the unsealed documents filed with the Court are available on the Monitor's website, located at: www.grantthornton.ca/ecc (the "**Monitor's Website**"). The Monitor continues to update this website as appropriate.

Purpose of this Report

4. The purpose of this Twelfth Report is to provide this Honourable Court and the Company's stakeholders with the Monitor's record with regards to the Monitor's determination of the Wester Surety Claim pursuant to the Notice of Determination of Claim issued by the Monitor on September 14, 2023.

Terms of Reference and Disclaimer

5. In preparing this Twelfth Report, the Monitor has relied upon unaudited financial information, the Company's records, financial information and projections, and discussions with the Company's management. While the Monitor reviewed various documents provided by the Company (including, among other things, unaudited internal financial documents and financial projections) and believes that the information therein provides a fair summary of the transactions as reflected in the documents, such work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Assurance Standards ("**GAAS**"), Generally Accepted Accounting Principles ("**GAAP**"), or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Monitor expresses no opinion or other form of assurance pursuant to GAAS, GAAP or IFRS with respect to such information.
6. In the course of its mandate, the Monitor has assumed the integrity and truthfulness of the information and explanations presented to it by the Company, its management and other stakeholders, within the context in which such information was presented. To date, nothing has come to the Monitor's attention that would cause it to question the reasonableness of these assumptions, or accuracy of the information. The Monitor has requested that management bring to its attention any significant matters which were not addressed in the course of the Monitor's specific inquiries. Accordingly, this Report is based solely on the

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information (financial or otherwise) made available to the Monitor by the Company, its management, and other stakeholders.

7. This Twelfth Report has been prepared for the use of this Honourable Court and the Company's stakeholders as general information relating to the Company and to assist the Court in administering this proceeding. Accordingly, the reader is cautioned that this Report may not be appropriate for any other purpose. The Monitor will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Twelfth Report contrary to the provisions of this paragraph.
8. Capitalized terms not defined in this Twelfth Report have the meanings ascribed to them in the Initial Order, the Originating Application, or the previous reports of the Monitor.
9. All references to dollars are in Canadian currency unless otherwise noted.

Western Surety Company Claims Procedure Order

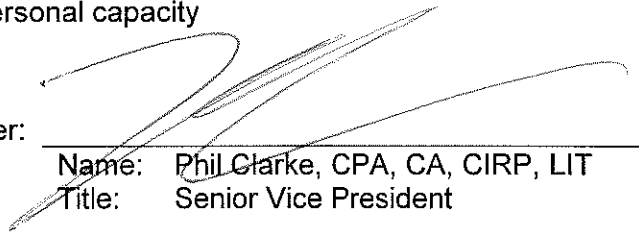
10. The Company, CRA and Western Surety consented to the Western Surety Company Claims Procedure Order dated August 24, 2023 attached hereto as **Appendix A**.
11. The Western Surety Company Claims Procedure Order was an amendment to the original Claims Procedure Order dated March 14, 2023 attached hereto as **Appendix B**.
12. All parties made submission before the claims bar date of July 31, 2023 at 5pm Newfoundland and Labrador time.
13. The submissions made were as follows:
 - a. **Appendix C** – Canada Revenue Agency ("CRA Deemed Trust Claim");
 - b. **Appendix D** – CRA Submissions;
 - c. **Appendix E** – Edward Collins Contracting Ltd. ("ECC") - Affidavit of Josh Collins dated August 17, 2023;
 - d. **Appendix F** – ECC Submissions - Memorandum of Fact in Law of ECC;
 - e. **Appendix G** – Western Submissions - Affidavit of James Toothhill dated February 10, 2023;
 - f. **Appendix H** – Western Submissions – Book of Authorities;
 - g. **Appendix I** – Western Submissions – Memorandum of Fact and Law of Western; and
 - h. **Appendix J** – Western Submissions – Compendium of Western.

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14. The Monitor's issued the following determinations:
 - a. **Appendix K** – Monitor's Disallowance of Western's Claim; and
 - b. **Appendix L** – Monitor's Acceptance of CRA's Claim.
15. Western Surety filed Notice of Objection on September 22, 2023 within the time frame provided for in paragraph 18 of the Claim Procedure Order. The objection is attached hereto as **Appendix M**.
16. The reasons attached to the Notice of Objection were not included in the Monitor's adjudication process.

Dated at Halifax, Nova Scotia the 21st day of December 2023.

GRANT THORNTON LIMITED, in its capacity as
Monitor of **EDWARD COLLINS CONTRACTING
LIMITED, H & E DESIGNS LTD., CLASSIC
SECURITY LTD., FGC HOLDINGS LTD. AND 51037
NEWFOUNDLAND & LABRADOR INC.** and not in its
personal capacity

Per: 

Name: Phil Clarke, CPA, CA, CIRP, LIT
Title: Senior Vice President

Appendix “A”

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF *The Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the "**CCAA**")

AND IN THE MATTER OF an application Of Edward Collins Contracting Limited, Classic Security Ltd, FGC Holdings Ltd, 51037 Newfoundland & Labrador Inc., and H & E Designs Ltd.

WESTERN SURETY COMPANY CLAIMS PROCEDURE ORDER

Before the Honourable Justice Alexander MacDonald on August 24, 2023:

THIS MOTION made by Grant Thornton Limited., in its capacity as the monitor (the "**Monitor**") of Edward Collins Contracting Limited, H&E Designs Ltd., Classic Security Ltd., FGC Holdings Ltd. and 51037 Newfoundland and Labrador Inc. (collectively, "**ECC**"), for an order that, among other things: establishes a procedure for the determination and resolution of Western Surety Company's ("**Western Surety**") claim against ECC related to the statutory holdback of \$237,785.27 ("**Statutory Holdback**") being held by the Monitor in connection with the Town of Placentia construction project for water system upgrades (the "**Western Surety Claim**").

UPON HEARING the submissions of counsel for the Monitor, counsel for ECC, counsel for CRA, and counsel for Western Surety, and upon the Monitor confirming that it has consulted, through counsel, with each person affected by the within Order,



2

1. **THIS COURT ORDERS** that this Order is supplemental to the Claims Procedure Order dated March 17, 2023 (“**Claims Procedure Order**”) and unless otherwise indicated, the defined terms in this Order have the same meanings ascribed to them in the Claims Procedure Order. However, for the purposes of the Western Surety Claim, the following terms shall have the following meanings:

- (a) “**Claimants**” means collectively Western Surety, the Canada Revenue Agency, Rodco Mechanical (2014) Ltd., and Crane Supply Canada;
- (b) “**Claims Bar Date**” means 5:00 PM Newfoundland Standard Time on July 31, 2023, or such later date as may be ordered by this Court; and
- (c) “**Claims Process**” means the process outlined in the Claims Procedure Order, as supplemented by this Order, for the resolution of the Western Surety Claim.

2. **THIS COURT ORDERS** that all terms of the Claims Procedure Order shall apply to the Western Surety Claim *mutatis mutandis*, subject to paragraph 1 herein.

GENERAL

3. **THIS COURT ORDERS** that the Monitor may, from time to time, apply to this Court for advice and directions in connection with the discharge or variation of its powers and duties under this Order.

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make



such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor and its agents in carrying out the terms of this Order.

5. **THIS COURT ORDERS** that Western Surety, ECC, the Canada Revenue Agency, or the Monitor be at liberty, and is hereby authorized and empowered, to apply to this Honourable Court for an order concerning the costs of dealing with the Western Surety Claim once a determination of the Western Surety Claim has been issued by the Monitor, or in the event of an appeal of the Monitor's determination, once the Monitor's determination is reviewed by the Court.

6. **THIS COURT ORDERS** that the Monitor be at liberty, and is hereby authorized and empowered, to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.


COURT
OFFICER



Appendix “B”

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF The *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the "CCAA")

AND IN THE MATTER OF an application Of Edward Collins Contracting Limited, Classic Security Ltd, FGC Holdings Ltd, 51037 Newfoundland & Labrador Inc., and H & E Designs Ltd. (collectively "ECC" or the "Company")

CLAIMS PROCEDURE ORDER

Before the Honourable Justice Alexander MacDonald on March 14, 2023:

THIS MOTION made by Grant Thornton Limited.. in its capacity as the monitor (the "Monitor") of Edward Collins Contracting Limited, H&E Designs Ltd., Classic Security Ltd., FGC Holdings Ltd. and 51037 Newfoundland and Labrador Inc. (collectively, the "Debtors"), for an order that, among other things: establishes a procedure for the determination and resolution of certain claims against the Debtors related to construction project receivables, holdbacks, liquidated damages and forced account balances owing.

UPON HEARING the submissions of counsel for the Monitor, and upon the Monitor confirming that he has consulted, through counsel, with each person affected by the within order (each an "Affected Party"), and that the comments and changes requested by all Affected Parties have been incorporated in the draft order.



A handwritten signature in blue ink, consisting of a stylized 'J' followed by a cursive 'K'.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service hereof.

DEFINITIONS AND INTERPRETATION

2. **THIS COURT ORDERS** that for the purposes of this Order, the following terms shall have the following meanings:

- (a) **"Act"** means the *Mechanic Lien Act*, RSNL 1990 Chapter M-3;
- (b) **"Business Day"** means a day, other than a Saturday or a Sunday, on which banks are generally open for business in St. John's, Newfoundland and Labrador;
- (c) **"Bryant's Cove Claim"** means the Claim of the town of Bryant's Cove against the Debtors in respect to the town of Bryant's Cove slope stabilization construction project, pursuant to which the Statutory Holdback of \$109,109.99 is being held;
- (d) **"CCAA"** means the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36;
- (e) **"Claim"** means the entirety of any right or claim against the Debtors, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of the Debtors and does not include an Excluded Claim;
- (f) **"Claimants"** means collectively:
 - (i) the town of Bryant's Cove in respect to the Bryant's Cove Claim;

- (ii) the town of Fox Harbour in respect to the town of Fox Harbour Claim;
 - (iii) the Government of Newfoundland and Labrador, Intact Insurance Company and Western Surety in respect to the GNL Claims;
 - (iv) the town of Deer Lake in respect to the Town of Deer Lake Claim;
 - (v) Rodco Mechanical (2014) Ltd. in respect to the Town of Humber Arm South Rodco Claim; and
 - (vi) the CRA in respect to the CRA Priority Claim;
- (g) **"Claims Process Claims"** means collectively:
- (i) the Bryant's Cove Claim;
 - (ii) the Town of Fox Harbour Claim;
 - (iii) the GNL Claims;
 - (iv) the Town of Deer Lake Claim;
 - (v) Town of Humber Arm South Rodco Claim; and
 - (vi) the CRA Priority Claim;
- (h) **"Claims Bar Date"** means 5:00 PM Newfoundland Standard Time on March 27, 2023, or such later date as may be ordered by this Court;
- (i) **"Claims Process"** means the process outlined in this Order for the resolution of the Claims;

- (j) “**Court**” means the Supreme Court of Newfoundland and Labrador sitting in Bankruptcy and Insolvency;
- (k) “**CRA**” means the Canadian Revenue Agency;
- (l) “**CRA Priority Claim**” means the statutory deemed trust claim of the CRA in respect of amounts designated under section 37(2) of the CCAA, including amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.);
- (m) “**Debtors**” means Edward Collins Contracting Limited, H&E Designs Ltd., Classic Security Ltd., FGC Holdings Ltd. and 51037 Newfoundland and Labrador Inc.;
- (n) “**Excluded Claim**” means, subject to further order of this Court, all Claims other than the Claims Process Claims;
- (o) “**GNL**” means the Government of Newfoundland and Labrador;
- (p) “**GNL Claims**” means the respective Claims of GNL, Western Surety and Intact Insurance Company relating to the payment or withholding of Liquidated Damages, billed, earned and unpaid contract funds, Statutory Holdbacks or force account claims in connection with 12-21 PCP (“**Contract 12-21**”), 46-21 PHP (“**Contract 46-21**”), and 45-20 PHP (“**Contract 45-20**”);
- (q) “**Initial Order**” means the amended and restated initial order of the Supreme Court of Newfoundland and Labrador made on October 17, 2022;

- (r) **"Liquidated Damages"** means Claims for liquidated damages, which damages were deducted from progress payments due to ECC in connection with Contract 12-21, Contract 46-21 and Contract 45-20,
- (s) **"Monitor"** means Grant Thornton Limited;
- (t) **"Notice of Determination of Claim"** means the notice provided by the Monitor pursuant to paragraph 17 of this Order, substantially in the form attached as Schedule "B" to this Order;
- (u) **"Notice of Objection"** means the notice provided pursuant to paragraph 18 of this Order, substantially in the form attached as Schedule "C" to this Order;
- (v) **"Proof of Claim"** means the proof of claim referred to herein, substantially in the form attached as Schedule "A" and including all supporting documentation, to be filed in connection with any Claims Process Claim;
- (w) **"Statutory Holdback"** means funds related to the services or materials supplied under a contract or subcontract and which were required to be withheld and released pursuant to and in accordance with the Act;
- (x) **"Town of Deer Lake Claim"** means the Claim of the Town of Deer Lake against the Debtors in respect to the paving construction project, pursuant to which the amount of \$57,070.50 in Statutory Holdback is being withheld;

- (y) **"Town of Humber Arm South Rodco Claim"** means the lien Claim of Rodco Mechanical (2014) Ltd. in connection with the Town of Humber Arm South project, in the amount of \$149,503.01;
- (z) **"Town of Fox Harbour Claim"** means the Claim of the town of Fox Harbour against the Debtors in respect to the town of Fox Harbour's armour stone construction project, pursuant to which the amount of \$19,896.72 in Statutory Holdback and \$179,070.53 in progress payments are being withheld; and
- (aa) **"Western Surety"** means Western Surety Company

3. **THIS COURT ORDERS** that all references as to time herein shall mean local time in St. John's, Newfoundland, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m Newfoundland Standard Time on such Business Day unless otherwise indicated herein.

4. **THIS COURT ORDERS** that all references to the word "including" shall mean "including without limitation", and that all references to the singular herein include the plural, the plural include the singular, and that any gender includes all genders.

5. **THIS COURT ORDERS** that the form and substance of each of the Proof of Claim, Notice of Determination of Claim and Notice of Objection, substantially in the forms attached as Schedules "A", "B" and "C" respectively, to this Order are hereby approved. Notwithstanding the foregoing, the Monitor may, from time to time, make changes to such forms as the Monitor considers necessary or advisable.

MONITOR'S ROLE

6. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Initial Order, shall administer this Claims Process and engage in the determination of the Claims Process Claims, and is hereby directed and empowered to take such actions and fulfill such other roles as are contemplated by this Order.

7. **THIS COURT ORDERS** that the Monitor is authorized to call for the Claims Process Claims.

8. **THIS COURT ORDERS** that (a) in carrying out the terms of this Order, the Monitor shall have all of the protections given to it by the CCAA, the Initial Order, this Order, and as an officer of the Court, (b) the Monitor shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, except for claims based on gross negligence or wilful misconduct, (c) the Monitor shall be entitled to rely on the books and records of the Debtors and any information provided by the Debtors, all without independent investigation, and (d) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information or in any information provided by any Claimant, except for claims based on gross negligence or wilful misconduct.

9. **THIS COURT ORDERS** that the Monitor, with the consent of the Debtors is authorized to enter into settlement negotiations with a Claimant at any stage of this Claims Process and is further authorized to enter into agreements with such Claimant to resolve the applicable Claims Process Claims.

10. **THIS COURT ORDERS** that the Monitor shall, no later than two (2) Business Days after the date of this Order, send the Proof of Claim by electronic mail or courier to each of the Claimants and/or their legal counsel holding a Claims Process Claim.

11. **THIS COURT ORDERS** that the service of this Order on Claimants holding a Claims Process Claim is the good and sufficient service of the Claims Bar Date on the Claimants and no other notice or service needs to be given or made.

CLAIMS BAR DATE

12. **THIS COURT ORDERS** that the Claimants shall deliver to the Monitor a Proof of Claim, together with all relevant supporting documentation in respect of the Claims Process Claim on or before the Claims Bar Date. The Monitor shall provide copies of the Proofs of Claim submitted by Claimants in respect of their Claims Process Claims to counsel for the Royal Bank of Canada as they are received by the Monitor.

13. **THIS COURT ORDERS** that those Claimants who do not deliver a Proof of Claim to the Monitor by the Claims Bar Date shall be forever extinguished and barred, shall be required to immediately remit to the Monitor any and all amounts being held by such Claimant in connection with their applicable Claims Process Claims and all such Claimants shall be deemed to have fully and finally released and discharged all such Claims Process Claims as against the Debtors and the Monitor.

PROOFS OF CLAIM

14. **THIS COURT ORDERS** that the Monitor shall maintain a list of all Proofs of Claim received by it, including the name of the Claimant, the amount claimed, and the status of the Claims Process Claims.

DETERMINATION OF CLAIMS

15. **THIS COURT ORDERS** that following the Claims Bar Date, the Monitor shall: (i) review the Proofs of Claim filed on or before the Claims Bar Date by Claimants and shall, after consultation with the Debtors and at the Monitor's discretion, determine either to allow, partially allow, partially disallow or entirely disallow the Claims Process Claims.

16. **THIS COURT ORDERS** that the Monitor may attempt to consensually resolve the amount of any asserted Claims Process Claims with the Claimant prior to partially allowing, partially disallowing or entirely disallowing such Claims Process Claims.

17. **THIS COURT ORDERS** that, where a Claims Process Claim is to be partially allowed, partially disallowed or entirely disallowed pursuant to the process contained in this Order, the Monitor shall deliver to the Claimant a written notice of such determination setting out the reasons for the determination (a "Notice of Determination of Claim") as soon as reasonably practicable.

RESOLUTION OF DISPUTES

18. **THIS COURT ORDERS** that in the event that a Claimant objects to the Monitor's determination of a Claims Process Claim, and intends to contest the Notice of Determination of Claim, such Claimant shall deliver written notice of its objection and a brief description of the grounds for such objection (a "Notice of Objection") so that such Notice of Objection is received

by the Monitor no later than 5:00 p.m. on the day which is seven (7) days after the date the Notice of Determination of Claim is deemed to be received.

19. **THIS COURT ORDERS** that any Claimant that does not provide the Monitor with a Notice of Objection within the deadline set forth in paragraph 18 shall be deemed to have agreed with the Notice of Determination of Claim pertaining to that Claimant's Claim Process Claim. Any Claim Process Claim, or any portion thereof, that is disallowed pursuant to a Notice of Determination of Claim, and in respect of which no Notice of Objection is received by the Monitor by the deadline set forth in paragraph 18, shall be forever extinguished, barred, discharged and released as against the Debtors and the Monitor without any further act or notification and the Claimant shall be required to immediately remit to the Monitor, on behalf of the Debtors, the amount of the Claims Process Claim as set out in the Notice of Determination of Claim

20. **THIS COURT ORDERS** that where a Claimant who receives a Notice of Determination of Claim agrees to same, or where the Claims Process Claim is otherwise determined in accordance with paragraph 19 of this Order, the value and status of such Claimant's Claim Process Claim shall be deemed to be as set out in the Notice of Determination of Claim or as determined in accordance with paragraph 19 of this Order, as the case may be, and such value and status, if any, shall constitute such Claimant's determined Claims Process Claim (a "**Determined Claim**").

21. **THIS COURT ORDERS** that where a Claimant provides the Monitor with a Notice of Objection within the deadline set forth in paragraph 18, the resolution of the applicable Claims Process Claim for which a Notice of Objection has been sent shall be referred to the Court for judicial determination pursuant to a timetable established by the Court;

NOTICES AND COMMUNICATIONS

22. **THIS COURT ORDERS** that, except as set out in this Order, any notice or communication (including Notices of Determination of Claims) to be given under this Order by the Monitor to a Claimant shall be in writing and may be delivered by prepaid ordinary mail, by courier, by delivery or electronic mail to the Claimant to such address or e-mail address, as applicable, for such Claimant as shown on the books of the Debtors or as set out in such Claimant's Proof of Claim. Any such service and delivery shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Newfoundland and Labrador, the fifth Business Day after mailing within Canada (other than within Newfoundland and Labrador) and the tenth Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by email by 5:00 p.m. on a Business Day, on such Business Day, and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

23. **THIS COURT ORDERS** that any document, notice or other communication (including, without limitation, Proofs of Claim) required to be delivered to the Monitor under this Order shall be in writing and, where applicable, substantially in the form provided for in this Order, and will be sufficiently delivered only if delivered to:

Grant Thornton Limited
in its capacity Monitor of the Debtors

Nova Centre, North Tower
Suite 1000 - 1675 Grafton Street
Halifax NS Canada, B3J 0E9

Attention: Allan MacDonald
Phone: (902) 491.4179

Email: Allan.MacDonald@ca.gt.com

24. **THIS COURT ORDERS** that in the event that the day on which any notice or communication required to be delivered pursuant to the Claims Process is not a Business Day, then such notice or communication shall be required to be delivered on the next Business Day.

GENERAL

25. **THIS COURT ORDERS** that the Monitor may, from time to time, apply to this Court for advice and directions in connection with the discharge or variation of its powers and duties under this Order.

26. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor and its agents in carrying out the terms of this Order.

27. **THIS COURT ORDERS** that the Monitor be at liberty, and is hereby authorized and empowered, to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.



**COURT
OFFICER**

SCHEDULE A

PROOF OF CLAIM IN RESPECT OF CLAIMS AGAINST EDWARD COLLINS CONTRACTING LIMITED, H&E DESIGNS LTD., CLASSIC SECURITY LTD., FGC HOLDINGS LTD. AND 51037 NEWFOUNDLAND AND LABRADOR INC (the "Debtors")

1. PARTICULARS OF CLAIMANT

Full Legal Name of Claimant: _____ (the "Claimant")
(the full legal or corporate name should be the name of the original Claimant)

Full Mailing Address of the Claimant:

Telephone Number of the Claimant: _____

Facsimile Number of the Claimant: _____

Contact Person of the Claimant: _____

Email Address of Contact Person: _____

Was the Claim sold or assigned to another party? ☐ Yes ☐ No

2. PROOF OF CLAIM

I, _____ [name of the Claimant or the Representative], do hereby
certify:

That I: ☐ am the Claimant; or
☐ hold the following position _____ of the
Claimant and having personal knowledge of all of the circumstances
connected with the Claim as described herein.

3. PARTICULARS OF CLAIM

	Amount	Currency	Claim Specification
Total	\$ _____		

Description of transaction, agreement or event giving rise or relating to the Claim. Please include contract, invoices, and evidence of preservation and perfection of lien (if applicable) along with any other relevant information:

If the Claim includes an amount for any accrued interest thereon and costs payable in respect thereof, state the basis for such interest and/or cost claim, the rate of interest, and provide evidence upon which the claim for interest and/or costs is being made:

If the Claim is contingent or unliquidated, state the basis and provide evidence upon which the Claim has been valued:

IF CLAIMANTS REQUIRE ADDITIONAL SPACE, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD PROVIDE PARTICULARS OF THE CLAIM AND COPIES OF ALL SUPPORTING DOCUMENTATION, INCLUDING AMOUNT AND DESCRIPTION OF TRANSACTION(S), AGREEMENT(S) OR LEGAL BREACH(ES) GIVING RISE TO THE CLAIM.

4. PARTICULARS OF ASSIGNEE(S) (IF ANY):

Full Legal Name of Assignee(s) of the Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information (the "Assignee(s)")

Amount of Claim Assigned: \$ _____

Amount of Claim Not Assigned: \$ _____

Total Amount of Claim: \$ _____

(should equal total amount of Claim in Section 3 above)

Mailing Address of Assignee(s):

Telephone Number of the Assignee: _____

Facsimile Number of the Assignee: _____

Contact Person of the Assignee: _____

Email Address of Contact Person: _____

5. FILING CLAIMS:

The duly completed Proof of Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 p.m. local St. John's time on March 27, 2023, to the email address or address listed below.

FAILURE TO FILE YOUR PROOF OF CLAIM BY SUCH DATE WILL RESULT IN YOUR CLAIM BEING FOREVER EXTINGUISHED AND BARRED AND YOU WILL BE PROHIBITED FROM MAKING OR ENFORCING A CLAIM AGAINST THE DEBTORS.

This Proof of Claim must be delivered by email, facsimile, personal delivery, courier or prepaid mail at the following address:

Grant Thornton Limited
in its capacity Monitor of the Debtors

Nova Centre, North Tower
Suite 1000 - 1675 Grafton Street
Halifax NS Canada, B3J 0E9

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Attention: Allan MacDonald
Phone: (902) 491.4179
Email: Allan.MacDonald@ca.gt.com

DATED the _____ day of _____ 2023.

(Signature of Witness)

(Signature of Claimant)

If the Claimant is not an individual, print name of Claimant, and name and title of authorized signatory:

Per: _____

Name: _____

Title: _____

I have the authority to bind the corporation

2

SCHEDULE B

NOTICE OF DETERMINATION OF CLAIM

To: _____ (the "Claimant")

Date: _____

IN THE MATTER OF THE CCAA PROCEEDINGS OF EDWARD COLLINS CONTRACTING LIMITED, H&E DESIGNS LTD., CLASSIC SECURITY LTD., FGC HOLDINGS LTD. AND 51037 NEWFOUNDLAND AND LABRADOR INC (the "DEBTORS")

Take notice that Grant Thornton Limited., in its capacity as Monitor (in such capacity, the "Monitor") appointed pursuant to the Order of Justice MacDonald dated October 5, 2022, has reviewed the Claim in respect of the above-noted Claimant and has assessed the Claim in accordance with the Claims Procedure Order of the Supreme Court of Newfoundland and Labrador dated February 9, 2023 (the "Claims Procedure Order").

All capitalized terms not defined herein have the meaning given to such terms in the Claim Procedure Order.

The Monitor has reviewed your Claim in accordance with the Claims Procedure Order, and has made the following determination:

☐ Claim Allowed

Claim Determination

☐ Claim Partially Allowed/Claim Partially Disallowed

☐ Claim Disallowed

The Monitor has made the above-noted determination in respect of your Claim for the following reason(s):

Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be allowed as follows:

Name of Claimant	Claim Amount per Proof of Claim	Amount of Claim Allowed (if any)
	\$	\$

IF YOU WISH TO DISPUTE THIS NOTICE OF DETERMINATION OF CLAIM AS SET FORTH HEREIN, YOU MUST TAKE THE STEPS OUTLINED BELOW.

The Claims Procedure Order provides that if you disagree with the determination of your Claim herein, you must deliver to the Monitor a completed Notice of Objection **before 5:00 p.m. on the day which is fourteen (14) days after the date the Notice of Determination of Claim is deemed to be received.**

If you do not dispute the determination of your Claim herein in accordance with the above instructions and the Claim Procedure Order, the amount of your Claim will be deemed to be accepted in the amount set forth herein.

If you have any questions or concerns regarding the Claims Procedure Order, please contact the Monitor directly.

DATED the _____ day of _____ 2023.

**Grant Thornton Limited, solely in its capacity as
Monitor of the Debtors.**

Per: _____
Name:
Title:

SCHEDULE C

NOTICE OF OBJECTION

IN THE MATTER OF THE CCAA PROCEEDINGS OF EDWARD COLLINS CONTRACTING LIMITED, H&E DESIGNS LTD., CLASSIC SECURITY LTD., FGC HOLDINGS LTD. AND 51037 NEWFOUNDLAND AND LABRADOR INC (the "DEBTORS")

To: Grant Thornton Limited, in its capacity as Monitor of the Debtors (the "Monitor")

Date: the _____ day of _____ 2023

Claimant: _____ (the "Claimant")

Pursuant to the Claims Procedure Order dated ●, 2023, the Claimant hereby gives notice that it disputes the Notice of Determination of Claim dated ●, 2023, issued by the Monitor.

The Claimant disputes the Claim as partially allowed, partially disallowed or disallowed in the said Notice of Determination of Claim as follows:

Amount of Claim determined by the Monitor as set out in the Notice of Determination of Claim	Amount of Claim per Claimant
\$	\$
\$	\$

Reason for the dispute *(attach copies of any supporting documentation)*

Address for service of this Notice of Objection:

Grant Thornton Limited



in its capacity Monitor of the Debtors

Nova Centre, North Tower
Suite 1000 - 1675 Grafton Street
Halifax NS Canada, B3J 0E9

Attention: Allan MacDonald
Phone: (902) 491.4179
Email: Allan.MacDonald@ca.gt.com

THIS FORM AND ANY REQUIRED SUPPORTING DOCUMENTATION MUST BE RETURNED TO THE MONITOR BY REGISTERED MAIL, PERSONAL SERVICE, EMAIL (IN PDF FORMAT), FACSIMILE OR COURIER TO THE ABOVE-NOTED ADDRESS AND MUST BE RECEIVED BY THE MONITOR BEFORE 5:00 P.M. ON THE FOURTEENTH (14) CALENDAR DAY AFTER THE DATE THE NOTICE OF DETERMINATION OF CLAIM IS DEEMED TO BE RECEIVED.

DATED the _____ day of _____ 2023.

(Signature of Witness)

(Signature of Claimant)

If the Claimant is not an individual, print name of Claimant, and name and title of authorized signatory:

Per: _____
Name: _____
Title: _____
I have the authority to bind the corporation



Appendix “C”



NSTSO, 145 Hobsons Lake, Halifax, NS
Halifax NS B3J 2T5

March 14, 2023

ATTENTION: ALLAN MACDONALD
GRANT THORNTON LIMITED
IN ITS CAPACITY AS MONITOR OF THE DEBTOR
NOVA CENTER, NORTH TOWER
SUITE 1000 - 1675 GRAFTON STREET
HALIFAX NS B3J 0E9

Dear Allan MacDonald:

Subject: Claims Procedure Order - Deemed Trust Claim
Edward Collins Contracting Limited
Account Number: 10158 2641 RP0001

We understand that you are the legal representative of the
above-named employer and have, or are preparing to sell,
liquidate, dispose of, or distribute property of this employer.

Edward Collins Contracting Limited owes amounts that were deducted
from the wages of its employees but were not paid to the Canada
Revenue Agency (CRA).

As stated in subsections 227(4) and (4.1) of the Income Tax Act,
subsections 23(3) and (4) of the Canada Pension Plan, and
subsections 86(2) and (2.1) of the Employment Insurance Act, the
following amounts are deemed to be held in trust until they are
paid to the CRA.

Deemed trust claim:

Deemed trust date premiums	Federal income tax	Provincial income tax	CPP contributions	EI
2020	\$445,531.99	\$258,410.09	\$137,872.57	\$45,129.79
2021	541,690.94	314,182.62	177,899.71	55,903.44
2022	72,785.40	42,215.77	27,729.96	8,520.25

Total deemed trust claim: \$2,127,872.52

.../2



When an employer does not pay an amount deemed to be held in trust, the CRA becomes the beneficial owner of, and has a priority interest over, all of the employer's property, even if there are registered or unregistered interests of other creditors. The CRA is not legally required to register a deemed trust debt against the employer's property.

The CRA also has a priority claim over the proceeds from selling, liquidating, distributing, or disposing of the employer's property. This is the case even if you received the proceeds because the employer voluntarily sold the property or if your interests in the employer's property occurred before the deemed trust date.

If you have a voluntary mortgage that was registered on the land or on a building owned by the employer before a deemed trust debt arose, part of your security interest may have priority over the amounts deemed to be held in trust. This is considered a prescribed security interest and is defined under Section 2201 of the Income Tax Regulations.

If you have a mortgage that was registered before the deemed trust date(s) noted above, please call me at 902-719-5046. The CRA will need to determine the value of any prescribed security interest you may have.

If there is no prescribed security interest, you must pay the deemed trust claim in the amount of \$2,127,872.52 from the proceeds of the sale, liquidation, disposal or distribution of any property of the employer, minus the costs that you incurred to enforce recovery.

Your payment must be made payable to the Receiver General for Canada. Please write account number 10158 2641 RP0001 on the front of your cheque or money order and mail the payment to:

Canada Revenue Agency
PO Box 3800 STN A
Sudbury ON P3A 0C3

If you do not comply with this deemed trust claim, the CRA may have to start proceedings against you to recover these amounts.

For more information on deemed trust and prescribed security interest, go to Canada.ca/cra-deemed-trust.

If you want more information or clarification about the CRA's deemed trust claim, please call me at 902-719-5046.

Yours truly,

M.Lohnes
Resource/Complex Case Officer

Appendix “D”



**Department of Justice
Canada**

**Ministère de la Justice
Canada**

Atlantic Region
National Litigation Sector
5251 Duke Street Suite 1400
Halifax, NS B3J 1P3

Région de l'Atlantique
Secteur national du contentieux
5251 Rue Duke, pièce 1400
Halifax (Nouvelle-Écosse) B3J 1P3

Telephone/Téléphone: (709) 772-7609
Fax /Télécopieur: (902) 426-8802
Email/Courriel: Maeve.Baird@justice.gc.ca

Via Email

Our File Number: LEX-500100838

July 27, 2023

Grant Thornton Limited
In its capacity as Monitor of ECCL
Nova Centre, North Tower
Suite 1000-1675 Grafton Street
Halifax, NS B3J 0E9

Attention: Allan MacDonald

**Re: Edward Collins Contracting Ltd. et al – Claims Process
Town of Placentia-Water Project
2022 01G 1853**

We enclose a proof of claim on behalf of the Canada Revenue Agency (“CRA”) in this matter. The proof of claim has previously been submitted on behalf of the CRA and accepted in full by the Monitor on March 20, 2023.

In addition to the proof of claim, we submit the following submissions in support of CRA’s priority claim to the holdback funds from the Town of Placentia Water Project which were paid to the Monitor in trust by the Town of Placentia (the “Holdback Funds”).

Crown Deemed Trust Claim

The CRA’s claim to the Holdback Funds is based on the deemed trust mechanism governed by [s. 227\(4\)](#) and [\(4.1\)](#) of the *Income Tax Act* (the “ITA”) and the parallel provisions in the *Canada Pension Plan* ([s. 23\(4\)](#)) (“CPP”) and the *Employment Insurance Act* ([s. 86\(2.1\)](#)) (“EI”). These statutory mechanisms confer a super priority to the federal Crown when, as in this case, an employer fails to remit payroll deductions to the federal Crown in accordance with the ITA.

Subsections 227(4) and (4.1) state:

Trust for moneys deducted

(4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection [224\(1.3\)](#)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined

in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of trust

(4.1) Notwithstanding any other provision of this Act, the Bankruptcy and Insolvency Act (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

Pursuant to these deemed trust provisions, when a tax debtor such as Edward Collins Contracting Limited ("ECCL") fails to remit payroll deductions to the Crown, all of the tax debtor's assets, including all account receivables or other amounts owed to the debtor or a secured creditor of the debtor, are deemed to be held in trust for the Crown, notwithstanding any security interest or any other legislation in Canada. Subsection 227(4.1) of the ITA overrides every other provision of the ITA, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2) and any other federal or provincial enactment, and any other law.

The effect of subsection 227(4.1) of the ITA is that once ECCL failed to make remittances on its payroll account, all property of ECCL became beneficially owned by His Majesty, up to the amount of the unremitted payroll amounts. The property of ECCL was deemed to be beneficially owned by His Majesty, in priority to all security interests.

The meaning of “[property](#)” in the ITA would include ECCL’s right to receive the final payment from the Town of Placentia for the work done on the Water Project.¹

It is the CRA’s position that the provisions governing the deemed trust squarely apply to the known facts of this case, such that the Holdback Funds must be paid to the Receiver General in priority, notwithstanding any other security interests such as the liens filed by ECCL’s subcontractors.

Mechanics’ Lien Claims are Security Interests Within the Meaning of the ITA

The definition of security interest in the ITA explicitly includes “lien[s]”, and also, “encumbrance[s] of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for”.²

[s. 224\(1.3\)](#) **"secured creditor"** means a person who has a security interest in the property of another person or who acts for or on behalf of that person with respect to the security interest and includes a trustee appointed under a trust deed relating to a security interest, a receiver or receiver-manager appointed by a secured creditor or by a court on the application of a secured creditor, a sequestrator, or any other person performing a similar function;

"security interest" means any interest in, or for civil law any right in, property that secures payment or performance of an obligation and includes an interest, or for civil law a right, created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for;

The question of whether or not a lien holder is a secured creditor holding a security interest within the definitions of secured creditor and security interests under section 224(1.3) of the ITA, was resolved by Justice Bateman, then of the Nova Scotia Supreme Court, in [Dias v. MacLean](#) ³.

The issue of whether a lien holder was a secured creditor had earlier been decided by the Saskatchewan Court of Appeal in [TransGas Ltd. v. Mid-Plains Contractors Ltd.](#)⁴ The Court in *Transgas* had held that the trust fund under the *Builders Lien Act* in Saskatchewan was a security interest under subsection 224(1.3), and that the lien claimants were secured creditors under subsection 224(1.3).

¹ *Ledcor Design Build (B.C.) Inc. v. Smithers Constructors Inc.*, 2000 BCSC 1120, at para 16

² *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s.224(1.3)

³ *Dias v. MacLean* (1993), 123 N.S.R. (2d) 231 (“*Dias*”)

⁴ *TransGas Ltd. v. Mid-Plains Contractors Ltd.*, 101 D.L.R. (4th) 238, 1993 CarswellSask 414 (C.A.), at para 51 (“*TransGas*”), additional reasons in 101 D.L.R. (4th) 238 at 266, 1993 CarswellSask 635 (C.A.), affirmed in [1994] 3 S.C.R. 753

The decisions in *Dias v. MacLean* and *Trans Gas* have been cited with approval in a number of other decisions⁵ including the NL Supreme Court in *Bonavista (Town) v. Atlantic Technologists Ltd.* (1994):

The whole purpose of the mechanics' lien legislation is to secure payment to contractors and the like. The purpose is achieved by creating a statutory interest in the property or estate of the owner. The clear wording of the definition of "security interest" in the *Income Tax Act* easily embraces a mechanic's lien. Similarly, the definition of secured creditor — a person who holds a security interest in the property of another person — encompasses the holder of a mechanic's lien.⁶

The Deemed Trust has Priority Over the Lien Claims

The courts have repeatedly recognized the Crown's priority under ss. 227(4.1) of the ITA over construction lien claimants in respect of contract funds and holdback funds.⁷

As noted in *PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc.* "it is settled law that once the Sub-contractor's entitlement to the fund arises so that the fund is only charged with the liens of the Sub-contractors, Her Majesty takes priority over them as secured creditors" (emphasis added).⁸

Lien claimants or other stakeholders have argued that the CRA is not entitled to the funds because the amounts are no longer due to the tax debtor under the contract. The Courts have rejected this argument, essentially because 227(4.1) of the ITA captures not only the amounts owed to the tax debtor, but also amounts owed to a secured creditor of the taxpayer.⁹ As stated in *Dias v. MacLean*:

The argument that the funds paid into Court would never become 'payable to' the tax debtor (Fundy), is initially attractive. Those funds are, however, under the contract, payable by the owners to Fundy and to no one else. The Mechanics Lien Act simply creates a statutory scheme to divert those funds to the lien claimants in certain circumstances. Although diverted through the operation of the Act, the funds are nevertheless payable (to the lien claimants) on behalf of Fundy. The Act simply operates to suspend the movement of funds to ensure the security interest of the lien claimants is satisfied.¹⁰

⁵ *Ledcor Design Build (B.C.) Inc. v. Smithers Constructors Inc.*, [2000] B.C.J. No. 1552; and *Hazmasters Environmental Equipment Inc. v. London Guarantee*, 1998 NSCA 163

⁶ *Bonavista (Town) v. Atlantic Technologists Ltd.*, [1994] N.J. No. 28 (NLTD) at para 15

⁷ See for example *TransGas*, *supra* note 4 and *Ledcor Construction Limited v. 544033 B.C. Ltd. et al.*, 2006 BCSC 2097 at para 32

⁸ *PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc.*, 2009 BCSC 95 at para 63

⁹ *Guarantee Company of North America v. Manitoba Housing and Renewal Corp. et al.*, 2018 MBCA 32 at para 17, leave to appeal to SCC dismissed June 4, 2019 SCC 38135; *Japan Canada Oil Sands Limited v. Stoney Mountain Steel Corp.*, 2001 A.J. No. 533 (Alta.Q.B.) at paras 32-34 and 38

¹⁰ *Dias*, *supra* note 3 at para 29

Western Surety Company Claim to the Holdback Funds

Western Surety Company (“Western”) obtained Releases, Assignments, Undertakings and Grants from the lien claimants, Crane Canada Co. and Rodco Mechanical (2014) Ltd. It is Western’s position that Western is the assignee of the claims and rights of action of the lien claimants.¹¹

Western therefore has the same rights and remedies with respect to the lien claims as the lien claimants had. Those lien claims pursuant to the NL *Mechanics’ Lien Act* are subordinated to the deemed trust claim of the federal Crown.

Western’s claim to the Holdback Funds, as assignee of the lien claimants, is therefore defeated by the deemed trust priority.

Western further alleges that it has a contractual right to the Holdback Funds, by virtue of “settlement agreements” purportedly entered into between Western, ECCL and the lien claimants.¹² ECCL has denied that these “settlement agreements” were executed.¹³

Private contractual arrangements between Western, the lien claimants and ECCL cannot displace the rights of the federal Crown, which are acquired by operation of law¹⁴, whether pursuant to s.227(4.1) or 224(1.2) of the ITA. Private arrangements cannot interfere with the collection of unremitted source deductions.¹⁵

Conclusion

The Holdback Funds are payable in priority to the CRA, in partial satisfaction of its proof of claim with respect to ECCL in this matter.

If you have any questions, please contact the undersigned or Sophie Dupré.

Sincerely,



Maeve Baird
Counsel

MB/klb

Encl.

¹¹ Affidavit of James Toothill, sworn February 10, 2023, at paragraph 24, Exhibit “L”

¹² Correspondence from Andrew Punzo dated October 18, 2022, Western Surety Company List of Documents, Tab 70

¹³ Correspondence from Darren O’Keefe dated October 19, 2022, Western Surety Company List of Documents, Tab 71

¹⁴ *Guarantee Company of North America v. Manitoba Housing and Renewal Corp. et al*, 2017 MBQB 27 at para 31 (“*Guarantee Company*”)

¹⁵ *Guarantee Company*, *supra* note 14, at para 32

Garnishment

(1.2) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act*, any other enactment of Canada, any enactment of a province or any law, but subject to subsections 69(1) and 69.1(1) of the *Bankruptcy and Insolvency Act* and section 11.09 of the *Companies' Creditors Arrangement Act*, if the Minister has knowledge or suspects that a particular person is, or will become within one year, liable to make a payment

(a) to another person (in this subsection referred to as the “tax debtor”) who is liable to pay an amount assessed under subsection 227(10.1) or a similar provision, or

(b) to a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor,

the Minister may in writing require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under subsection 227(10.1) or the similar provision, and on receipt of that requirement by the particular person, the amount of those moneys that is so required to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty to the extent of that liability as assessed by the Minister and shall be paid to the Receiver General in priority to any such security interest.

Definitions

(1.3) In subsection 224(1.2),

secured creditor means a person who has a security interest in the property of another person or who acts for or on behalf of that person with respect to the security interest and includes a trustee appointed under a trust deed relating to a security interest, a receiver or receiver-manager appointed by a secured creditor or by a court on the application of a secured creditor, a sequestrator or any other person performing a similar function; (*créancier garanti*)

security interest means any interest in, or for civil law any right in, property that secures payment or performance of an obligation and includes an interest, or for civil law a right, created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for; (*garantie*)

Saisie-arrêt

(1.2) Malgré les autres dispositions de la présente loi, la *Loi sur la faillite et l'insolvabilité*, tout autre texte législatif fédéral ou provincial et toute règle de droit, mais sous réserve des paragraphes 69(1) et 69.1(1) de la *Loi sur la faillite et l'insolvabilité* et de l'article 11.09 de la *Loi sur les arrangements avec les créanciers des compagnies*, s'il sait ou soupçonne qu'une personne donnée est ou deviendra, dans les douze mois, débiteur d'une somme :

a) soit à un débiteur fiscal, à savoir une personne redevable du montant d'une cotisation en application du paragraphe 227(10.1) ou d'une disposition semblable;

b) soit à un créancier garanti, à savoir une personne qui, grâce à une garantie en sa faveur, a le droit de recevoir la somme autrement payable au débiteur fiscal,

le ministre peut exiger par écrit de la personne donnée que tout ou partie de cette somme soit payé au receveur général, sans délai si la somme est payable immédiatement, sinon dès qu'elle devient payable, au titre du montant de la cotisation en application du paragraphe 227(10.1) ou d'une disposition semblable dont le débiteur fiscal est redevable. Sur réception de l'avis de cette exigence par la personne donnée, la somme dont le paiement est exigé devient, malgré toute autre garantie au titre de cette somme, la propriété de Sa Majesté jusqu'à concurrence du montant de la cotisation et doit être payée au receveur général par priorité sur toute autre garantie au titre de cette somme.

Définitions

(1.3) Les définitions qui suivent s'appliquent au paragraphe (1.2).

créancier garanti Personne qui a une garantie sur un bien d'une autre personne — ou qui est mandataire de cette personne quant à cette garantie —, y compris un fiduciaire désigné dans un acte de fiducie portant sur la garantie, un séquestre ou séquestre-gérant nommé par un créancier garanti ou par un tribunal à la demande d'un créancier garanti, un administrateur-séquestre ou une autre personne dont les fonctions sont semblables à celles de l'une de ces personnes. (*secured creditor*)

disposition semblable Disposition, semblable au paragraphe 227(10.1), d'une loi provinciale qui prévoit un impôt semblable à celui prévu par la présente loi, si la province concernée a conclu avec le ministre des Finances un accord pour le recouvrement des impôts payables à celle-ci en vertu de cette loi provinciale. (*similar provision*)

similar provision means a provision, similar to subsection 227(10.1), of any Act of a province that imposes a tax similar to the tax imposed under this Act, where the province has entered into an agreement with the Minister of Finance for the collection of the taxes payable to the province under that Act. (*disposition semblable*)

Garnishment

(1.4) Provisions of this Act that provide that a person who has been required to do so by the Minister must pay to the Receiver General an amount that would otherwise be lent, advanced or paid to a taxpayer who is liable to make a payment under this Act, or to that taxpayer's secured creditor, apply to Her Majesty in right of Canada or a province.

Minister's receipt discharges original liability

(2) The receipt of the Minister for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Idem

(3) Where the Minister has, under this section, required a person to pay to the Receiver General on account of a liability under this Act of a tax debtor moneys otherwise payable by the person to the tax debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement applies to all such payments to be made by the person to the tax debtor until the liability under this Act is satisfied and operates to require payments to the Receiver General out of each such payment of such amount as is stipulated by the Minister in the requirement.

Failure to comply with s. (1), (1.2) or (3) requirement

(4) Every person who fails to comply with a requirement under subsection 224(1), 224(1.2) or 224(3) is liable to pay to Her Majesty an amount equal to the amount that the person was required under subsection 224(1), 224(1.2) or 224(3), as the case may be, to pay to the Receiver General.

Failure to comply with s. (1.1) requirement

(4.1) Every institution or person that fails to comply with a requirement under subsection 224(1.1) with respect to moneys to be lent, advanced or paid is liable to pay to Her Majesty an amount equal to the lesser of

garantie Intérêt ou, pour l'application du droit civil, droit sur un bien qui garantit l'exécution d'une obligation, notamment un paiement. Sont en particulier des garanties les intérêts ou, pour l'application du droit civil, les droits nés ou découlant de débentures, hypothèques, privilèges, nantissements, sûretés, fiducies réputées ou réelles, cessions et charges, quelle qu'en soit la nature, de quelque façon ou à quelque date qu'elles soient créées, réputées exister ou prévues par ailleurs. (*security interest*)

Saisie-arrêt

(1.4) Les dispositions de la présente loi exigeant qu'une personne verse au receveur général, par suite d'une requête du ministre en ce sens, un montant qui serait par ailleurs prêté, avancé ou payé soit à un contribuable redevable d'une somme aux termes de la présente loi, soit à son créancier garanti, s'appliquent à Sa Majesté du chef du Canada ou d'une province.

Récépissé du ministre constituant quittance

(2) Le récépissé du ministre relatif à des fonds versés, comme l'exige le présent article, constitue une quittance valable et suffisante de l'obligation initiale jusqu'à concurrence du paiement.

Durée de la saisie-arrêt

(3) Lorsque le ministre a, sous le régime du présent article, exigé d'une personne qu'elle verse au receveur général, à l'égard d'une obligation imposée à un débiteur fiscal en vertu de la présente loi, des fonds payables par ailleurs par cette personne au débiteur fiscal à titre d'intérêt, de loyer, de rémunération, de dividende, de rente ou autre paiement périodique, cette exigence s'applique à tous les versements de ce genre à faire par la personne au débiteur fiscal tant qu'il n'a pas été satisfait à l'obligation imposée par la présente loi, et porte que des paiements soient faits au receveur général sur chacun des versements, selon le montant que le ministre fixe dans l'avis de l'exigence.

Défaut de se conformer aux par. (1), (1.2) ou (3)

(4) Toute personne qui omet de se conformer à une exigence du paragraphe (1), (1.2) ou (3) est tenue de payer à Sa Majesté un montant égal au montant qu'elle était tenue, en vertu du paragraphe (1), (1.2) ou (3), selon le cas, de payer au receveur général.

Défaut de se conformer au par. (1.1)

(4.1) Toute institution ou personne qui omet de se conformer à une exigence du paragraphe (1.1) est tenue de payer à Sa Majesté, à l'égard des fonds à prêter, à

Withholding taxes

227 (1) No action lies against any person for deducting or withholding any sum of money in compliance or intended compliance with this Act.

Return filed with person withholding

(2) Where a person (in this subsection referred to as the “payer”) is required by regulations made under subsection 153(1) to deduct or withhold from a payment to another person an amount on account of that other person’s tax for the year, that other person shall, from time to time as prescribed, file a return with the payer in prescribed form.

Failure to file return

(3) Every person who fails to file a return as required by subsection (2) is liable to have the deduction or withholding under section 153 on account of the person’s tax made as though the person were a person who is neither married nor in a common-law partnership and is without dependants.

Trust for moneys deducted

(4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of trust

(4.1) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

Retenue des impôts

227 (1) Nulle action ne peut être intentée contre une personne pour le fait de déduire ou de retenir une somme d’argent quelconque en conformité, réelle ou intentionnelle, avec la présente loi.

Déclaration à produire auprès de la personne qui fait les retenues

(2) Lorsqu’une personne (appelée le « payeur » au présent paragraphe) est tenue en vertu des dispositions réglementaires prises en application du paragraphe 153(1) de déduire d’un paiement à une autre personne ou de retenir sur un tel paiement un montant au titre de l’impôt de cette autre personne pour l’année, cette autre personne doit, selon les modalités de temps fixées par ces dispositions, produire auprès du payeur une déclaration selon le formulaire prescrit.

Défaut de produire la déclaration

(3) Toute personne qui omet de produire un formulaire, ainsi que le requiert le paragraphe (2), est susceptible de subir la déduction ou retenue en vertu de l’article 153 au titre de son impôt au même titre que si elle était sans personne à charge, n’était pas mariée et ne vivait pas en union de fait.

Montant détenu en fiducie

(4) Toute personne qui déduit ou retient un montant en vertu de la présente loi est réputée, malgré toute autre garantie au sens du paragraphe 224(1.3) le concernant, le détenir en fiducie pour Sa Majesté, séparé de ses propres biens et des biens détenus par son créancier garanti au sens de ce paragraphe qui, en l’absence de la garantie, seraient ceux de la personne, et en vue de le verser à Sa Majesté selon les modalités et dans le délai prévus par la présente loi.

Non-versement

(4.1) Malgré les autres dispositions de la présente loi, la *Loi sur la faillite et l’insolvabilité* (sauf ses articles 81.1 et 81.2), tout autre texte législatif fédéral ou provincial ou toute règle de droit, en cas de non-versement à Sa Majesté, selon les modalités et dans le délai prévus par la présente loi, d’un montant qu’une personne est réputée par le paragraphe (4) détenir en fiducie pour Sa Majesté, les biens de la personne, et les biens détenus par son créancier garanti au sens du paragraphe 224(1.3) qui, en l’absence d’une garantie au sens du même paragraphe, seraient ceux de la personne, d’une valeur égale à ce montant sont réputés :

a) être détenus en fiducie pour Sa Majesté, à compter du moment où le montant est déduit ou retenu,

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

Meaning of security interest

(4.2) For the purposes of subsections 227(4) and 227(4.1), a security interest does not include a prescribed security interest.

Application to Crown

(4.3) For greater certainty, subsections (4) to (4.2) apply to Her Majesty in right of Canada or a province where Her Majesty in right of Canada or a province is a secured creditor (within the meaning assigned by subsection 224(1.3)) or holds a security interest (within the meaning assigned by that subsection).

Payments by trustees, etc.

(5) Where a specified person in relation to a particular person (in this subsection referred to as the “payer”) has any direct or indirect influence over the disbursements, property, business or estate of the payer and the specified person, alone or together with another person, authorizes or otherwise causes a payment referred to in subsection 135(3), 135.1(7) or 153(1), or on or in respect of which tax is payable under Part XII.5 or XIII, to be made by or on behalf of the payer, the specified person

(a) is, for the purposes of subsections 135(3) and 153(1), section 215 and this section, deemed to be a person who made the payment;

(a.1) is, for the purposes of subsections 135.1(7) and 211.8(2), deemed to be a person who redeemed, acquired or cancelled a share and made the payment as a consequence of the redemption, acquisition or cancellation;

(b) is jointly and severally, or solidarily, liable with the payer to pay to the Receiver General

séparés des propres biens de la personne, qu’ils soient ou non assujettis à une telle garantie;

b) ne pas faire partie du patrimoine ou des biens de la personne à compter du moment où le montant est déduit ou retenu, que ces biens aient été ou non tenus séparés de ses propres biens ou de son patrimoine et qu’ils soient ou non assujettis à une telle garantie.

Ces biens sont des biens dans lesquels Sa Majesté a un droit de bénéficiaire malgré toute autre garantie sur ces biens ou sur le produit en découlant, et le produit découlant de ces biens est payé au receveur général par priorité sur une telle garantie.

Sens de garantie

(4.2) Pour l’application des paragraphes (4) et (4.1), n’est pas une garantie celle qui est visée par règlement.

Application à Sa Majesté

(4.3) Il est entendu que les paragraphes (4) à (4.2) s’appliquent à Sa Majesté du chef du Canada ou d’une province lorsqu’elle est un créancier garanti, au sens du paragraphe 224(1.3), ou détient une garantie, au sens de ce paragraphe.

Paielements par le fiduciaire, etc.

(5) La personne déterminée, quant à une autre personne (appelée « payeur » au présent paragraphe), qui a une influence directe ou indirecte sur les décaissements, les biens, l’entreprise ou la succession du payeur et qui, seule ou avec quelqu’un d’autre, fait en sorte qu’un paiement visé aux paragraphes 135(3), 135.1(7) ou 153(1), ou sur lequel ou relativement auquel un impôt est payable en vertu des parties XII.5 ou XIII, soit effectué par le payeur ou pour son compte, ou autorise un tel paiement :

a) est réputée, pour l’application des paragraphes 135(3) et 153(1), de l’article 215 et du présent article, être une personne qui a effectué le paiement;

a.1) est réputée, pour l’application des paragraphes 135.1(7) et 211.8(2), être une personne qui a racheté, acquis ou annulé une part ou une action et qui a effectué le paiement par suite de cette opération;

b) est solidairement responsable, avec le payeur, du versement au receveur général des montants suivants :

Application of *Income Tax Act* provisions

(2) Section 160, subsections 161(11) and 220(3.1), (4) and (5), sections 221.1 and 223 to 224.3, subsections 227(9.1) and (10), sections 229, 236 and 244 (except subsections 244(1) and (4)) and subsections 248(7) and (11) of the *Income Tax Act* apply, with such modifications as the circumstances require, in relation to all contributions, interest, penalties and other amounts payable by a person under this Act, and for the purposes of this subsection,

(a) the reference in subsection 224(1.2) of that Act to “subsection 227(10.1) or a similar provision” shall be read as a reference to “section 22 of the *Canada Pension Plan*”; and

(b) subsection 224(1.2) of the *Income Tax Act* shall apply to employer’s contributions, employee’s contributions, and related interest, penalties or other amounts, subject to subsections 69(1) and 69.1(1) of the *Bankruptcy and Insolvency Act* and section 11.09 of the *Companies’ Creditors Arrangement Act*.

Where amount deducted not remitted

(3) Where an employer has deducted an amount from the remuneration of an employee as or on account of any contribution required to be made by the employee but has not remitted the amount to the Receiver General, the employer is deemed, notwithstanding any security interest (as defined in subsection 224(1.3) of the *Income Tax Act*) in the amount so deducted, to hold the amount separate and apart from the property of the employer and from property held by any secured creditor (as defined in subsection 224(1.3) of the *Income Tax Act*) of that employer that but for the security interest would be property of the employer, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of trust

(4) Notwithstanding the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection (3) to be held by an employer in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the employer and property held by any secured creditor (as defined in subsection 224(1.3) of the *Income Tax Act*) of that employer that but for a security interest (as defined in subsection 224(1.3) of the *Income Tax Act*) would be property of the employer, equal in value to the amount so deemed to be held in trust is deemed

Application de dispositions de la *Loi de l’impôt sur le revenu*

(2) L’article 160, les paragraphes 161(11) et 220(3.1), (4) et (5), les articles 221.1 et 223 à 224.3, les paragraphes 227(9.1) et (10), les articles 229, 236 et 244 (sauf les paragraphes 244(1) et (4)) et les paragraphes 248(7) et (11) de la *Loi de l’impôt sur le revenu* s’appliquent, avec les adaptations nécessaires, aux cotisations, intérêts, pénalités et autres montants payables par une personne en vertu de la présente loi. Pour l’application du présent paragraphe :

a) le passage « du paragraphe 227(10.1) ou d’une disposition semblable » au paragraphe 224(1.2) de cette loi vaut mention de « de l’article 22 du *Régime de pensions du Canada* »;

b) le paragraphe 224(1.2) de la *Loi de l’impôt sur le revenu* s’applique aux cotisations d’employeur, aux cotisations d’employé et aux intérêts, pénalités ou autres sommes afférents, sous réserve des paragraphes 69(1) et 69.1(1) de la *Loi sur la faillite et l’insolvabilité* et de l’article 11.09 de la *Loi sur les arrangements avec les créanciers des compagnies*.

Montant déduit non remis

(3) L’employeur qui a déduit de la rémunération d’un employé un montant au titre des cotisations que ce dernier est tenu de verser, ou à valoir sur celles-ci, mais ne l’a pas remis au receveur général est réputé, malgré toute autre *garantie* au sens du paragraphe 224(1.3) de la *Loi de l’impôt sur le revenu* concernant le montant, le détenir en fiducie pour Sa Majesté, séparé de ses propres biens et des biens détenus par son *créancier garanti*, au sens de ce paragraphe qui, en l’absence de la garantie, seraient ceux de l’employeur, et en vue de le verser à Sa Majesté selon les modalités et dans le délai prévus par la présente loi.

Non-versement

(4) Malgré la *Loi sur la faillite et l’insolvabilité* (sauf ses articles 81.1 et 81.2), toute autre loi fédérale, toute loi provinciale ou toute règle de droit, en cas de non-versement à Sa Majesté, selon les modalités et dans le délai prévus par la présente loi, d’un montant qu’un employeur est réputé par le paragraphe (3) détenir en fiducie pour Sa Majesté, les biens de l’employeur, et les biens détenus par son créancier garanti au sens du paragraphe 224(1.3) de la *Loi de l’impôt sur le revenu*, qui, en l’absence d’une garantie au sens du même paragraphe, seraient ceux de l’employeur, d’une valeur égale à ce montant sont réputés :

(a) to be held, from the time the amount was deducted by the employer, separate and apart from the property of the employer, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the employer from the time the amount was so deducted, whether or not the property has in fact been kept separate and apart from the estate or property of the employer and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property or in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

a) être détenus en fiducie pour Sa Majesté, à compter du moment où le montant est déduit, séparés des propres biens de l'employeur, qu'ils soient ou non assujettis à une telle garantie;

b) ne pas faire partie du patrimoine ou des biens de l'employeur à compter du moment où le montant est déduit, que ces biens aient été ou non tenus séparés de ses propres biens ou de son patrimoine et qu'ils soient ou non assujettis à une telle garantie.

Ces biens sont des biens dans lesquels Sa Majesté a un droit de bénéficiaire malgré toute autre garantie sur ces biens ou sur le produit en découlant, et le produit découlant de ces biens est payé au receveur général par priorité sur une telle garantie.

Meaning of *security interest*

(4.1) For the purposes of subsections (3) and (4), a security interest does not include a prescribed security interest.

Certificate before distribution

(5) Every person, other than a trustee in bankruptcy, who is an assignee, liquidator, receiver, receiver-manager, administrator, executor, liquidator of a succession or any other like person, in this section referred to as the "responsible representative", administering, winding-up, controlling or otherwise dealing with a property, business or estate of another person, before distributing to one or more persons any property over which he or she has control in his or her capacity as the responsible representative, shall obtain a certificate from the Minister certifying that all amounts

(a) for which any employer is liable under this Act up to and including the date of distribution, and

(b) for the payment of which the responsible representative is or can reasonably be expected to become liable in his capacity as the responsible representative

have been paid or that security for the payment thereof has been accepted by the Minister.

Personal liability

(5.1) Where a responsible representative distributes to one or more persons property over which he has control in his capacity as the responsible representative, without obtaining a certificate under subsection (5) in respect of the amounts referred to in that subsection, the responsible representative is personally liable for the payment of those amounts to the extent of the value of the property

Sens de *garantie*

(4.1) Pour l'application des paragraphes (3) et (4), n'est pas une garantie celle qui est visée par règlement.

Certificat avant répartition

(5) Quiconque (à l'exclusion d'un syndic de faillite) est cessionnaire, liquidateur, séquestre, séquestre-gérant, administrateur, liquidateur de succession, exécuteur testamentaire, ou une autre personne semblable — appelé « responsable » au présent article —, chargé de gérer, liquider ou garder quelque bien, entreprise ou patrimoine d'une autre personne ou de s'en occuper autrement, est tenu, avant de répartir entre plusieurs personnes ou d'attribuer à une seule des biens sous sa garde en sa qualité de responsable, d'obtenir du ministre un certificat attestant qu'ont été versés tous les montants :

a) d'une part, dont un employeur est redevable en vertu de la présente loi jusqu'à la date de répartition ou d'attribution;

b) d'autre part, du paiement desquels le responsable est, en cette qualité, redevable ou dont on peut raisonnablement s'attendre à ce qu'il le devienne,

ou attestant que le ministre a accepté une garantie pour le paiement de ces montants.

Responsabilité personnelle

(5.1) Le responsable qui, en cette qualité, répartit entre plusieurs personnes ou attribue à une seule des biens sous sa garde sans le certificat prévu au paragraphe (5) à l'égard des montants visés à ce paragraphe est personnellement redevable de ces montants, jusqu'à concurrence de la valeur des biens répartis ou attribués; le ministre peut alors cotiser le responsable de la façon prévue à

partnership's immediate attention is available in the person or partnership's secure electronic account. A notice or other communication is considered to be made available if it is posted by the Minister in the person or partnership's secure electronic account and the person or partnership has authorized that notices or other communications may be made available in this manner and has not before that date revoked that authorization in a manner specified by the Minister.

1996, c. 23, s. 85; 2010, c. 25, s. 71.

Recovery

86 (1) All premiums, interest, penalties and other amounts payable by an employer under this Act are debts due to Her Majesty and are recoverable in the Federal Court or any other court of competent jurisdiction or in any other manner provided for by this Act.

Amounts deducted and not remitted

(2) Where an employer has deducted an amount from the remuneration of an insured person as or on account of any employee's premium required to be paid by the insured person but has not remitted the amount to the Receiver General, the employer is deemed, notwithstanding any security interest (as defined in subsection 224(1.3) of the *Income Tax Act*) in the amount so deducted, to hold the amount separate and apart from the property of the employer and from property held by any secured creditor (as defined in subsection 224(1.3) of the *Income Tax Act*) of that employer that but for the security interest would be property of the employer, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of trust

(2.1) Notwithstanding the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection (2) to be held by an employer in trust for Her Majesty in the manner and at the time provided under this Act, property of the employer and property held by any secured creditor (as defined in subsection 224(1.3) of the *Income Tax Act*) of that employer that but for a security interest (as defined in subsection 224(1.3) of the *Income Tax Act*) would be property of the employer, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted by the employer, separate and apart from the property of the employer, in trust for Her Majesty whether or not the property is subject to such a security interest, and

immédiate se trouve dans son compte électronique sécurisé. Un avis ou une autre communication est considéré comme étant rendu disponible s'il est affiché par le ministre sur le compte électronique sécurisé de la personne ou de la société de personnes et si celle-ci a donné son autorisation pour que des avis ou d'autres communications soient rendus disponibles de cette manière et n'a pas retiré cette autorisation avant cette date selon les modalités fixées par le ministre.

1996, ch. 23, art. 85; 2010, ch. 25, art. 71.

Recouvrement

86 (1) Les cotisations, intérêts, pénalités et autres sommes payables par un employeur en vertu de la présente loi constituent des créances de Sa Majesté, dont le recouvrement peut être poursuivi à ce titre soit devant la Cour fédérale ou tout autre tribunal compétent, soit selon toute autre modalité prévue par la présente loi.

Montant déduit non remis

(2) L'employeur qui a retenu une somme sur la rétribution d'un assuré au titre des cotisations ouvrières que l'assuré doit payer, mais n'a pas versé cette somme au receveur général est réputé, malgré toute autre garantie au sens du paragraphe 224(1.3) de la *Loi de l'impôt sur le revenu* la concernant, la détenir en fiducie pour Sa Majesté, séparée de ses propres biens et des biens détenus par son créancier garanti au sens de ce paragraphe qui, en l'absence de la garantie, seraient ceux de l'employeur, et en vue de la verser à Sa Majesté selon les modalités et au moment prévus par la présente loi.

Non-versement

(2.1) Malgré la *Loi sur la faillite et l'insolvabilité* (sauf ses articles 81.1 et 81.2), tout autre texte législatif fédéral ou provincial ou toute règle de droit, en cas de non-versement à Sa Majesté, selon les modalités et au moment prévus par la présente loi, d'une somme qu'un employeur est réputé par le paragraphe (2) détenir en fiducie pour Sa Majesté, les biens de l'employeur, et les biens détenus par son créancier garanti au sens du paragraphe 224(1.3) de la *Loi de l'impôt sur le revenu* qui, en l'absence d'une garantie au sens du même paragraphe, seraient ceux de l'employeur, d'une valeur égale à cette somme sont réputés :

a) être détenus en fiducie pour Sa Majesté, à compter du moment où la somme est retenue, séparés des propres biens de l'employeur, qu'ils soient ou non assujettis à une telle garantie;

(b) to form no part of the estate or property of the employer from the time the amount was so deducted, whether or not the property has in fact been kept separate and apart from the estate or property of the employer and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property or in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

Meaning of security interest

(2.2) For the purposes of subsections (2) and (2.1), a security interest does not include a prescribed security interest.

Certificate before distribution

(3) Before distributing any property over which a responsible representative has control in that capacity, the responsible representative shall obtain a certificate from the Minister certifying the payment, or acceptance by the Minister of security for payment, of all amounts

(a) for which an employer is liable under this Act up to and including the date of distribution; and

(b) for the payment of which the responsible representative is or can reasonably be expected to become liable in that capacity.

Personal liability

(4) If the responsible representative distributes to one or more persons property over which the responsible representative has control in that capacity, without obtaining the certificate, the responsible representative is personally liable for the payment of the amounts to the extent of the value of the property distributed and the Minister may assess the responsible representative for the amounts in the same manner and with the same effect as an assessment made under section 85.

Security

(5) If the Minister considers it advisable in a particular case, the Minister may accept security for payment of premiums by way of mortgage, hypothec or other charge of any kind whatever on property of the employer or any other person or by way of guarantee from other persons.

b) ne pas faire partie du patrimoine ou des biens de l'employeur à compter du moment où la somme est retenue, que ces biens aient été ou non tenus séparés de ses propres biens ou de son patrimoine et qu'ils soient ou non assujettis à une telle garantie.

Ces biens sont des biens dans lesquels Sa Majesté a un droit de bénéficiaire malgré toute autre garantie sur ces biens ou sur le produit en découlant, et le produit découlant de ces biens est payé au receveur général par priorité sur une telle garantie.

Sens de garantie

(2.2) Pour l'application des paragraphes (2) et (2.1), n'est pas une garantie celle qui est visée par règlement.

Certificat avant répartition

(3) Le responsable est tenu, avant de répartir entre plusieurs personnes ou d'attribuer à une seule des biens sous sa garde en sa qualité de responsable, d'obtenir du ministre un certificat attestant qu'ont été versés tous les montants :

a) d'une part, dont un employeur est redevable en vertu de la présente loi jusqu'à la date de répartition ou d'attribution,

b) d'autre part, du paiement desquels il est, en sa qualité de responsable, redevable ou le deviendra vraisemblablement,

ou attestant que le ministre a accepté une garantie pour le paiement de ces montants.

Responsabilité personnelle

(4) Le responsable qui, en cette qualité, répartit entre plusieurs personnes ou attribue à une seule des biens sous sa garde sans le certificat est personnellement redevable de ces montants, jusqu'à concurrence de la valeur des biens répartis ou attribués; le ministre peut alors le cotiser de la façon prévue à l'article 85, et cette cotisation a le même effet qu'une cotisation établie en vertu de cet article.

Garantie

(5) Le ministre peut, s'il le juge opportun dans un cas particulier, accepter en garantie du paiement de cotisations une hypothèque ou une charge sur les biens de l'employeur ou d'une autre personne ou une autre garantie fournie par d'autres personnes.

2022 01G 1964
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies*
Creditors Arrangement Act, R.S.C., 1985 c.
C-36 as amended (the “CCAA”)

AND IN THE MATTER OF an application of
Edward Collins Contracting Ltd., Classic
Security Limited, FGC Holdings Limited,
51037 Newfoundland and Labrador Inc. and
H&E Designs Ltd. (collectively “ECC” or the
Company”)

AFFIDAVIT

SUMMARY OF CURRENT DOCUMENT	
Court File No.	2022 01G 1964
Date of Filing Document:	February __, 2023
Name of Party Filing Party of Person:	Western Surety Company
Application to which Document being filed relates:	Application by Western Surety Company to affirm and declare settlements
Statement of Purpose in filing:	To support the within application.
Court Sub-file No: (if any)	N/A

AFFIDAVIT

I, **JAMES TOOTHILL**, of the City of Regina, in the Province of Saskatchewan, **MAKE OATH**
AND SAY:

1. That I am Chief Claims Manager & Privacy Officer at Western Surety Company (“Western”), and, as such, I have knowledge of the matters contained in this Affidavit.
Where I make statements in this Affidavit which are not within my personal knowledge, I have identified the source of that information and belief, and I verily believe it to be true.

2. I have primary day-to-day responsibility, on behalf of Western, for handling claims related to Edward Collins Contracting Limited (“ECC”), including in relation to a construction project for the Town of Placentia (the “Town”) as owner for water systems upgrades (the “Project”), described further below.
3. Western is a corporation licensed to carry on business as a surety in the Province of Newfoundland and Labrador. Western’s business includes writing surety bonds for the construction industry, from small to large firms performing public works projects, as well as private construction projects.
4. This Affidavit is made in support of Western’s application to affirm and declare settlements between Western, ECC, Rodco Mechanical (2014) Ltd. (“Rodco”) and Crane Supply Canada (“Crane”), which settlements provide that certain remaining contract funds being held by the Town be paid to Western. Such remaining contract funds constitute the holdback funds required to be held back by owners pursuant to the Newfoundland and Labrador *Mechanics’ Lien Act*.

Background

5. ECC was a client of Western that requested surety bonds for various construction contracts. ECC executed an Indemnity Agreement in favour of Western on March 8, 2021, in which ECC and others jointly and severally agreed to indemnify Western for any loss or damage by reason of having issued any surety bonds. Attached hereto and marked as **Exhibit “A”** to this my Affidavit is a copy of the Indemnity Agreement.

6. At the request of ECC and in reliance upon the Indemnity Agreement, Western issued various bonds, including both performance bonds and labour and material payment bonds, for ECC contracts, including the contract in relation to the Project.
7. ECC was the contractor for the Town in connection with the Project. On March 3, 2021, ECC entered into a contract with the Town for Water System Upgrades 17-GI-20-00050 / 17-SCF-19-00129 (the “Contract”). Attached hereto and marked as **Exhibit “B”** to this my Affidavit is a copy of the Contract.
8. ECC entered into subcontracts with Rodco and Crane (together, the “Subcontractors”) for the supply of certain services and materials in relation to the Contract. Attached hereto and marked collectively as **Exhibit “C”** to this my Affidavit are copies of the subcontracts.

Western Issued Bonds for the Project

9. Western issued Labour & Material Payment Bond No. 532,090 (the “Payment Bond”) under which ECC is “Principal”, the Town is “Obligee” and Western is “Surety”, in relation to the Contract. Attached hereto and marked as **Exhibit “D”** to this my Affidavit is a copy of the Payment Bond.
10. In general, the purpose of the Payment Bond was to ensure that ECC’s subcontractors who have valid claims are paid where ECC fails to pay such “Claimants” (as defined in the Payment Bond). The Payment Bond is therefore for the benefit of both ECC’s subcontractors and the Town as it helps mitigate impacts to the completion of the Contract and Project.

Claims Against the Payment Bond & Claims for Lien

11. In September 2021, Western first became aware of issues with ECC's performance regarding the Project when it received claims from the Subcontractors under the Payment Bond.
12. On or about September 1, 2021, Crane made a claim under the Payment Bond in the amount of \$251,635.00 for unpaid invoices (the "Crane Debt"). Attached hereto and marked as **Exhibit "E"** to this my Affidavit is a copy of the executed Proof of Claim that Western received from Crane along with supporting documentation.
13. In addition to Crane's claim against the Payment Bond, on September 9, 2021, Crane registered a Claim for Lien in the Supreme Court of Newfoundland and Labrador bearing Registration No. 19909 in relation to the Crane Debt. Attached hereto and marked as **Exhibit "F"** to this my Affidavit is a copy of the Claim for Lien of Crane.
14. On or about December 2, 2021, Rodco made a claim under the Payment Bond in the amount of \$508,271.50 for unpaid invoices (the "Rodco Debt"). Attached hereto and marked as **Exhibit "G"** to this my Affidavit is a copy of the Proof of Claim that Western received from Rodco along with supporting documentation.
15. In addition to Rodco's claim against the Payment Bond, on December 3, 2021, Rodco registered a Claim for Lien bearing Registration No. 19963 in relation to the Rodco Debt and later filed a Certificate of Action and Statement of Claim in the Supreme Court of Newfoundland and Labrador (the "Rodco Lien"). Attached hereto and marked collectively as **Exhibit "H"** to this my Affidavit are a copies of the Notice of Action and Statement of Claim of Rodco.

16. On December 22, 2021, Josh Collins, Principal of ECC, sent me an email advising that ECC had made a lump sum payment to Rodco in the amount of \$135,000.00, reducing the Rodco Debt. This payment to Rodco is also acknowledged in paragraph 7 of Rodco's Statement of Claim. Attached hereto and marked as **Exhibit "I"** to this my Affidavit is a copy of the correspondence from Mr. Collins.
17. Josh Collins alleged to me on two other occasions payments made by ECC to Rodco: (i) on January 24, 2022, Mr. Collins advised me by email that ECC had made a payment of \$75,000.00 to Rodco; and (ii) on March 29, 2022, Mr. Collins advised me during a meeting that ECC had made a lump sum payment of \$48,000.00 to Rodco. However, I was unable to verify with Rodco that these amounts had been paid as Mr. Collins did not provide me with payment receipts or account payable statements. Attached hereto and marked as **Exhibit "J"** to this my Affidavit is a copy of the email from Mr. Collins dated January 24, 2022.
18. On April 1, 2022, I emailed Brad Leyte, counsel for Rodco, asking if Rodco had received any further payments from ECC. On April 8, 2022, Mr. Leyte said he could offer the following information: (i) Rodco is still owed \$391,700.24 from ECC; (ii) Rodco has been pursuing updates from ECC regarding payment, but no firm answers have been received to date; and (iii) Rodco has only received progress payments on current progress claims, and no lump sum payment on the long overdue balance. Attached hereto and marked collectively as **Exhibit "K"** to this my Affidavit are copies of said correspondence.

ECC Settles the Claims of Rodco and Crane

19. On or about October 4, 2021, ECC entered into a Settlement Agreement with Crane to resolve the Crane Debt (the "Crane Agreement").

20. On or about July 7, 2022, ECC, Western and Rodco entered into a Settlement Agreement to resolve the Rodco Debt (the “Rodco Agreement”).
21. Both the Crane Agreement and the Rodco Agreement (together, the “Settlement Agreements”) contemplate the Subcontractors being paid a specified amount directly from the holdback held by the Town in relation to the Contract, which is currently \$244,977.53 (the “Holdback”). Further, details regarding the negotiations and execution of the Settlement Agreements are discussed in more detail below.
22. ECC failed to perform the settlements and the Subcontractors were not paid any funds from the Holdback. The Subcontractors then looked to Western to pursue payment under the Payment Bond.
23. Western fulfilled its obligations under the Payment Bond and paid the valid claims of the Subcontractors. Western issued payment to Crane in the amount of \$204,781.32 and to Rodco in the amount of \$398,607.88, in exchange for Releases, Assignments, Undertakings, and Grants (the “Assignments”). Attached hereto and marked collectively as **Exhibit “L”** to this my Affidavit are copies of the Assignments.
24. I am advised by Western’s lawyers, Borden Ladner Gervais LLP (“BLG”), and do verily believe to be true, that as a result of the Assignments, Western is assignee of all of the claims and rights of action of both Crane and Rodco.
25. I am advised by BLG, and do verily believe to be true, that Western has made all reasonable efforts to negotiate the release of the Holdback on account of the Assignments and the Settlement Agreements to avoid a hearing. However, ECC disagrees with Western and

asserts that ECC did not enter into any settlements and that Western is not entitled to the Holdback.

26. I am advised by BLG and do verily believe to be true, that it is Western's understanding that the Town does not object to the Holdback being paid to Western. However, the Town is reluctant to release the Holdback given its obligations under the *Mechanics' Lien Act* and the position taken by ECC.

The Crane Settlement

27. On September 22, 2021, Michael Cabot, previous counsel for ECC, sent a without prejudice letter to Lee Ballett of Duffy Law Office, then counsel for Crane, proposing a settlement to resolve the Crane Debt. The proposal provided that (i) ECC execute an assignment in favour of Crane, whereby the full amount of the Holdback held by the Town in connection with the Project, be assigned to Crane; and (ii) Crane vacate its Claim for Lien. Mr. Cabot advised that if there was an agreement, the Holdback amount as of September 30, 2021, should be available for release to Crane within 2-4 weeks of October 15, 2021. Attached hereto and marked as **Exhibit "M"** is a copy of said correspondence.
28. On September 28, 2021, Mr. Cabot on behalf of ECC wrote to the Town seeking written confirmation of the amount of the Holdback held by the Town in relation to the Project and confirmation that the Town would keep in trust the Holdback as of September 28, 2021, pending further direction from ECC and/or its solicitor. Attached hereto and marked as **Exhibit "N"** is a copy of said correspondence.

29. On September 28, 2021, Bernard Power, Mayor of the Town, wrote to Mr. Cabot confirming the Holdback amount at that time (\$178,070.71 plus HST) and that the Town would retain the Holdback as of September 28, 2021, pending further direction from ECC and/or its solicitor. Attached hereto and marked as **Exhibit “O”** is a copy of said correspondence.
30. On October 5, 2021, Crane discharged its Claim for Lien. Attached hereto and marked as **Exhibit “P”** to this my Affidavit is a copy of the Discharge of Lien.
31. On October 7, 2021, ECC executed the Crane Agreement. The Crane Agreement acknowledges the Crane Debt, directs ECC to make payment by way of Irrevocable Direction to the Town (the “Irrevocable Direction”), directing the Town to pay \$178,070.71 plus HST from the Holdback to Crane, in exchange for Crane discharging its Claim for Lien. Attached hereto and marked collectively as **Exhibit “Q”** are copies of the executed Crane Agreement and Irrevocable Direction to Pay.
32. On October 27, 2021, I received a letter from Michael Duffy, then counsel for Crane, advising that the Crane Debt remained outstanding, that the terms of the Crane Agreement were falsely represented to Crane, and that Crane was asserting a claim under the Payment Bond. Attached hereto and marked as **Exhibit “R”** is a copy of said correspondence.
33. On November 1, 2021, I received a letter from Mr. Cabot on behalf of ECC regarding Crane’s claim under the Payment Bond and details about the Crane Agreement. Mr. Cabot confirmed that ECC and Crane had agreed to resolve the Crane Debt by way of assignment of ECC’s interest in the Holdback retained by the Town, and that Crane agreed to vacate its Claim for Lien and not make any further claims against the Payment Bond. Mr. Cabot also confirmed that the Crane Agreement remained binding on the parties and suggested that

Western should deny Crane's claim against the Payment Bond. Attached hereto and marked as **Exhibit "S"** is a copy of said correspondence.

34. On March 8, 2022, I wrote to Josh Collins advising that Crane, through its lawyer, had advised that the Crane Agreement had not yet been performed. I asked Mr. Collins to let me know when Crane could expect payment and if the Rodco Lien was impacting payment of the Holdback from the Town. Attached hereto and marked as **Exhibit "T"** to this my Affidavit is a copy of said correspondence, dated March 8, 2022.
35. On May 12, 2022, I wrote to the Town advising of the Payment Bond claims of Crane and Rodco and asked the Town to hold all funds in connection with the Project until arrangements could be put in place to ensure payment to the Subcontractors. Attached hereto and marked as **Exhibit "U"** to this my Affidavit is a copy of said correspondence.
36. That same day, I received an email from Matthew Craig, counsel for the Town, indicating that the Town did not intend to release the Holdback while liens remained outstanding. Attached hereto and marked as **Exhibit "V"** to this my Affidavit is a copy of said correspondence, dated May 12, 2022.
37. On May 13, 2022, Mr. Cabot on behalf of ECC sent a without prejudice letter to Mr. Paul Guaragna of Miller Thomson, counsel for Crane at that time, confirming the Crane Agreement and the payment of the Holdback to Crane by way of the Irrevocable Direction. With respect to payment, Mr. Cabot advised that the timing of the release of the Holdback to Crane was under the Town's purview and that there appeared to be competing claims to the Holdback on account the Rodco Lien. Attached hereto and marked as **Exhibit "W"** to this my Affidavit is a copy of said correspondence.

38. On May 17, 2022, Mr. Guaragna advised my lawyers at BLG that the Holdback had not been paid to Crane despite the Contract having reached substantial performance. Mr. Guaragna considered ECC to be in default of the Crane Agreement and sought payment under the Payment Bond. Attached hereto and marked as **Exhibit "X"** to this my Affidavit is a copy of said correspondence.

The Rodco Settlement

39. As a result of the Rodco Lien, the Town would not release the Holdback to Crane in accordance with the Irrevocable Direction to Pay. To resolve this issue, Western, ECC, and Rodco negotiated the Rodco Agreement. The Rodco Agreement was confirmed by all parties and contemplates the Rodco Lien being vacated and Crane and Rodco being paid directly from the Holdback.
40. On May 26, 2022, Mr. Cabot on behalf of ECC, sent a without prejudice email to Brad Leyte, counsel for Rodco, advising that he understood ECC and Rodco had worked out the framework for a resolution, which included:
- (a) Rodco discharging its lien;
 - (b) Crane being paid \$206,000 from the Holdback;
 - (c) Rodco receiving the balance of the Holdback, being \$50,000; and
 - (d) ECC paying the remaining balance of the Rodco Debt, failing which Rodco would claim under the Payment Bond.

Mr. Cabot requested Mr. Leyte's position and said it was his understanding that a deal had been reached between their clients. Attached hereto and marked as **Exhibit "Y"** to this my Affidavit is a copy of said correspondence.

41. On May 27, 2022, Mr. Cabot wrote to Mr. Leyte providing further details regarding the settlement. Mr. Cabot confirmed the total amount of the Holdback to be \$244,977.53, of which Crane would receive \$204,781.36 and Rodco would receive the balance, being \$40,196.17. Attached hereto and marked as **Exhibit "Z"** to this my Affidavit is a copy of said correspondence.
42. On May 30, 2022, Mr. Cabot wrote to Mr. Leyte indicating that the amounts referenced in his email of May 27, 2022, included all claims. Mr. Cabot also stated that no other company was claiming any payment, including ECC. Attached hereto and marked as **Exhibit "AA"** to this my Affidavit is a copy of said correspondence.
43. On May 30, 2022, Mr. Leyte sent a without prejudice email to Mr. Cabot advising that Rodco wished to move forward with the proposed settlement. Attached hereto and marked as **Exhibit "BB"** to this my Affidavit is a copy of said correspondence.
44. On June 3, 2022, Mr. Cabot circulated a draft settlement agreement and Mr. Leyte provided comments. Attached hereto and marked as **Exhibit "CC"** to this my Affidavit is a copy of said correspondence.
45. On June 7, 2022, Mr. Cabot advised that he had incorporated Mr. Leyte's comments and circulated what is now the Rodco Agreement. Among other things, the Rodco Agreement contains the following terms and conditions:

(a) The parties to the Rodco Agreement acknowledge and agree that the Holdback can be released and paid to the Subcontractors; and

(b) ECC and Rodco will do all things necessary and execute all documents reasonably necessary to give full effect to their obligations under the Rodco Agreement.

Mr. Cabot told Mr. Leyte he would arrange to have ECC execute the Rodco Agreement and asked Mr. Leyte if Rodco would agree to sign the Rodco Agreement in counterpart. Attached hereto and marked as **Exhibit “DD”** to this my Affidavit is a copy of said correspondence.

46. On June 8, 2022, Mr. Leyte advised Mr. Cabot that Rodco had no problem signing in counterpart and that Rodco would execute the Rodco Agreement. Mr. Leyte asked Mr. Cabot to coordinate with the Town regarding the release the Holdback. Attached hereto and marked as **Exhibit “EE”** to this my Affidavit is a copy of said correspondence.

47. On June 8, 2022, Mr. Cabot advised Mr. Leyte that he had spoken to Mr. Craig and was told that the Town would cooperate in having the Holdback released as contemplated in the Rodco Agreement and raised the prospect of getting a release from Crane and Rodco. Attached hereto and marked as **Exhibit “FF”** to this my Affidavit is a copy of said correspondence.

48. On June 23, 2022, Mr. Cabot wrote to Mr. Craig copying Western and BLG. Mr. Cabot advised that Rodco and ECC had settled the terms of the Rodco Agreement on June 7, 2022, which included Rodco’s Lien being vacated. Mr. Cabot said all that remained was execution of the Rodco Agreement. Attached hereto and marked as **Exhibit “GG”** to this my Affidavit is a copy of said correspondence.

49. On June 28, 2022, Mr. Leyte advised Mr. Cabot that Rodco had attend at his office that morning to execute the Rodco Agreement. Attached hereto and marked as **Exhibit “HH”** to this my Affidavit is a copy of said correspondence.
50. On July 4, 2022, Mr. Cabot wrote to me asking if Western had signed the Rodco Agreement. I responded saying that the initial draft of the agreement did not have a signature line for Western. I told him that if a signature line was added Western would execute the Rodco Agreement. Attached hereto and marked as **Exhibit “II”** to this my Affidavit is a copy of said correspondence.
51. On July 4, 2022, Mr. Cabot sent BLG the Rodco Agreement for review and execution. Attached hereto and marked as **Exhibit “JJ”** to this my Affidavit is a copy of said correspondence.
52. On July 6, 2022, Mr. Cabot wrote to BLG and me, copying Mr. Leyte, confirming that ECC had signed the Rodco Agreement. Attached hereto and marked as **Exhibit “KK”** to this my Affidavit is a copy of said correspondence.
53. On July 13, 2022, I wrote to Mr. Cabot advising that BLG had suggested a few changes to the Rodco Agreement. I specifically asked Mr. Cabot if these changes would be approved or if they would cause hardship with the parties. I did not want to interrupt the performance of the settlement in place, therefore, I was simply asking if the proposed revisions could be incorporated. To the extent incorporating the proposed revisions would delay the settlement, I was happy to proceed with the version already signed by ECC and Rodco. Attached hereto and marked as **Exhibit “LL”** to this my Affidavit is a copy of said correspondence.

54. Mr. Cabot did not respond to my email of July 13, 2022. On July 18, 2022, Mr. Leyte followed up with me for an update on the Rodco Agreement. That same day, I advised Mr. Leyte and Mr. Cabot that I would sign the Rodco Agreement without the proposed changes. Attached hereto and marked as **Exhibit “MM”** to this my Affidavit is a copy of said correspondence.
55. On July 19, 2022, I signed the Rodco Agreement and circulated Western’s signed copy to Mr. Leyte and Mr. Cabot. Attached hereto and marked as **Exhibit “NN”** to this my Affidavit is a copy of the signed Rodco Agreement from Western and the corresponding email to counsel.
56. At this time, because all the parties had now signed the Rodco Agreement and it was previously noted on June 8, 2022, that the parties would sign in counterpart, it was clear to me that a settlement was in place, whereby ECC assigned any interest in the Holdback to Rodco and Crane and further agreed to pay the shortfall to Rodco. Therefore, I considered Western’s Payment Bond exposure regarding Crane and Rodco to have been addressed.
57. As of the date of the swearing of this my Affidavit, Western has not received the signed copy of the Rodco Agreement from ECC or Rodco, despite confirmation from their lawyers that the Rodco Agreement was signed.

ECC Breaches the Settlements and Western Pays Rodco and Crane

58. On July 26, 2022, BLG wrote to Mr. Cabot to follow up on the status of ECC’s performance of the settlement obligations. The following day, Mr. Cabot advised BLG that he was no

longer acting for ECC in this matter and said he would pass his correspondence to ECC. I am advised by BLG and do verily believe that they never received a response from ECC after Mr. Cabot's email of July 27, 2022. Attached hereto and marked as **Exhibit "OO"** to this my Affidavit is a copy of said correspondence.

59. As a result of ECC's failure to perform its settlement obligations, Western was forced to comply with its obligations under the Payment Bond and pay Crane \$204,781.32 and Rodco \$398,607.88.
60. On August 23, 2022, BLG wrote to Josh Collins of ECC advising that Crane and Rodco would be paid under the Payment Bond, and they asked ECC to direct the Holdback funds to Western as contemplated in the Rodco Agreement. Attached hereto and marked as **Exhibit "PP"** to this my Affidavit is a copy of said correspondence.
61. I am advised by BLG and do verily believe that they did not receive a response from Josh Collins regarding their email of August 23, 2022. However, they did receive an email from Darren O'Keefe, current counsel for ECC, that same day alleging that the Rodco Agreement was never executed between the parties. Attached hereto and marked as **Exhibit "QQ"** to this my Affidavit is a copy of said correspondence.
62. On August 24, 2022, BLG wrote to Mr. O'Keefe, advising that Western would be obtaining the Assignments and would be entitled to the Holdback as the assignee of Rodco's claims. BLG further advised that the Town was willing to direct the Holdback to Western but required an acknowledgment or direction from ECC. BLG asked Mr. O'Keefe if ECC would provide the acknowledgement or direction as it was contemplated in the Rodco Agreement.

Attached hereto and marked as **Exhibit “RR”** to this my Affidavit is a copy of said correspondence.

63. I am advised by BLG and verily believe that Mr. O’Keefe did not respond to their email of August 24, 2022.

Western’s Efforts to Affirm the Settlement Obligations

64. On October 18, 2022, BLG wrote to Phil Clarke of Grant Thornton Limited (the “Monitor”), copying Mr. Craig and Mr. O’Keefe, explaining the claims against the Payment Bond, the Rodco Agreement, and the Assignments. BLG advised the Monitor that the Town was agreeable in principle to releasing the Holdback directly to Western, but the Town would require a release from ECC and/or approval from the Monitor disclaiming any rights to the Holdback and confirming ECC would not seek further amounts from the Town in connection with the Contract. Attached hereto and marked as **Exhibit “SS”** to this my Affidavit is a copy of said correspondence.
65. On October 19, 2022, Mr. O’Keefe wrote to BLG setting out ECC’s position with respect to the Holdback. Mr. O’Keefe alleged, among other things, that the Rodco Agreement was not finalized, and that the Holdback should be paid to ECC and form part of its estate. Attached hereto and marked as **Exhibit “TT”** to this my Affidavit is a copy of said correspondence.
66. On October 26, 2022, the Monitor responded to BLG’s correspondence of October 18, 2022, requesting information regarding the Subcontractor liens, the Settlement Agreements, and confirmation that Rodco and Crane had been paid under the Payment Bond. Attached hereto and marked as **Exhibit “UU”** to this my Affidavit is a copy of said correspondence.

67. On November 25, 2022, BLG wrote to the Monitor providing the requested information. On December 7, 2022, the Monitor advised that ECC was disputing Western's position along with the validity of the Rodco Lien. Attached hereto and marked as **Exhibit "VV"** to this my Affidavit is a copy of said correspondence.
68. On December 12, 2022, BLG wrote to the Monitor requesting that ECC provide information to support its position regarding the validity of the Rodco Lien. That same day, Mr. O'Keefe responded to BLG indicating that the only information ECC had was its interpretation of the *Mechanics' Lien Act* and relevant legal principles concerning how a lien survives after the underlying debt obligation is paid. Attached hereto and marked as **Exhibit "WW"** to this my Affidavit is a copy of said correspondence.
69. On December 15, 2022, Justice MacDonald issued the Extension to Stay Order (the "Extension Order") in this proceeding. The Extension Order invites parties to file materials in reply to the Monitor's Interim Report and return for an interim hearing on February 17, 2023, to review the contents of the Monitor's Interim Report. Attached hereto and marked as **Exhibit "XX"** to this my Affidavit is a copy of the Extension Order.
70. I am advised by BLG and do verily believe to be true, that they attended a meeting with Mr. O'Keefe, Mr. Craig, and the Monitor on January 5, 2023. I am further advised by BLG and do verily believe that during the meeting, Mr. O'Keefe agreed to provide information in support of ECC's position regarding its alleged entitlement to the Holdback.
71. Following the call, BLG wrote to Mr. O'Keefe, copying the Monitor and Mr. Craig, advising that Western's preference would be for the Town to hold onto the Holdback funds rather than paying them into court because Western's approach contemplated cost efficiency by

having one hearing to determine to who and where the Holdback should be paid by the Town, rather than separate applications to (i) pay Holdback into court, then (ii) return to address the merits. Attached hereto and marked as **Exhibit “YY”** to this my Affidavit is a copy of said correspondence.

72. I am advised by BLG and do verily believe that ECC has not provided any information to support its position regarding the Holdback. I am further advised by BLG and do verily believe that the Monitor requested documents from ECC on this issue. As referenced in the Fourth Report of the Monitor dated February 3, 2023, ECC has not provided the Monitor with the documents. Attached hereto and marked as **Exhibit “ZZ”** to this my Affidavit is a copy of the Fourth Monitor’s Report.
73. On January 20, 2023, Mr. O’Keefe wrote to BLG and the Town advising that the Holdback should be paid to ECC and constituted ECC receivables that should be made available to its creditors. Mr. O’Keefe said he had instructions to make an application to compel the Town to pay the funds into court if they were not paid to the Monitor. Attached hereto and marked as **Exhibit “AAA”** to this my Affidavit is a copy of said correspondence.
74. On January 23, 2023, BLG responded to Mr. O’Keefe’s January 20 letter and advised of Western’s position, namely, that Western disagrees that the Holdback should be paid to ECC and the basis of Western’s position. Attached hereto and marked as **Exhibit “BBB”** to this my Affidavit is a copy of said email.
75. On January 31, 2023, Mr. O’Keefe wrote to BLG and Mr. Craig suggesting that the Holdback be paid into court in the *Mechanics’ Lien* action commenced by Rodco (the “Rodco Lien Action”). Mr. O’Keefe indicated that if an agreement could not be reached, he

expected to make an application to have the funds paid into court as proposed. Attached hereto and marked as **Exhibit “CCC”** to this my Affidavit is a copy of said correspondence.

76. On February 2, 2023, BLG advised Mr. O’Keefe that Western would bring an application to affirm and declare the Settlement Agreements, which application would be brought in the CCAA proceedings in accordance with the Extension Order. BLG asked Mr. O’Keefe if he would like to work cooperatively and agree on a mutually acceptable timetable for the exchange of materials, cross-examination, and hearing date. Attached hereto and marked as **Exhibit “DDD”** to this my Affidavit is a copy of said correspondence.
77. On February 2, 2023, Mr. O’Keefe responded to BLG asserting that he did not agree with Western’s proposed approach and reiterated ECC’s position that there was no settlement agreement. Mr. O’Keefe served an application in the Rodco Lien Action to have the Holdback paid into court along with supporting Affidavits from Mr. O’Keefe and Josh Collins. Attached hereto and marked as **Exhibit “EEE”** to this my Affidavit is a copy of said correspondence.
78. In addition, on February 2, 2023, Mr. O’Keefe served a Notice to Produce for Inspection on Western in the Rodco Lien Action. Attached hereto and marked as **Exhibit “FFF”** to this my Affidavit is a copy of the Notice to Produce for Inspection.
79. That same day, BLG responded to Mr. O’Keefe objecting to the Notice to Produce for Inspection on several grounds, including that Western is not a party to the Rodco Lien Action, BLG not being counsel of record for any party in that action, and that the documents requested are not contemplated under the *Rules of the Supreme Court*. In reply, Mr. O’Keefe advised BLG that ECC would bring an application to force production of the documents

indemnity basis. Attached hereto and marked as **Exhibit "GGG"** to this my Affidavit is a copy of said correspondence, dated February 2, 2023.

80. As of the date of the swearing of this my Affidavit, I am advised by BLG and do verily believe to be true that ECC has not provided any supporting information regarding its entitlement to the Holdback funds or any information in support of the position that the Rodco Agreement was never finalized.
81. I swear this Affidavit in support of Western's position in the within application and for no other or improper purpose.

SWORN TO at Regina, in the Province of
Saskatchewan, the 10th day of February,
2023 before me:


Barrister, Notary Public or Commissioner for
Oaths




JAMES TOOTHILL

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File No. 013722.000143

October 18, 2022

DELIVERED BY EMAIL
phil.clarke@ca.gt.com

Phil Clarke
Grant Thornton Limited
15 International Place, Suite 300
St. John's, NL A1A 0L4

Dear Mr. Clarke:

Re: Surety: Western Surety Company ("Western Surety ")
Principal: Edward Collins Contracting Limited ("ECC")
Obligee: Town of Placentia (the "Town")
Claimants: Rodco Mechanical (2014) Ltd. ("Rodco") and Crane Supply
Payment Bond No.: 532,090 ("Payment Bond")
Contract: Town of Placentia / Water Systems Upgrades 17-G1-2-00050 / 17-SCF-19-00129 (the "Contract")

As you may recall, we represent Western Surety in connection with the above-noted matter.

On March 19, 2021, ECC entered into the Contract with the Town for the project known as Town of Placentia / Water Systems Upgrades (the "Project").

Western Surety issued Payment Bond 532,090 in connection with the Contract naming ECC as Principal, the Town as Obligee, and Western Surety as Surety.

Rodco and Crane Supply subsequently entered into agreements with ECC for the supply of certain services and materials in relation to the Contract.

In or around December 2021, Rodco and Crane Supply each made claims for lien and claims against the Payment Bond for unpaid invoices for work performed on the Project.

In or around June 2022, Rodco, Crane Supply, ECC, and Western Surety negotiated a Settlement Agreement whereby Crane Supply would be paid the full amount of its claim from the holdback, being \$204,781.32, and Rodco would receive the remaining balance of the holdback to satisfy a portion of

its claim, being \$40,196.17. ECC agreed to pay the balance of Rodco's claim, being \$358,411.71, by July 28, 2022, failing which Western Surety would pay the balance owing to Rodco.

Rodco, Crane Supply, and Western Surety each executed the Settlement Agreement. Previous counsel for ECC, Michael Cabot, advised that ECC had executed the Settlement Agreement, but the parties were never provided with a copy of the signed Settlement Agreement despite repeated requests. Accordingly, Western Surety had no choice but to comply with its obligations under the Payment Bond and issued payment to Rodco and Crane Supply without any contribution from the holdback.

In exchange for an Assignment and Release, Western Surety paid Rodco \$398,607.88 and Crane Supply \$204,781.32 under the Payment Bond. Accordingly, Western Surety is now assignee of those parties' claims, including claims for lien.

Western Surety has reached an agreement in principle with the Town whereby the holdback will be directly released to Western Surety given the assignments. While the Town is agreeable in principle with this proposal, the Town would like a Release from ECC and/or approval from the Monitor disclaiming any rights to the holdback and confirming ECC will not seek further amounts from the Town in connection with the Contract.

We look forward to hearing from you regarding the foregoing proposal. Please let us know if you require any additional information.

Yours very truly,



Andrew Punzo

ASP/MAB

cc. Darren D. O'Keefe
O'Keefe & Company
darren@okeefeandcompany.com

Matthew Craig
Stewart McKelvey
mcraig@stewartmckelvey.com

O'KEEFE & COMPANY

BY EMAIL

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower 22 Adelaide Street West
Toronto ON M5H 4E3 Canada
Attn: Mark Borgo and Andrew Punzo
Email: mborgo@blg.com
apunzo@blg.com

19 October 2022

Mssrs. Borgo and Punzo:

Re: Surety: Western Surety Company ("Western")
Principal: Edward Collins Contracting Limited ("ECC")
Obligee: Town of Placentia (the "Town")
Claimants: Rodco Mechanical (2014) Ltd. ("Rodco") and;
Crane Supply ("Crane")
Payment Bond No.: 532,090 ("Payment Bond")
Contract: Town of Placentia / Water Systems Upgrades 17-G1-2-00050 / 17-SCF-19-
00129 (the "Contract")

As you are aware we represent Edward Collins Contracting Ltd. and its affiliated companies ("ECC"). We refer to your two separate letters dated 18 October 2022 addressed to Phil Clarke, the Court appointed Monitor, concerning the above noted.

Please be advised that ECC disagrees with the position taken by Western, *to wit*:

- (i) Westerns payment to Crane was contrary to a contract entered into between ECC and Crane whereby Crane waived all rights of payment as against the Payment Bond. Any payments made by Western – and accepted by Crane - in violation of that agreement are not recoverable against the holdback or ECC.
- (ii) With respect to the draft settlement agreement between Rodco, Crane, Western and ECC, referred to in your letter, as you know, this was never finalized.
- (iii) Westerns position that it has obtained a better claim to the holdback funds by virtue of its private arrangements existing outside the CCAA process - that do not involve ECC or the Monitor - is flawed. The assignment of the debts once held by Rodco and Crane *may* be valid, but the assignment of the lien claim is void *ab initio* as no lien claim exists. Further, this purported assignment which would give Western better enforcement rights *vis a vis* ECC than it bargained for under the Payment Bond is

contrary to the Rule 22 Order of Madam Justice Marshall dated 20 July 2022 and to the Amended and Restated Initial Order of Mr. Justice MacDonald dated 17 October 2022.

- (iv) It is ECC's position that the holdback on this Contract currently held by the Town should be paid to ECC and form part of its estate. As there appears to be a contrary view held by Western, ECC would respectfully suggest that the holdback be paid to the Monitor, in trust, pending direction from the Court.

We trust the foregoing is clear.

Regards,



DARREN D. O'KEEFE
darren@okeefeandcompany.com

cc.

Matthew Craig
Stewart McKelvey
mcraig@stewartmckelvey.com

Phil Clarke
Grant Thornton Ltd.
phil.clarke@ca.gt.com

TAB 72

Appendix “E”

2022 01G 1964
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C-36 as Amended (the “**CCAA**”); and

AND IN THE MATTER OF an application of Edward Collins Contracting Ltd., Classic Security Limited, FGC Holdings Limited, 51037 Newfoundland and Labrador Inc. and H&E Designs Ltd. (collectively, “**ECC**” or the “**Company**”).

AFFIDAVIT

I, Josh Collins of the Town of Placentia, in the Province of Newfoundland and Labrador, MAKE OATH AND SAY THAT:

1. I am Vice President of the ECC Group and am familiar with and status of the within application.
2. That contemporaneous with this affidavit, ECC is filing a memorandum of fact and law setting out its position that the Holdback in dispute is properly payable to CRA (the “**ECC Memorandum**”).
3. Capitalized terms and abbreviations used in this affidavit, where not defined herein, shall have the meaning attributed to them in the ECC Memorandum.
4. I have reviewed the following documents: (1) the memorandum of fact and law filed by Western on 31 July 2023 concerning their claim to the Holdback (the “**Western Memorandum**”) (2) the memorandum of fact and law filed on behalf of CRA on their competing claim to the Holdback, filed on 28 July 2023 (the “**CRA Memorandum**”); and (3) the affidavit filed by James Toothill on 10 February 2022 (the “**Toothill Affidavit**”).
5. The facts as stated therein are true to the best of my knowledge, information, and belief.
6. I hereby solemnly declare and say as follows:

COURT DOCUMENTS:

7. With reference to paragraph 10 of the ECC Memorandum, a copy of the ARIQ is attached hereto as **Exhibit “A”**.
8. With reference to paragraph 12 of the ECC Memorandum, a copy of the ECC Holdback Application is attached hereto as **Exhibit “B”**.

9. With reference to paragraph 13 of the ECC Memorandum, a copy of Western Holdback Application is attached hereto as **Exhibit "C"**.
10. With reference to paragraph 15 of the ECC Memorandum, a copy of the Western Claims Process Order is attached hereto as **Exhibit "D"**.

FACTUAL MATTERS:

11. That as of the end of August 2021, a dispute had arisen between ECC and Crane concerning the quality of the materials supplied by Crane and adequacy of its work on the Project.
12. Despite not having resolved ECC's concerns, Crane issued invoices to ECC and demanded to be paid in full. ECC declined Crane's invoices pending a resolution of its complaints against Crane, and on 14 September 2021 it had its then counsel, Adam Baker, write to Crane outlining the basis of its complaints against Crane. I attach a copy of this correspondence as **Exhibit "E"**.
13. Despite the fact that ECC had serious complaints concerning Crane's work, on 01 September 2021, Crane filed a claim with Western under the Bond (the Crane Claim). Crane also registered a Claim for Lien against the Project. At this time, it was ECC's position that it was not required to pay Crane any amount on the Crane Claim, given the significance of its issues with Crane and ECC's proposed counterclaims. However, after receiving advice from its legal counsel, ECC acknowledged that a settlement agreement would be the best course of action to avoid the costs of litigation and to minimize disruption to the Project. In that regard ECC instructed its new counsel, Michael Cabot ("**Cabot**"), to prepare a settlement agreement and present the same to Crane for review.
14. In the settlement discussions that followed, ECC took the position that it was only willing to offer to a "direction to pay" instructing the Town to pay Crane from the Holdback to resolve the Crane Claim. It was crucially important for ECC that as a *quid pro quo* for the direction to pay, Crane would cooperate to ensure the Project reached a successful conclusion. This meant that Crane must withdraw their lien, waive any further bonding claims against Western, waive any further claims against ECC, and remain silent in the background until the Project was complete. If the Project went smoothly from then on, Crane could be paid from the Holdback. If the Project did not go smoothly, Crane suffered the risk of not getting paid. This arrangement was deliberate and meant to incentivize Crane to cooperate with ECC and to not interfere any further with ECC's bonding arrangements or in the Project generally.
15. During the settlement discussions, referred to above, contrary to what Western now alleges, ECC was aware that it could not "assign" the Holdback. As a contractor with

significant experience working under the *Mechanics Lien Act*, ECC knew the Holdback was a fund meant for all unpaid subcontractors. ECC could not ring fence the Holdback for the benefit of one subcontractor. If ECC did so, it would not only run afoul of the legislation, but would not be able to hire other subcontractors to work on the job as they would not do so without the benefit of the holdback. It is for this reason ECC would only give Crane a direction to pay– to show Crane that ECC was willing to work cooperatively with them, and eventually pay them if the Project was completed according to plan. It was crucial that Crane stopped interfering with the Project on what ECC felt were unsubstantiated claims in order for this to happen.

16. The Crane Settlement Agreement was eventually finalized and signed on 07 October 2021. A copy of the Crane Settlement Agreement is attached hereto as **Exhibit “F”**.
17. Following the execution of the Crane Settlement Agreement, and contrary to our expectations, Crane immediately started complaining about the timing of the release of the Holdback. Crane alleged that it was their expectation that the Holdback would be released in 3-4 weeks.
18. At no time prior to the execution of the Settlement Agreement did anyone from Crane ask me, as the ECC lead for the Project, when I expected the Project to be completed. Had anyone asked me, prior to the execution of the Settlement Agreement, I would have estimated 6 to 8 weeks based on the information available at the time, subject to change orders and other delays beyond ECC's control. It is important to bear in mind that during this time we were still in the middle of the Covid-19 pandemic and there were significant operating issues (everything from obtaining materials to hiring laborers). Everyone in the industry was aware that timelines were uncertain and subject to change as a result.
19. To the best of my knowledge and belief, no one from Crane asked the Town (as the Owner of the Project) when they expected the Project to be complete prior to the execution of the Settlement Agreement.
20. On 26 October 2021 Rodco filed a lien for work done on behalf of ECC on the Project that was not paid for (the **“First Rodco Lien”**).
21. On 02 November 2021 Western obtained a copy of the Crane Settlement Agreement and Release in the context of their review of the re-instated bonding claim of Crane. A copy of the email transmittal to Western of the Crane Settlement Agreement is attached hereto as **Exhibit “G”**.
22. Between 02 November 2021 and the middle of December 2021, I am informed and do verily believe that our legal counsel, Cabot, was involved in discussions with Western, Crane, Rodco and the Town in an effort to resolve the now competing claims by Rodco and Crane against the Holdback. Ultimately no agreement was reached.

23. ECC continued working on the Project in the ordinary course into January 2022.
24. In early January 2022, ECC received our ordinary progress payments from the Town. At that time, I was informed and do verily believe that Crane contacted Cabot to request a payment against their account from our progress draws. I personally instructed Cabot that under no circumstances was ECC willing to make payment to Crane prior to the release of the Holdback. In ECC's view it had fulfilled its obligations to Crane under the Crane Settlement Agreement by providing the Direction to Pay as agreed. I am informed and do verily believe this position was communicated to Crane and they accepted the same.
25. The Project was deemed substantially complete on 28 March 2022, as evidenced by the Certificate attached hereto as **Exhibit "H"**.
26. On 11 May 2022, Crane wrote to both ECC and to Western to inquire about the Holdback. I am informed and do verily believe that Toothill replied that day advising that, "as of right now, it is [Western's] understanding that the holdback amount has not been paid to ECC by the Owner and therefore the [Crane Settlement Agreement] is in full force and has not been breached by ECC". A copy of Toothill's correspondence is attached hereto as **Exhibit "I"**.
27. Toothill's response above was consistent with ECC's position, namely, that ECC had fulfilled its obligations by providing the Direction to Pay to the Town, it had no further authority to direct the Town to release Holdback to Crane or to resolve the relative priority of the two competing claims. I refer to a letter from Cabot to Crane issued on 13 May 2022 setting out ECC's position, attached hereto as **Exhibit "J"**.
28. On 12 May 2022, the amounts allegedly owed were \$204,781.32 to Crane and \$398,607.88 to Rodco (ECC does not accept these amounts as correct). By way of email to the Town, Western asked the Town not to pay the Holdback to ECC until "arrangements can be put in place to administer the contract funds in accordance with the provisions of the Contract and the *Mechanics Lien Act* and to ensure the payment of the unpaid ECC subcontractors". A copy of this correspondence is attached hereto as **Exhibit "K"**.
29. On 25 May 2022 Rodco filed a second Claim for Lien (the "**Second Rodco Lien**"). Although not the subject of this proceeding, ECC takes the position that this Second Rodco Lien (like the First Rodco Lien) was invalid and did not comply with the provisions of the *Mechanics Lien Act*. It is ECC's understanding that Western has conceded that point and is not relying on either the First Rodco Lien or the Second Rodco Lien to support their claim to the Holdback.
30. I am informed and do verily believe that around the same time as the Second Rodco Lien was filed, being the end of May 2022, Crane started pressuring Western to pay

its reinstated bond claim. Notwithstanding Western's awareness that Crane's claim was made in violation of the Crane Settlement Agreement, it appears as though Toothill began discussing potential payment to Crane. This discussion was conducted without ECC's knowledge or consent. Attached to this affidavit as **Exhibit "L"** is the correspondence between Crane and Toothill on this point.

31. Between 25 May 2022 and 03 June 2022, ECC discussed options on how to resolve the competing Rodco and Crane claims to the Holdback given substantial completion had now been achieved.
32. On 03 June 2022, based on our instructions and to attempt to reach a solution on the competing claims to the Holdback, Cabot circulated a proposed settlement agreement regarding the Holdback. This has been referred to in the ECC Memorandum as "**Rodco Agreement Version 1**". A copy of Rodco Agreement Version 1 is attached hereto as **Exhibit "M"**.
33. I am informed and do verily believe that although the Town was not a party to the proposed Rodco Agreement Version 1, their participation was necessary to the extent that they required a release from each of Crane and Rodco as a precondition to any disbursement of the Holdback. It appears that this was Western's expectation as well, given their written instructions to the Town as referred to at paragraph 28 of my affidavit above to keep the Holdback until "arrangements can be put in place to administer the contract funds in accordance with the provisions of the Contract and the *Mechanics Lien Act* and to ensure the payment of the unpaid ECC subcontractors".
34. Further to the above, I am informed and do verily believe that following 03 June 2023 Western took the position the liens could not be released without their approval. When discussing the proposed releases, Western intervened and asked the parties to stop. I refer to the emails attached hereto as **Exhibit "N"**.
35. As of 28 June 2022, the draft Rodco Agreement Version 1 had still not been finalized and the parties had not received any approval on the form of releases required by the Town. In an email exchange between Cabot and Leyte on this date, Leyte confirmed that he had yet to receive anything from the Town or Crane with regard to proposed Releases. A copy of this email exchange is attached hereto as **Exhibit "O"**.
36. I am informed and do verily believe that on 04 July 2022 Cabot followed up with Toothill to confirm his acceptance of the last draft of the proposed settlement agreement – being Rodco Agreement Version 1. A copy of Cabot's email to Toothill is attached hereto as **Exhibit "P"**.
37. I am informed and do verily believe that on 04 July 2022, Toothill acknowledged that Western had not yet signed off on the draft and requested a copy of the "final version"

for review. Toothill instructed Cabot to send the final version to him and his counsel Andrew Punzo, at Borden Ladner Gervais ("**Punzo**"). Cabot sent the Rodco Agreement Version 1 to Toothill and Punzo on the same day as evidenced by the email exchange attached hereto as **Exhibit "Q"**.

38. I am informed by my father Frank Collins, and do verily believe, that on 05 July 2022 he attended Cabot's offices to deal with various ongoing matters for ECC. I am informed by Frank Collins that at this meeting he signed signature pages for Rodco Agreement Version 1 and instructed Cabot to hold them in escrow pending presentation of the final version of the agreement that was still under review by Western.
39. I am informed and do verily believe that by 06 July 2022, having heard nothing from Toothill or Punzo, Cabot followed up with an email asking if Punzo had had an opportunity to review the draft settlement agreement – being Rodco Agreement Version 1. Punzo did not reply. A copy of Cabot's email following up on the draft settlement agreement is attached hereto as **Exhibit "R"**.
40. In Western's Memorandum, it alleges that on or around 07 July 2022, ECC, Western and Rodco "entered into" settlement agreement to pay both the Crane Claim and the Rodco Claim out of the Holdback. This is factually incorrect. On 07 July 2022 ECC was still waiting for comments from Western on Rodco Agreement Version 1. There is no basis upon which Western can suggest that the settlement agreement was signed on 07 July 2022. This appears to be an arbitrary date selected by Western to align with the very last day before RBC filed their Receivership Application (i.e., ECC was deemed insolvent).
41. Westerns' assertion that Rodco Agreement Version 1 was signed on 07 July 2022 is further contradicted by the fact that on 08 July 2022 Toothill provided Cabot with a blacklined draft of the proposed settlement agreement ("**Rodco Agreement Version 2**") attached hereto as **Exhibit "S"**. What's more, *it is further contradicted* by the subsequent emails of James Toothill admitting that he did not sign the agreement until 19 July 2022, attached hereto as **Exhibit "T"**.
42. On 08 July 2022 Cabot sent ECC a copy of Rodco Agreement Version 2. Upon review, ECC determined there were materials changes in this version that were not acceptable. Further, at this point it appeared that ECC would be filing the CCAA Application imminently. On that basis, ECC instructed Cabot to terminate settlement discussions with Western and informed him not to release the signature pages from escrow.
43. Following 08 July 2022, it was ECC's understanding that neither of the parties had agreed that the Rodco Agreement Version 1 or 2 were finalized. This understanding was confirmed by Western on 15 July 2022, when Western wrote to ECC regarding all our outstanding claims. In their formal letter on this date, they acknowledged that

the Rodco Agreement was still considered “tentative”. At this point, no signed copy of the agreement had been returned by any of the parties.

44. Following 08 July 2022, at no time did ECC consider the Rodco Settlement Agreement, either Version 1 or Version 2 to be finalized.
45. Following 08 July 2022, ECC never authorized the release of its undated signature page to Rodco Agreement Version 1.
46. ECC never signed the Rodco Settlement Agreement Version 2.
47. I am informed, and do verily believe, that following 08 July 2022 Rodco never considered the proposed Rodco Settlement Agreement to be finalized, and as a result, refused to release their *undated* signature page to the Rodco Settlement Agreement Version 1.
48. I have been informed, and do verily believe, that Rodco never signed a copy of the proposed Rodco Settlement Agreement Version 2.
49. Since at least 08 July 2022, ECC has maintained there is no settlement agreement in place.
50. On 19 July 2022 the Court issued the Rule 22 Order.
51. I am informed and do verily believe that Rodco, like ECC, understood that the settlement agreement was never finalized either before or after the Rule 22 Order. My belief is informed, in part, by the documents attached hereto as **Exhibit “U”** including an email from Brad Leyte as counsel for Rodco dated 26 July 2022 where he says “[it] is now increasingly apparent [that] the settlement agreement appears increasingly unlikely.” and an email from Stephen Puddicombe at Rodco dated 26 April 2023 where he confirms his understanding, consistent with Leyte’s, that there was no settlement agreement finalized.
52. I am informed and do verily believe that Western purported to take an assignment of the Crane Settlement Agreement, and the unsigned Rodco Settlement Agreement (which version I’m not entirely sure) on or around 24 August 2022. ECC did not consent to these purported assignments, ECC would not have consented as doing so would effectively destroy any value to ECC obtained through the Crane Settlement Agreement and associated release. Attached hereto as **Exhibit “V”** are copies of the purported assignments.
53. Since at least October 2022, it has been ECC’s position, based on all the information made available to it, that the Holdback should be paid to its estate for the benefit of its creditors, in particular, to CRA in partial satisfaction of its statutory deemed trust claim. ECC has formally communicated this position to Western, through counsel,

since at least 20 January 2023. I attach herewith as **Exhibit "W"** a copy of correspondence from our legal counsel dated 20 January 2023 to Western and the Monitor.

54. Since January 2023 ECC has been forced to spend a significant amount of time and resources in dealing with Western on its claim that the Holdback should be paid to it in priority to CRA. ECC does not have sufficient resources to pay for these expenses and to maintain a legal dispute with Western, and as such, every dollar ECC spends in legal fee's disputing with Western is a dollar less it has available to pay its secured creditors.
55. I currently estimate ECC's costs in disputing this matter with Western to be between \$100,000.00 - \$150,000.00. ECC is obligated to pay these costs by virtue of its retainer agreements with its counsel and with the Monitor (and its counsel), and the ARIO.
56. Since January 2023, the Western claim to the Holdback has been a constant source of distraction for ECC as we have tried to work through our CCAA process. In addition to various court hearings where we had to prepare submissions on this matter, ECC has had to spend significant time dealing with Western and its counsel outside of Court. It is ECC's position that if Western had accepted that the Holdback should be paid to ECC's estate for the benefit of its creditors, as was communicated to them time and time again since January 2023, ECC could have avoided these significant costs referred to above.
57. That I make this affidavit in support of ECC's position that the Holdback should be paid to CRA.

[Signature page follows]

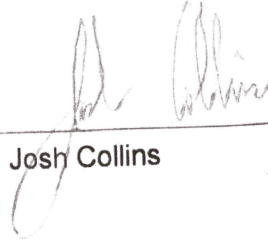
[Signature page to affidavit of Josh Collins dated 17 August 2023]

SWORN at St. John's, Newfoundland and
Labrador, on the 17 day of August
2023, before me



Commissioner, notary public, etc.

*Witnessed electronically
via Microsoft Teams*
Darren D. O. Keefe, B.C.L., LL.B.
Barrister, Solicitor, Notary Public
Newfoundland & Labrador, Canada



Josh Collins

This is Exhibit "A" to the affidavit of
Forst Collins sworn before me on the
17 day of August 2023.

DARRELL D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "A"

2022 01G 1964
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies'*
Creditors Arrangement Act, R.S.C. 1985, c.
C-36, as amended (the "**CCAA**")

AND IN THE MATTER OF an application of
Edward Collins Contracting Limited, Classic
Security Ltd., FGC Holdings Ltd., 51037
Newfoundland and Labrador Inc. and H & E
Designs Ltd. (collectively, "**ECC**" or the
"**Company**").

AMENDED AND RESTATED INITIAL ORDER

**Before the Honourable Justice Alexander MacDonald on September 16, 2022,
September 28-29, 2022, October 5, 2022 and October 17, 2022:**

THIS APPLICATION made by Edward Collins Contracting Limited, Classic Security Ltd., FGC Holdings Ltd., 51037 Newfoundland and Labrador Inc. and H & E Designs Ltd. (collectively, "**ECC**" or the "**Applicant**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an amended and restated Order pursuant to an Application that was heard on the 16th, 28th, 29th of September, 2022 and the 5th and 17th of October, 2022.

ON READING the affidavits of Francis Collins, Josh Collins, David Savoie, Mark Lohnes and the Exhibits attached thereto, the consent of Grant Thornton Limited ("**GTL**") to act as Court appointed monitor of ECC (in such capacity, the "**Monitor**"), and the Pre-Filing Reports of GTL dated September 13th and September 23rd 2022;

ON HEARING the submissions of counsel for the Company, counsel for the Royal Bank of Canada, and counsel for the Canada Revenue Agency, and such other counsel that were present, no one else appearing for any party although duly served as outlined in the affidavit of service dated the 15th day of July, 2022, and on reading the consent of GTL to act as Monitor:

Filed 



SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Materials filed, as set out in the affidavit of service is hereby deemed adequate notice so that this Application is properly returnable today and hereby dispenses with further service thereof. Further service of Court materials, including the Materials, may be facilitated by the Monitor as prescribed by paragraph 32 below.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that Edward Collins Contracting Limited, Classic Security Ltd., FGC Holdings Ltd., 51037 Newfoundland and Labrador Inc. and H & E Designs Ltd. (collectively, "ECC" or the "Company") is a Company to which the CCAA applies.
3. Capital terms not otherwise defined herein shall have the meaning ascribed to them in the within Application.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Company, shall have the authority to file and may, if deemed appropriate and subject to further order of this Court, file with this Court a plan of compromise and arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Company shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Honourable Court, the Company shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Company is authorized and empowered to continue to retain and employ the employees, consultants, independent contractors, agents, experts, accountants, counsel and such other persons (collectively "Assistants")

currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of its Business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Company, shall be entitled to continue to utilize its cash management system currently in place, or replace it with another substantially similar cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Company of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Company, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of compromise or arrangement with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.
7. **THIS COURT ORDERS** that the Company shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:
 - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
 - (b) the fees and disbursements of any Assistants retained or employed by the Company in respect of these proceedings, at their standard rates and charges; and
 - (c) amounts owing for goods and services supplied to the Company, if in the opinion of the Company, the supplier or vendor of such goods or services is necessary for the operation and preservation of the Business or Property.



8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein the Company shall be entitled but not required to pay all reasonable expenses incurred by the Company in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, construction or performance bonding facilities, maintenance and security services and lease payments for equipment used in the operation of the Business; and
- (b) payment for goods or services supplied to the Company following the date of this Order.

9. **THIS COURT ORDERS** that the Company shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Company in connection with the sale of goods and services by the Company, but only where such Sales Taxes are collected after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Company.



10. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA the Company shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Company and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order. The Monitor, on behalf of the Company, may pay such Rent twice monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.
11. **THIS COURT ORDERS** that, except as specifically permitted herein the Company is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Company to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.
12. **THIS COURT ORDERS** that the Company, shall provide each of the relevant landlords with notice of the Company's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Company's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Monitor, on behalf of the Company, or by further Order of this Court upon application by the Monitor on at least two (2) days notice to such landlord and any such secured creditors. If the Monitor disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Company's claim to the fixtures in dispute.



13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer [or resiliation], the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Company in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

RESTRUCTURING

14. **THIS COURT ORDERS** that the Company shall, subject to such requirements as are imposed by the CCAA have the right to:
- (a) Permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets (except Excluded Real Property as defined below) not exceeding:
 - (i) \$100,000.00 in any one transaction or \$250,000.00 in the aggregate;
 - (ii) Between \$100,000.00 up to \$500,000.00 in any one transaction or \$1,000,000.00 in the aggregate without the written consent of the Royal Bank of Canada and the Canada Revenue Agency;
 - (b) The Applicant shall not dispose of any of its real property and/or the asphalt plant (the "**Excluded Real Property**") in any event without approval of this Honourable Court, with net proceeds to be held in trust by the Monitor pending an application to this Honourable Court for distribution and a determination of entitlement to such proceeds recognizing the relative priorities of the parties to such proceeds as at the date of the stay of proceedings in the Initial Order;
 - (c) With respect to the sale or return of any assets referred to in paragraph 14(a) above, after the payment of any purchase money security interest (each, a "**PMSI**"), or any portion thereof, the net proceeds shall be held in trust by the Monitor pending an application to Court for distribution, without prejudice to the Royal Bank of Canada's right to pursue any claim of set off, contribution, or priority



over the PMSI proceeds as against the PMSI creditor as it relates to debts owed to CRA or any other party claiming a priority interest in such proceeds;

- (d) Terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (e) Pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing.

All of the foregoing to permit the Monitor, on behalf of the Company, to proceed with an orderly restructuring of the Business (the "**Restructuring**").

NO PROCEEDINGS AGAINST THE COMPANY OR THE PROPERTY

15. **THIS COURT ORDERS** that until and including the 15th day of December, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Company or the Monitor, or affecting the Business or the Property except with the written consent of the Monitor and the Company, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Company or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Company or affecting the Business or the Property are hereby stayed and suspended except with the written consent of the Monitor and the Company, or leave of this Court, provided that nothing in this Order shall (i) empower the Company, to carry on any business which the Company is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.



NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Company, except with the written consent of the Monitor and the Company, or leave of this Court.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Company or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, construction and performance bonding and surety services, transportation services, utility or other services to the Business or the Company, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Company, and the Company shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid the Company in accordance with normal payment practices of the Company or such other practices as may be agreed upon by the supplier or service provider and the Company or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Company. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

APPOINTMENT OF MONITOR

20. **THIS COURT ORDERS** that Grant Thornton Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Company with the powers and obligations set out in the CCAA or set forth herein and that the Company and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Company pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
21. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- a. monitor the Company's receipts and disbursements;
 - b. report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
 - c. assist the Company in its dissemination of reports and other information to the Secured Creditors (as defined herein) and their respective counsel;
 - d. advise, in consultation with the Company, the preparation of the Company's cash flow statements and reporting;
 - e. have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Company, to the extent that is necessary to adequately assess the Company's business, cashflow, and financial affairs or to perform its duties arising under this Order;
 - f. be at liberty to engage with Company legal counsel or retain independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and



- g. perform such other duties as are required by this Order or by this Court from time to time.
22. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or be considered management of the Business, or any part thereof.
23. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.
24. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Company with information provided by the Company in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Company is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Company may agree.
- In any event, the Monitor shall issue a report to this Honourable Court on or before 17 November 2022 containing an update on the status of the Travelers refinancing, the CRA trust exam and debt negotiations, the Company's cash flow including budget to actual

variance analysis, the status of Contracts 12-21 PHC and 46-21 PHP with the Government of Newfoundland and Labrador, and any other matter the Monitor considers material.

25. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Company shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Company on a weekly basis and, in addition, the Company is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Company reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
27. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose, the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Supreme Court of Newfoundland and Labrador in Bankruptcy and Insolvency.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

28. **THIS COURT ORDERS** that the Company and all its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf shall fully co-operate with the Monitor in the exercise its powers under this Order or any other Order of the Court, including by:
- h. advising the Monitor of the existence of any Property of which such party has knowledge of;



- i. providing the Monitor with immediate and continued access to any Property in such party's possession or control;
- j. advising the Monitor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Company, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information ("**Records**") of which such party has knowledge of; and
- k. providing access to and use of the Records, including any accounting, computer, software and physical facilities relating thereto, and including providing the Monitor with instructions on the use of any computer or other system as requested by the Monitor and providing the Monitor with any and all access codes, account names and account numbers that may be required to gain access to the Records, provided however that nothing in this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

LIMITATION ON THE MONITOR'S LIABILITY

- 29. **THIS COURT ORDERS THAT** the Monitor is not and shall not, for any purposes, be deemed to be a director, officer, employee, receiver, receiver-manager, or liquidator of the Company.
- 30. **THIS COURT ORDERS THAT** the Monitor is not and shall not for the purposes of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) be deemed to be a legal representative or person to whom s. 150(3) of that Act applies.
- 31. **THIS COURT ORDERS THAT** that the rights, protections, indemnities, charges, priorities and other provisions in favour of the Monitor set out in the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, any other applicable legislation, and any other Order granted in these proceedings, all shall apply and extend to the Monitor in



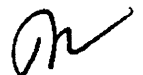
connection with the Monitor carrying out the provisions of this Order, amended as necessary to give effect to the terms of this Order.

SERVICE AND NOTICE

32. **THIS COURT ORDERS** that the Monitor shall (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner by electronic means, a notice to every known creditor who has a claim against the Company of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

GENERAL

33. **THIS COURT ORDERS** that the Monitor, on behalf of the Company, may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
34. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from subsequently acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Company, the Business or the Property.
35. **THIS COURT ORDERS** that each of the Company and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
36. **THIS COURT ORDERS** that with respect to a further request by the Applicant to extend the stay of proceedings:
- (a) The parties shall file any evidence and/or briefs at least 5 clear days before the hearing of such application; and



- (b) the Monitor shall file its report at least 3 clear days before the hearing of such application.

ISSUED at St. John's, Newfoundland and Labrador this 17th day of October, 2022.



**COURT
OFFICER**



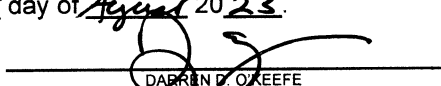
This is Exhibit "B" to the affidavit of
Joseph Collins sworn before me on the
17 day of August 2023.

DARIN D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "B"

2022 01G 0563
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER OF the *Mechanics' Lien Act*, Chapter M-3, of the Revised Statutes of Newfoundland and Labrador, 1990

- AND -

IN THE MATTER OF a claim for lien of a claim of lien by Rodeo Mechanical (2014) Ltd. against certain property of the Town of Placentia, as Owner, and against Edward Collins Contracting Limited, as General Contractor;

BETWEEN: RODCO MECHANICAL (2014) INC.

PLAINTIFF

AND: EDWARD COLLINS CONTRACTING LTD.

FIRST DEFENDANT

AND: THE TOWN OF PLACENTIA

SECOND DEFENDANT

SUMMARY OF CURRENT DOCUMENT	
Court File Number (s):	2022 01G 0563
Date of Filing of Document:	02 February 2023
Name of Filing Party or Person:	Edward Collins Contracting Ltd.
Application to which Document being filed relates:	Application pursuant to s. 5, 6, 12.4(1), 23(4) and 26(2)(b) of the <i>Mechanics' Lien Act</i> , R.S.N.L. 1990, c.M-3, as amended (the " Act ") for an order that certain holdback funds (the " Holdback ") held pursuant to s.6 of the Act be paid into Court and that the Second Defendant be released from any further obligation under the Act or connection with this proceeding.
Statement of purpose in filing:	To seek an order for Holdback funds to be paid into Court and the release of the Second Defendant in the within matter.
Court Sub-File Number, if any:	N/A

INTERLOCUTORY APPLICATION

The Interlocutory Application of Edward Collins Contracting Ltd. ("ECC"), seeks an order as follows:

1. Pursuant to sections 5, 6, 12.4(1), 23(4) and 26(2)(b) of Act that:
 - (a) the Second Defendant be ordered to pay the Holdback into this Honourable Court in satisfaction of its obligations under the Act;
 - (b) Pursuant to section 26(2) of the Act, that upon payment of the Holdback into this Honourable Court, an Order that Mechanics' Lien No.19963 registered on 03 December 2021 be vacated pursuant to section 12.4(1) of the Act;
 - (c) That payment of the Holdback as aforesaid shall discharge the Second Defendant of any further obligation or liability as it relates to the claim of the Plaintiff in the within action; and
 - (d) That upon payment of the Holdback into this Honourable Court, and the discharge of the lien as aforesaid, any interested party may apply to this Honourable Court for a determination of the ownership of the Holdback, including but not limited to any application concerning the correct procedural forum to resolve any disputes with respect to ownership of the Holdback.

MATERIAL FACTS:

2. The Plaintiff is a body corporate, duly incorporated and existing pursuant to the laws of the Province of Newfoundland and Labrador, and has its registered address situate at 257 Conception Bay Highway, in the Town of Conception Bay South, in the Province of Newfoundland and Labrador, with postal code AOA 2R0.
3. The First Defendant is a body corporate, incorporated and existing pursuant to the laws of the Province of Newfoundland and Labrador, and has its registered office situate at

Main Road, P.O. Box 51, in the Town of Jerseyside, Placentia Bay, in the Province of Newfoundland and Labrador, with postal code A0B 2G0.

4. The Second Defendant is a municipality, incorporated and existing under the *Municipalities Act*, 1999, SNL 1999, c.M-24, as amended, with its address at P.O. Box 99, 21 Patterson Drive, in the Town of Placentia, in the Province of Newfoundland and Labrador, with postal code A0B 2Y0. At all times material and relevant to the within action the Second Defendant was the "Owner" of the subject Property (defined below) within the meaning of the Act.

5. The Plaintiff alleges that under a contract between the Plaintiff and the First Defendant (the "**Contract**"), the Plaintiff agreed to supply materials and labour in connection with the construction, development and improvement of the municipal water system and associated structures upon the Owner's land or their interest in same (hereinafter referred to as the "**Property**"), and more particularly:
 - (a) Pressure reducing building and associated structures situate at the corner of Harbour Drive and Route 100, in the Town of Placentia, in the Province of Newfoundland and Labrador;

 - (b) Pressure reducing building and associated structures situate at the corner of Fox Harbour Road and Route 100, in the Town of Placentia, in the Province of Newfoundland and Labrador; and

 - (c) Clarkes Pond pump house and associated structures situate at the corner of Route 100 and the entrance to the Town of Placentia, in the Province of Newfoundland and Labrador.

6. The Plaintiff further alleges that it supplied materials and labour to the First Defendant under the terms of the Contract up to and including 10 November 2021.

7. On 03 December 2021, pursuant to the provisions of the Act, the Plaintiff registered a Mechanics' Lien (bearing No. 19963) upon the interest of the Defendants in the Property (hereinafter the "**Lien**"). The total amount of the Lien was Five hundred eight thousand,

two hundred seventy-one dollars and fifty cents (\$508,271.50), inclusive of HST, plus interest.

8. On 02 February 2022 the Plaintiff filed a Certificate of Action along with the within Statement of Claim.
9. The Plaintiff acknowledges having received a payment in the amount of One hundred thirty-five thousand dollars (\$135,000.00) since the registration of the Lien.
10. The Plaintiff alleges that there remains due and owing from the Defendants to the Plaintiff, in respect of the said Contract, the amount of Three hundred eighty-one thousand, nine hundred fifty dollars and twenty-four cents (\$381,950.24), plus interest at the invoiced rate, and that despite demand, the Defendants have failed to pay this remaining amount to the Plaintiff.
11. Since the date of the Certificate of Action and within claim, no further steps have been taken in the within proceeding.
12. On 15 July 2022, the First Defendant applied for creditor protection under the provisions of the *Company Creditors Arrangement Act* R.S.C 1985 (the "**CCAA**"). This Honorable Court granted an interim order under Rule 22 of the *Rules of the Supreme Court*, 1986 on 20 July 2022, followed by a first day CCAA order on 05 October 2022, and an amended and restated first day order (the "**ARIO**") on 17 October 2022.
13. As of the date hereof, the First Defendant is still subject to the ARIO.
14. Sometime between 01 December 2021 and 15 July 2022, the Plaintiff made a claim against the labour and materials bond of the First Defendant, in place with Western Surety Company of Canada ("**Western**") in the amount of \$381,950.24, being the same amount claimed in the within action (the "**Bonding Claim**").
15. That sometime between 15 July 2022 and the date hereof, Western paid the Bonding Claim. Western alleges that during this period it obtained an assignment of the Plaintiff's lien rights.

16. That Western, the First Defendant and the Second Defendant have not been able to agree as to who is entitled to the Holdback given (i) the intervening ARIO and related CCAA proceedings; (ii) the payment of the Bonding Claim, and (iii) the alleged assignment of the Plaintiff's lien rights.
17. The First Defendant further says that the parties cannot agree as to which proceeding governs the adjudication of the payment of the Holdback, whether it be the within proceeding, or the CCAA proceeding.
18. The Second Defendant has indicated it has no interest in the Holdback, other than it does not wish to be part of any ongoing legal dispute concerning the payment of the Holdback. As a result, the Second Defendant has not paid the Holdback.
19. The First Defendant has no reason to further involve the Second Defendant in the within proceeding concerning ownership of the Holdback and says the dispute is between the First Defendant, Western (as alleged as assignee of Plaintiff) and any other person who may have an interest in the Holdback.
20. On the basis of the foregoing, the First Defendant seeks an order as follows:
 - (a) That the Second Defendant be ordered to pay the Holdback into this Honourable Court in satisfaction of its obligations under the Act;
 - (b) That pursuant to section 26(2) of the Act, upon payment of the Holdback into this Honourable Court, Mechanics' Lien No.19963 registered on 03 December 2021 shall be vacated as the Owner has met its obligations under section 12.4(1) of the Act;
 - (c) That payment of the Holdback as aforesaid shall discharge the Second Defendant of any further obligation or liability as it relates to the claim of the Plaintiff and the within proceedings; and

- (d) That upon payment of the Holdback into this Honourable Court, and the discharge of the Lien as aforesaid, any interested party may apply to this Honorable Court for a determination of the ownership of the Holdback, including but not limited to an application concerning the correct procedural forum to resolve any disputes with respect to ownership of the subject Holdback.

All of the foregoing is respectfully submitted.

DATED at St. John's, Newfoundland and Labrador, this 02 day of February, 2023.

O'KEEFE & SULLIVAN



DARREND O'KEEFE

Solicitors for Second Defendant
Edward Collins Contracting Ltd.
Suite 202, 80 Elizabeth Ave.
St. John's, NL
A1A 1W7

TO:

ISSUED at St. John's, Newfoundland and Labrador, this _____ day of _____, 2023.

2022 01G 0563
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER OF the *Mechanics' Lien Act*,
Chapter M-3, of the Revised Statutes of
Newfoundland and Labrador, 1990

- AND -

IN THE MATTER OF a claim for lien of a claim of
lien by Rodeo Mechanical (2014) Ltd. against
certain property of the Town of Placentia, as
Owner, and against Edward Collins Contracting
Limited, as General Contractor;

BETWEEN: RODCO MECHANICAL (2014) INC.

PLAINTIFF

AND: EDWARD COLLINS CONTRACTING LTD.

FIRST DEFENDANT

AND: THE TOWN OF PLACENTIA

SECOND DEFENDANT

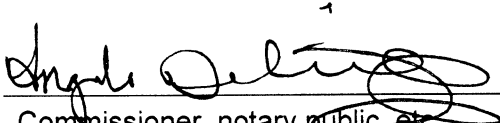
AFFIDAVIT

I, Darren D. O'Keefe, Solicitor for the ECC Group, of the City of St. John's, in the Province
of Newfoundland and Labrador, MAKE OATH AND SAY THAT:

1. I have consulted with Josh Collins, Vice President of the ECC Group, who has
provided the affidavit attached hereto as Schedule "A" to confirm that he is familiar
with and status of the within application.
2. That to the best of my knowledge and belief, based on my discussions with Josh
Collins, he has reviewed the within application and the facts as stated therein are true
to the best of his knowledge, information and belief as set out in the attached affidavit.
3. That the original of the affidavit attached as Schedule "A" will be delivered to the Court
within three (3) business days of the date hereof.
4. I make this affidavit in support of ECC's position in the within application and for no
other or improper purpose.

[Signature page to affidavit of Darren O'Keefe dated 02 February 2023]

SWORN at St. John's, Newfoundland and
Labrador, on the 02 day of February
2023, before me



Commissioner, notary public, etc.



Darren D. O'Keefe

ANGELA De CARIA
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2025

2022 01G 0563

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

IN THE MATTER OF the *Mechanics' Lien Act*, Chapter M-3, of the Revised Statutes of Newfoundland and Labrador, 1990

- AND -

IN THE MATTER OF a claim for lien of a claim of lien by Rodeo Mechanical (2014) Ltd. against certain property of the Town of Placentia, as Owner, and against Edward Collins Contracting Limited, as General Contractor;

BETWEEN: RODCO MECHANICAL (2014) INC.

PLAINTIFF

AND: EDWARD COLLINS CONTRACTING LTD.

FIRST DEFENDANT

AND: THE TOWN OF PLACENTIA

SECOND DEFENDANT

AFFIDAVIT

I, Josh Collins, Vice President of the First Defendant, resident of the Town of Placentia, in the Province of Newfoundland and Labrador, make oath and say as follows:

1. That I have reviewed the content of the within application, and the same is true to best of my knowledge information and belief.
2. I make this Affidavit truthfully, knowing it to be an offence to willfully swear a false affidavit.

SWORN TO at St. John's,
Newfoundland and Labrador,
this _____ day of February, 2023.
before me:

JOSH COLLINS

This is Exhibit "C" to the affidavit of
Josh Calpin sworn before me on the
11 day of Aug 20 23.


DARREN D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "C"

2022 01G 1964
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies*
Creditors Arrangement Act, R.S.C., 1985 c.
C-36 as amended (the “CCAA”)

AND IN THE MATTER OF an application of
Edward Collins Contracting Ltd., Classic
Security Limited, FGC Holdings Limited,
51037 Newfoundland and Labrador Inc. and
H&E Designs Ltd. (collectively, “ECC” or the
“Company”)

INTERLOCUTORY APPLICATION
(Inter Partes)

SUMMARY OF CURRENT DOCUMENT	
Court File No.	2022 01G 1964
Date of Filing Document:	February , 2023
Name of Party Filing Party of Person:	Western Surety Company
Application to which Document being filed relates:	Application by Western Surety to affirm and declare settlement agreements between ECC, Rodco Mechanical (2014) Ltd., Crane Supply Canada, and Western Surety pursuant to Rules 1, 2.01, 3.03, 29, 20A, 49, and 55 of the <i>Rules of the Supreme Court, 1986</i>
Statement of Purpose in filing:	To initiate and support the above-noted Interlocutory Application
Court Sub-file No: (if any)	N/A

TO THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR OR ONE OF THE JUDGES THEREOF

The application of Western Surety Company, the Application herein says as follows:

NATURE OF APPLICATION

1. Western Surety Company (“Western”) seeks an Order affirming and declaring the settlements between ECC, Western, Rodco Mechanical (2014) Ltd. (“Rodco”), and Crane

Supply Canada (“Crane”), which settlements provide that certain remaining contract funds being held by the Town of Placentia (the “Town”) be paid to Western. Such remaining funds constitute the holdback funds required to be held back under the *Mechanics’ Lien Act*.

MATERIAL FACTS

Background

2. On March 3, 2021, ECC entered into a contract with the Town for Water System Upgrades (the “Contract”).
3. ECC entered into subcontracts with Rodco and Crane for the supply of certain services and materials in relation to the Contract.
4. Western issued Labour & Material Payment Bond No. 532,090 (the “Payment Bond”) under which ECC is “Principal”, the Town is “Obligee” and Western is “Surety”, in relation to the Contract.
5. On or about September 1, 2021, Crane made a claim against the Payment Bond for unpaid invoices (the “Crane Debt”).
6. On or about December 2, 2021, Rodco made a claim against the Payment Bond for unpaid invoices (the “Rodco Debt”).
7. In addition to the claims against the Payment Bond, Crane and Rodco registered Claims for Lien. Rodco also filed a Certificate of Action and issued a Statement of Claim bearing Court File No. 2022 01 G0563 (the “Rodco Lien”).

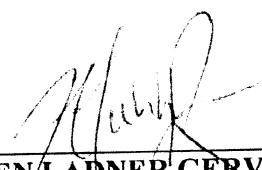
8. On or around October 4, 2021, ECC entered into a Settlement Agreement with Crane (the “Crane Settlement”). The Crane Agreement acknowledges that the Crane Debt will be paid to Crane directly from the Holdback by way of Irrevocable Direction to the Town in favour of Crane. On October 4, 2021, ECC executed such Irrevocable Direction.
9. On or around July 7, 2022, ECC, Western and Rodco entered into a Settlement Agreement to resolve the Rodco Debt (the “Rodco Agreement”). The Rodco Agreement acknowledges that both the Crane Debt and Rodco Debt will be paid directly from the Holdback.
10. ECC failed to comply with the settlements and Crane and Rodco were not paid any funds from the Holdback.
11. As a result of ECC’s breach of settlement agreements western was obligated to fulfill its obligations under the Payment Bonds, and Western paid the valid claims of Crane and Rodco in exchange for Releases, Assignments, Undertakings, and Grants (the “Assignments”).
12. As a result of the Assignments, Western is assignee of all of the claims and rights of action of both Crane and Rodco, including the Rodco Lien.
13. ECC now denies the existence of the foregoing settlements.
14. In this application, Western is seeking affirmation and declaration of the settlements so the Holdback can be paid to Western, which the Town does not dispute.

RELIEF SOUGHT

15. Western requests an Order for the following relief:
 - (a) An Order confirming the Crane Agreement and the Rodco Agreement;

- (b) An Order affirming and/or declaring the Crane Settlement;
- (c) An Order affirming and/or declaring the Rodco Settlement;
- (d) An Order that the Town may pay the Holdback to Western;
- (e) In addition and/or in the alternative, an Order affirming or declaring that ECC released any entitlement to the Holdback by virtue of the Crane Agreement and Rodco Agreement;
- (f) Such further and other relief that this Honourable Court may deem just; and
- (g) Costs of this Application on a suitable scale.

DATED at Toronto, Ontario, on the 10th of February 10, 2023


BORDEN LADNER GERVAIS LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto, ON M5H 4E3

Andrew Punzo / Mark A. Borgo
*Solicitors for the Applicant,
Western Surety Company*

TO: O'KEEFE & SULLIVAN
80 Elizabeth Avenue, Suite 202
St. John's, NL A1A 1W7
Attention: Darren O'Keefe

*Solicitors for the Respondent,
Edward Collins Contracting Ltd*

ISSUED at St. John's, in the Province of Newfoundland and Labrador this _____ day of February 2023.

Registrar

2022 01G 1964
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies*
Creditors Arrangement Act, R.S.C., 1985 c.
C-36 as amended (the "CCAA")

AND IN THE MATTER OF an application of
Edward Collins Contracting Ltd., Classic
Security Limited, FGC Holdings Limited,
51037 Newfoundland and Labrador Inc. and
H&E Designs Ltd. (collectively, "ECC" or the
"Company")

NOTICE TO THE RESPONDENT

You are hereby notified that the foregoing application will be heard by the judge presiding in the chambers at the Court House at the Supreme Court, General Division, 309 Duckwork Street, St. John's Newfoundland and Labrador, on _____, the _____ day of _____, at _____.

DATED at St. John's, in the Province of Newfoundland and Labrador, this _____ day of _____.

TO: O'KEEFE & SULLIVAN
80 Elizabeth Avenue, Suite 202
St. John's, NL A1A 1W7
Attention: Darren O'Keefe

Solicitors for the Respondent,
Edward Collins Contracting Ltd.

2022 01G 1964
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
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H&E Designs Ltd. (collectively "ECC" or the
Company")

AFFIDAVIT

SUMMARY OF CURRENT DOCUMENT	
Court File No.	2022 01G 1964
Date of Filing Document:	February __, 2023
Name of Party Filing Party of Person:	Western Surety Company
Application to which Document being filed relates:	Application by Western Surety Company to affirm and declare settlements
Statement of Purpose in filing:	To support the within application.
Court Sub-file No: (if any)	N/A

AFFIDAVIT

I, **JAMES TOOTHILL**, of the City of Regina, in the Province of Saskatchewan, **MAKE OATH**
AND SAY:

1. That I am Chief Claims Manager & Privacy Officer at Western Surety Company ("Western"), and, as such, I have knowledge of the matters contained in this Affidavit.
Where I make statements in this Affidavit which are not within my personal knowledge, I have identified the source of that information and belief, and I verily believe it to be true.

2. I have primary day-to-day responsibility, on behalf of Western, for handling claims related to Edward Collins Contracting Limited (“ECC”), including in relation to a construction project for the Town of Placentia (the “Town”) as owner for water systems upgrades (the “Project”), described further below.
3. Western is a corporation licensed to carry on business as a surety in the Province of Newfoundland and Labrador. Western’s business includes writing surety bonds for the construction industry, from small to large firms performing public works projects, as well as private construction projects.
4. This Affidavit is made in support of Western’s application to affirm and declare settlements between Western, ECC, Rodco Mechanical (2014) Ltd. (“Rodco”) and Crane Supply Canada (“Crane”), which settlements provide that certain remaining contract funds being held by the Town be paid to Western. Such remaining contract funds constitute the holdback funds required to be held back by owners pursuant to the Newfoundland and Labrador *Mechanics’ Lien Act*.

Background

5. ECC was a client of Western that requested surety bonds for various construction contracts. ECC executed an Indemnity Agreement in favour of Western on March 8, 2021, in which ECC and others jointly and severally agreed to indemnify Western for any loss or damage by reason of having issued any surety bonds. Attached hereto and marked as **Exhibit “A”** to this my Affidavit is a copy of the Indemnity Agreement.

6. At the request of ECC and in reliance upon the Indemnity Agreement, Western issued various bonds, including both performance bonds and labour and material payment bonds, for ECC contracts, including the contract in relation to the Project.
7. ECC was the contractor for the Town in connection with the Project. On March 3, 2021, ECC entered into a contract with the Town for Water System Upgrades 17-GI-20-00050 / 17-SCF-19-00129 (the “Contract”). Attached hereto and marked as **Exhibit “B”** to this my Affidavit is a copy of the Contract.
8. ECC entered into subcontracts with Rodco and Crane (together, the “Subcontractors”) for the supply of certain services and materials in relation to the Contract. Attached hereto and marked collectively as **Exhibit “C”** to this my Affidavit are copies of the subcontracts.

Western Issued Bonds for the Project

9. Western issued Labour & Material Payment Bond No. 532,090 (the “Payment Bond”) under which ECC is “Principal”, the Town is “Obligee” and Western is “Surety”, in relation to the Contract. Attached hereto and marked as **Exhibit “D”** to this my Affidavit is a copy of the Payment Bond.
10. In general, the purpose of the Payment Bond was to ensure that ECC’s subcontractors who have valid claims are paid where ECC fails to pay such “Claimants” (as defined in the Payment Bond). The Payment Bond is therefore for the benefit of both ECC’s subcontractors and the Town as it helps mitigate impacts to the completion of the Contract and Project.

Claims Against the Payment Bond & Claims for Lien

11. In September 2021, Western first became aware of issues with ECC's performance regarding the Project when it received claims from the Subcontractors under the Payment Bond.
12. On or about September 1, 2021, Crane made a claim under the Payment Bond in the amount of \$251,635.00 for unpaid invoices (the "Crane Debt"). Attached hereto and marked as **Exhibit "E"** to this my Affidavit is a copy of the executed Proof of Claim that Western received from Crane along with supporting documentation.
13. In addition to Crane's claim against the Payment Bond, on September 9, 2021, Crane registered a Claim for Lien in the Supreme Court of Newfoundland and Labrador bearing Registration No. 19909 in relation to the Crane Debt. Attached hereto and marked as **Exhibit "F"** to this my Affidavit is a copy of the Claim for Lien of Crane.
14. On or about December 2, 2021, Rodco made a claim under the Payment Bond in the amount of \$508,271.50 for unpaid invoices (the "Rodco Debt"). Attached hereto and marked as **Exhibit "G"** to this my Affidavit is a copy of the Proof of Claim that Western received from Rodco along with supporting documentation.
15. In addition to Rodco's claim against the Payment Bond, on December 3, 2021, Rodco registered a Claim for Lien bearing Registration No. 19963 in relation to the Rodco Debt and later filed a Certificate of Action and Statement of Claim in the Supreme Court of Newfoundland and Labrador (the "Rodco Lien"). Attached hereto and marked collectively as **Exhibit "H"** to this my Affidavit are a copies of the Notice of Action and Statement of Claim of Rodco.

16. On December 22, 2021, Josh Collins, Principal of ECC, sent me an email advising that ECC had made a lump sum payment to Rodco in the amount of \$135,000.00, reducing the Rodco Debt. This payment to Rodco is also acknowledged in paragraph 7 of Rodco's Statement of Claim. Attached hereto and marked as **Exhibit "I"** to this my Affidavit is a copy of the correspondence from Mr. Collins.
17. Josh Collins alleged to me on two other occasions payments made by ECC to Rodco: (i) on January 24, 2022, Mr. Collins advised me by email that ECC had made a payment of \$75,000.00 to Rodco; and (ii) on March 29, 2022, Mr. Collins advised me during a meeting that ECC had made a lump sum payment of \$48,000.00 to Rodco. However, I was unable to verify with Rodco that these amounts had been paid as Mr. Collins did not provide me with payment receipts or account payable statements. Attached hereto and marked as **Exhibit "J"** to this my Affidavit is a copy of the email from Mr. Collins dated January 24, 2022.
18. On April 1, 2022, I emailed Brad Leyte, counsel for Rodco, asking if Rodco had received any further payments from ECC. On April 8, 2022, Mr. Leyte said he could offer the following information: (i) Rodco is still owed \$391,700.24 from ECC; (ii) Rodco has been pursuing updates from ECC regarding payment, but no firm answers have been received to date; and (iii) Rodco has only received progress payments on current progress claims, and no lump sum payment on the long overdue balance. Attached hereto and marked collectively as **Exhibit "K"** to this my Affidavit are copies of said correspondence.

ECC Settles the Claims of Rodco and Crane

19. On or about October 4, 2021, ECC entered into a Settlement Agreement with Crane to resolve the Crane Debt (the "Crane Agreement").

20. On or about July 7, 2022, ECC, Western and Rodco entered into a Settlement Agreement to resolve the Rodco Debt (the “Rodco Agreement”).
21. Both the Crane Agreement and the Rodco Agreement (together, the “Settlement Agreements”) contemplate the Subcontractors being paid a specified amount directly from the holdback held by the Town in relation to the Contract, which is currently \$244,977.53 (the “Holdback”). Further, details regarding the negotiations and execution of the Settlement Agreements are discussed in more detail below.
22. ECC failed to perform the settlements and the Subcontractors were not paid any funds from the Holdback. The Subcontractors then looked to Western to pursue payment under the Payment Bond.
23. Western fulfilled its obligations under the Payment Bond and paid the valid claims of the Subcontractors. Western issued payment to Crane in the amount of \$204,781.32 and to Rodco in the amount of \$398,607.88, in exchange for Releases, Assignments, Undertakings, and Grants (the “Assignments”). Attached hereto and marked collectively as **Exhibit “L”** to this my Affidavit are copies of the Assignments.
24. I am advised by Western’s lawyers, Borden Ladner Gervais LLP (“BLG”), and do verily believe to be true, that as a result of the Assignments, Western is assignee of all of the claims and rights of action of both Crane and Rodco.
25. I am advised by BLG, and do verily believe to be true, that Western has made all reasonable efforts to negotiate the release of the Holdback on account of the Assignments and the Settlement Agreements to avoid a hearing. However, ECC disagrees with Western and

asserts that ECC did not enter into any settlements and that Western is not entitled to the Holdback.

26. I am advised by BLG and do verily believe to be true, that it is Western's understanding that the Town does not object to the Holdback being paid to Western. However, the Town is reluctant to release the Holdback given its obligations under the *Mechanics' Lien Act* and the position taken by ECC.

The Crane Settlement

27. On September 22, 2021, Michael Cabot, previous counsel for ECC, sent a without prejudice letter to Lee Ballett of Duffy Law Office, then counsel for Crane, proposing a settlement to resolve the Crane Debt. The proposal provided that (i) ECC execute an assignment in favour of Crane, whereby the full amount of the Holdback held by the Town in connection with the Project, be assigned to Crane; and (ii) Crane vacate its Claim for Lien. Mr. Cabot advised that if there was an agreement, the Holdback amount as of September 30, 2021, should be available for release to Crane within 2-4 weeks of October 15, 2021. Attached hereto and marked as **Exhibit "M"** is a copy of said correspondence.
28. On September 28, 2021, Mr. Cabot on behalf of ECC wrote to the Town seeking written confirmation of the amount of the Holdback held by the Town in relation to the Project and confirmation that the Town would keep in trust the Holdback as of September 28, 2021, pending further direction from ECC and/or its solicitor. Attached hereto and marked as **Exhibit "N"** is a copy of said correspondence.

Western should deny Crane's claim against the Payment Bond. Attached hereto and marked as **Exhibit "S"** is a copy of said correspondence.

34. On March 8, 2022, I wrote to Josh Collins advising that Crane, through its lawyer, had advised that the Crane Agreement had not yet been performed. I asked Mr. Collins to let me know when Crane could expect payment and if the Rodco Lien was impacting payment of the Holdback from the Town. Attached hereto and marked as **Exhibit "T"** to this my Affidavit is a copy of said correspondence, dated March 8, 2022.
35. On May 12, 2022, I wrote to the Town advising of the Payment Bond claims of Crane and Rodco and asked the Town to hold all funds in connection with the Project until arrangements could be put in place to ensure payment to the Subcontractors. Attached hereto and marked as **Exhibit "U"** to this my Affidavit is a copy of said correspondence.
36. That same day, I received an email from Matthew Craig, counsel for the Town, indicating that the Town did not intend to release the Holdback while liens remained outstanding. Attached hereto and marked as **Exhibit "V"** to this my Affidavit is a copy of said correspondence, dated May 12, 2022.
37. On May 13, 2022, Mr. Cabot on behalf of ECC sent a without prejudice letter to Mr. Paul Guaragna of Miller Thomson, counsel for Crane at that time, confirming the Crane Agreement and the payment of the Holdback to Crane by way of the Irrevocable Direction. With respect to payment, Mr. Cabot advised that the timing of the release of the Holdback to Crane was under the Town's purview and that there appeared to be competing claims to the Holdback on account the Rodco Lien. Attached hereto and marked as **Exhibit "W"** to this my Affidavit is a copy of said correspondence.

29. On September 28, 2021, Bernard Power, Mayor of the Town, wrote to Mr. Cabot confirming the Holdback amount at that time (\$178,070.71 plus HST) and that the Town would retain the Holdback as of September 28, 2021, pending further direction from ECC and/or its solicitor. Attached hereto and marked as **Exhibit "O"** is a copy of said correspondence.
30. On October 5, 2021, Crane discharged its Claim for Lien. Attached hereto and marked as **Exhibit "P"** to this my Affidavit is a copy of the Discharge of Lien.
31. On October 7, 2021, ECC executed the Crane Agreement. The Crane Agreement acknowledges the Crane Debt, directs ECC to make payment by way of Irrevocable Direction to the Town (the "Irrevocable Direction"), directing the Town to pay \$178,070.71 plus HST from the Holdback to Crane, in exchange for Crane discharging its Claim for Lien. Attached hereto and marked collectively as **Exhibit "Q"** are copies of the executed Crane Agreement and Irrevocable Direction to Pay.
32. On October 27, 2021, I received a letter from Michael Duffy, then counsel for Crane, advising that the Crane Debt remained outstanding, that the terms of the Crane Agreement were falsely represented to Crane, and that Crane was asserting a claim under the Payment Bond. Attached hereto and marked as **Exhibit "R"** is a copy of said correspondence.
33. On November 1, 2021, I received a letter from Mr. Cabot on behalf of ECC regarding Crane's claim under the Payment Bond and details about the Crane Agreement. Mr. Cabot confirmed that ECC and Crane had agreed to resolve the Crane Debt by way of assignment of ECC's interest in the Holdback retained by the Town, and that Crane agreed to vacate its Claim for Lien and not make any further claims against the Payment Bond. Mr. Cabot also confirmed that the Crane Agreement remained binding on the parties and suggested that

38. On May 17, 2022, Mr. Guaragna advised my lawyers at BLG that the Holdback had not been paid to Crane despite the Contract having reached substantial performance. Mr. Guaragna considered ECC to be in default of the Crane Agreement and sought payment under the Payment Bond. Attached hereto and marked as **Exhibit "X"** to this my Affidavit is a copy of said correspondence.

The Rodco Settlement

39. As a result of the Rodco Lien, the Town would not release the Holdback to Crane in accordance with the Irrevocable Direction to Pay. To resolve this issue, Western, ECC, and Rodco negotiated the Rodco Agreement. The Rodco Agreement was confirmed by all parties and contemplates the Rodco Lien being vacated and Crane and Rodco being paid directly from the Holdback.
40. On May 26, 2022, Mr. Cabot on behalf of ECC, sent a without prejudice email to Brad Leyte, counsel for Rodco, advising that he understood ECC and Rodco had worked out the framework for a resolution, which included:
- (a) Rodco discharging its lien;
 - (b) Crane being paid \$206,000 from the Holdback;
 - (c) Rodco receiving the balance of the Holdback, being \$50,000; and
 - (d) ECC paying the remaining balance of the Rodco Debt, failing which Rodco would claim under the Payment Bond.

Mr. Cabot requested Mr. Leyte's position and said it was his understanding that a deal had been reached between their clients. Attached hereto and marked as **Exhibit "Y"** to this my Affidavit is a copy of said correspondence.

41. On May 27, 2022, Mr. Cabot wrote to Mr. Leyte providing further details regarding the settlement. Mr. Cabot confirmed the total amount of the Holdback to be \$244,977.53, of which Crane would receive \$204,781.36 and Rodco would receive the balance, being \$40,196.17. Attached hereto and marked as **Exhibit "Z"** to this my Affidavit is a copy of said correspondence.
42. On May 30, 2022, Mr. Cabot wrote to Mr. Leyte indicating that the amounts referenced in his email of May 27, 2022, included all claims. Mr. Cabot also stated that no other company was claiming any payment, including ECC. Attached hereto and marked as **Exhibit "AA"** to this my Affidavit is a copy of said correspondence.
43. On May 30, 2022, Mr. Leyte sent a without prejudice email to Mr. Cabot advising that Rodco wished to move forward with the proposed settlement. Attached hereto and marked as **Exhibit "BB"** to this my Affidavit is a copy of said correspondence.
44. On June 3, 2022, Mr. Cabot circulated a draft settlement agreement and Mr. Leyte provided comments. Attached hereto and marked as **Exhibit "CC"** to this my Affidavit is a copy of said correspondence.
45. On June 7, 2022, Mr. Cabot advised that he had incorporated Mr. Leyte's comments and circulated what is now the Rodco Agreement. Among other things, the Rodco Agreement contains the following terms and conditions:

(a) The parties to the Rodco Agreement acknowledge and agree that the Holdback can be released and paid to the Subcontractors; and

(b) ECC and Rodco will do all things necessary and execute all documents reasonably necessary to give full effect to their obligations under the Rodco Agreement.

Mr. Cabot told Mr. Leyte he would arrange to have ECC execute the Rodco Agreement and asked Mr. Leyte if Rodco would agree to sign the Rodco Agreement in counterpart. Attached hereto and marked as **Exhibit “DD”** to this my Affidavit is a copy of said correspondence.

46. On June 8, 2022, Mr. Leyte advised Mr. Cabot that Rodco had no problem signing in counterpart and that Rodco would execute the Rodco Agreement. Mr. Leyte asked Mr. Cabot to coordinate with the Town regarding the release the Holdback. Attached hereto and marked as **Exhibit “EE”** to this my Affidavit is a copy of said correspondence.

47. On June 8, 2022, Mr. Cabot advised Mr. Leyte that he had spoken to Mr. Craig and was told that the Town would cooperate in having the Holdback released as contemplated in the Rodco Agreement and raised the prospect of getting a release from Crane and Rodco. Attached hereto and marked as **Exhibit “FF”** to this my Affidavit is a copy of said correspondence.

48. On June 23, 2022, Mr. Cabot wrote to Mr. Craig copying Western and BLG. Mr. Cabot advised that Rodco and ECC had settled the terms of the Rodco Agreement on June 7, 2022, which included Rodco’s Lien being vacated. Mr. Cabot said all that remained was execution of the Rodco Agreement. Attached hereto and marked as **Exhibit “GG”** to this my Affidavit is a copy of said correspondence.

49. On June 28, 2022, Mr. Leyte advised Mr. Cabot that Rodco had attend at his office that morning to execute the Rodco Agreement. Attached hereto and marked as **Exhibit “HH”** to this my Affidavit is a copy of said correspondence.
50. On July 4, 2022, Mr. Cabot wrote to me asking if Western had signed the Rodco Agreement. I responded saying that the initial draft of the agreement did not have a signature line for Western. I told him that if a signature line was added Western would execute the Rodco Agreement. Attached hereto and marked as **Exhibit “II”** to this my Affidavit is a copy of said correspondence.
51. On July 4, 2022, Mr. Cabot sent BLG the Rodco Agreement for review and execution. Attached hereto and marked as **Exhibit “JJ”** to this my Affidavit is a copy of said correspondence.
52. On July 6, 2022, Mr. Cabot wrote to BLG and me, copying Mr. Leyte, confirming that ECC had signed the Rodco Agreement. Attached hereto and marked as **Exhibit “KK”** to this my Affidavit is a copy of said correspondence.
53. On July 13, 2022, I wrote to Mr. Cabot advising that BLG had suggested a few changes to the Rodco Agreement. I specifically asked Mr. Cabot if these changes would be approved or if they would cause hardship with the parties. I did not want to interrupt the performance of the settlement in place, therefore, I was simply asking if the proposed revisions could be incorporated. To the extent incorporating the proposed revisions would delay the settlement, I was happy to proceed with the version already signed by ECC and Rodco. Attached hereto and marked as **Exhibit “LL”** to this my Affidavit is a copy of said correspondence.

54. Mr. Cabot did not respond to my email of July 13, 2022. On July 18, 2022, Mr. Leyte followed up with me for an update on the Rodco Agreement. That same day, I advised Mr. Leyte and Mr. Cabot that I would sign the Rodco Agreement without the proposed changes. Attached hereto and marked as **Exhibit “MM”** to this my Affidavit is a copy of said correspondence.
55. On July 19, 2022, I signed the Rodco Agreement and circulated Western’s signed copy to Mr. Leyte and Mr. Cabot. Attached hereto and marked as **Exhibit “NN”** to this my Affidavit is a copy of the signed Rodco Agreement from Western and the corresponding email to counsel.
56. At this time, because all the parties had now signed the Rodco Agreement and it was previously noted on June 8, 2022, that the parties would sign in counterpart, it was clear to me that a settlement was in place, whereby ECC assigned any interest in the Holdback to Rodco and Crane and further agreed to pay the shortfall to Rodco. Therefore, I considered Western’s Payment Bond exposure regarding Crane and Rodco to have been addressed.
57. As of the date of the swearing of this my Affidavit, Western has not received the signed copy of the Rodco Agreement from ECC or Rodco, despite confirmation from their lawyers that the Rodco Agreement was signed.

ECC Breaches the Settlements and Western Pays Rodco and Crane

58. On July 26, 2022, BLG wrote to Mr. Cabot to follow up on the status of ECC’s performance of the settlement obligations. The following day, Mr. Cabot advised BLG that he was no

Attached hereto and marked as **Exhibit “RR”** to this my Affidavit is a copy of said correspondence.

63. I am advised by BLG and verily believe that Mr. O’Keefe did not respond to their email of August 24, 2022.

Western’s Efforts to Affirm the Settlement Obligations

64. On October 18, 2022, BLG wrote to Phil Clarke of Grant Thornton Limited (the “Monitor”), copying Mr. Craig and Mr. O’Keefe, explaining the claims against the Payment Bond, the Rodco Agreement, and the Assignments. BLG advised the Monitor that the Town was agreeable in principle to releasing the Holdback directly to Western, but the Town would require a release from ECC and/or approval from the Monitor disclaiming any rights to the Holdback and confirming ECC would not seek further amounts from the Town in connection with the Contract. Attached hereto and marked as **Exhibit “SS”** to this my Affidavit is a copy of said correspondence.
65. On October 19, 2022, Mr. O’Keefe wrote to BLG setting out ECC’s position with respect to the Holdback. Mr. O’Keefe alleged, among other things, that the Rodco Agreement was not finalized, and that the Holdback should be paid to ECC and form part of its estate. Attached hereto and marked as **Exhibit “TT”** to this my Affidavit is a copy of said correspondence.
66. On October 26, 2022, the Monitor responded to BLG’s correspondence of October 18, 2022, requesting information regarding the Subcontractor liens, the Settlement Agreements, and confirmation that Rodco and Crane had been paid under the Payment Bond. Attached hereto and marked as **Exhibit “UU”** to this my Affidavit is a copy of said correspondence.

longer acting for ECC in this matter and said he would pass his correspondence to ECC. I am advised by BLG and do verily believe that they never received a response from ECC after Mr. Cabot's email of July 27, 2022. Attached hereto and marked as **Exhibit "OO"** to this my Affidavit is a copy of said correspondence.

59. As a result of ECC's failure to perform its settlement obligations, Western was forced to comply with its obligations under the Payment Bond and pay Crane \$204,781.32 and Rodco \$398,607.88.
60. On August 23, 2022, BLG wrote to Josh Collins of ECC advising that Crane and Rodco would be paid under the Payment Bond, and they asked ECC to direct the Holdback funds to Western as contemplated in the Rodco Agreement. Attached hereto and marked as **Exhibit "PP"** to this my Affidavit is a copy of said correspondence.
61. I am advised by BLG and do verily believe that they did not receive a response from Josh Collins regarding their email of August 23, 2022. However, they did receive an email from Darren O'Keefe, current counsel for ECC, that same day alleging that the Rodco Agreement was never executed between the parties. Attached hereto and marked as **Exhibit "QQ"** to this my Affidavit is a copy of said correspondence.
62. On August 24, 2022, BLG wrote to Mr. O'Keefe, advising that Western would be obtaining the Assignments and would be entitled to the Holdback as the assignee of Rodco's claims. BLG further advised that the Town was willing to direct the Holdback to Western but required an acknowledgment or direction from ECC. BLG asked Mr. O'Keefe if ECC would provide the acknowledgement or direction as it was contemplated in the Rodco Agreement.

67. On November 25, 2022, BLG wrote to the Monitor providing the requested information. On December 7, 2022, the Monitor advised that ECC was disputing Western's position along with the validity of the Rodco Lien. Attached hereto and marked as **Exhibit "VV"** to this my Affidavit is a copy of said correspondence.
68. On December 12, 2022, BLG wrote to the Monitor requesting that ECC provide information to support its position regarding the validity of the Rodco Lien. That same day, Mr. O'Keefe responded to BLG indicating that the only information ECC had was its interpretation of the *Mechanics' Lien Act* and relevant legal principles concerning how a lien survives after the underlying debt obligation is paid. Attached hereto and marked as **Exhibit "WW"** to this my Affidavit is a copy of said correspondence.
69. On December 15, 2022, Justice MacDonald issued the Extension to Stay Order (the "Extension Order") in this proceeding. The Extension Order invites parties to file materials in reply to the Monitor's Interim Report and return for an interim hearing on February 17, 2023, to review the contents of the Monitor's Interim Report. Attached hereto and marked as **Exhibit "XX"** to this my Affidavit is a copy of the Extension Order.
70. I am advised by BLG and do verily believe to be true, that they attended a meeting with Mr. O'Keefe, Mr. Craig, and the Monitor on January 5, 2023. I am further advised by BLG and do verily believe that during the meeting, Mr. O'Keefe agreed to provide information in support of ECC's position regarding its alleged entitlement to the Holdback.
71. Following the call, BLG wrote to Mr. O'Keefe, copying the Monitor and Mr. Craig, advising that Western's preference would be for the Town to hold onto the Holdback funds rather than paying them into court because Western's approach contemplated cost efficiency by

having one hearing to determine to who and where the Holdback should be paid by the Town, rather than separate applications to (i) pay Holdback into court, then (ii) return to address the merits. Attached hereto and marked as **Exhibit “YY”** to this my Affidavit is a copy of said correspondence.

72. I am advised by BLG and do verily believe that ECC has not provided any information to support its position regarding the Holdback. I am further advised by BLG and do verily believe that the Monitor requested documents from ECC on this issue. As referenced in the Fourth Report of the Monitor dated February 3, 2023, ECC has not provided the Monitor with the documents. Attached hereto and marked as **Exhibit “ZZ”** to this my Affidavit is a copy of the Fourth Monitor’s Report.
73. On January 20, 2023, Mr. O’Keefe wrote to BLG and the Town advising that the Holdback should be paid to ECC and constituted ECC receivables that should be made available to its creditors. Mr. O’Keefe said he had instructions to make an application to compel the Town to pay the funds into court if they were not paid to the Monitor. Attached hereto and marked as **Exhibit “AAA”** to this my Affidavit is a copy of said correspondence.
74. On January 23, 2023, BLG responded to Mr. O’Keefe’s January 20 letter and advised of Western’s position, namely, that Western disagrees that the Holdback should be paid to ECC and the basis of Western’s position. Attached hereto and marked as **Exhibit “BBB”** to this my Affidavit is a copy of said email.
75. On January 31, 2023, Mr. O’Keefe wrote to BLG and Mr. Craig suggesting that the Holdback be paid into court in the *Mechanics’ Lien* action commenced by Rodco (the “Rodco Lien Action”). Mr. O’Keefe indicated that if an agreement could not be reached, he

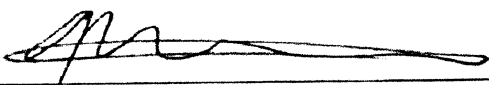
expected to make an application to have the funds paid into court as proposed. Attached hereto and marked as **Exhibit “CCC”** to this my Affidavit is a copy of said correspondence.

76. On February 2, 2023, BLG advised Mr. O’Keefe that Western would bring an application to affirm and declare the Settlement Agreements, which application would be brought in the CCAA proceedings in accordance with the Extension Order. BLG asked Mr. O’Keefe if he would like to work cooperatively and agree on a mutually acceptable timetable for the exchange of materials, cross-examination, and hearing date. Attached hereto and marked as **Exhibit “DDD”** to this my Affidavit is a copy of said correspondence.
77. On February 2, 2023, Mr. O’Keefe responded to BLG asserting that he did not agree with Western’s proposed approach and reiterated ECC’s position that there was no settlement agreement. Mr. O’Keefe served an application in the Rodco Lien Action to have the Holdback paid into court along with supporting Affidavits from Mr. O’Keefe and Josh Collins. Attached hereto and marked as **Exhibit “EEE”** to this my Affidavit is a copy of said correspondence.
78. In addition, on February 2, 2023, Mr. O’Keefe served a Notice to Produce for Inspection on Western in the Rodco Lien Action. Attached hereto and marked as **Exhibit “FFF”** to this my Affidavit is a copy of the Notice to Produce for Inspection.
79. That same day, BLG responded to Mr. O’Keefe objecting to the Notice to Produce for Inspection on several grounds, including that Western is not a party to the Rodco Lien Action, BLG not being counsel of record for any party in that action, and that the documents requested are not contemplated under the *Rules of the Supreme Court*. In reply, Mr. O’Keefe advised BLG that ECC would bring an application to force production of the documents

indemnity basis. Attached hereto and marked as **Exhibit "GGG"** to this my Affidavit is a copy of said correspondence, dated February 2, 2023.

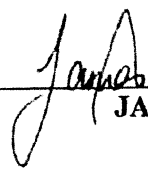
80. As of the date of the swearing of this my Affidavit, I am advised by BLG and do verily believe to be true that ECC has not provided any supporting information regarding its entitlement to the Holdback funds or any information in support of the position that the Rodco Agreement was never finalized.
81. I swear this Affidavit in support of Western's position in the within application and for no other or improper purpose.

SWORN TO at Regina, in the Province of
Saskatchewan, the 15th day of February,
2023 before me:



Barrister, Notary Public or Commissioner for
Oaths





JAMES TOOTHILL

**ATTACHMENTS TO THE JAMES TOOTHILL AFFIDAVIT DATED 10
FEBRUARY 2023 ARE OMITTED AS THEY HAVE BEEN
PROVIDED PREVIOUSLY VIA EMAIL**

This is Exhibit "70" to the affidavit of
John Collins sworn before me on the
17 day of August 2023.


DARREN D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "D"

From: Darren O'Keefe
Sent: May 11, 2023 9:37 AM
To: 'Power, Anette'; 'Borgo, Mark'
Cc: Inquiries, Supreme Court; Hillier, Michelle; Phil Clarke - BDO Canada Ltd. (Phil.Clarke@ca.gt.com); Sharon Kour; Caitlin Fell; Dunne, Ashley; Punzo, Andrew
Subject: RE: In Re: Edward Collins Contracting Ltd. [2022 01G 1964] [BLG-DOCUMENTS.FID8425518]
Attachments: Procedural Order [Draft] 26 April 23.docx

Annette –

Please see the attached draft order for the attention of Mr. Justice MacDonald. We will be discussing this at this morning's hearing. This has been previously circulated to counsel.

Thank you,

Darren D. O'Keefe
Partner, Lawyer | O'Keefe & Sullivan
P 709 700 0911 | C 709 699 3002
E dokeefe@okeefesullivan.com
80 Elizabeth Ave., 2nd Floor, St. John's, NL A1A 1W7

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From: Power, Anette <AnettePower@supreme.court.nl.ca>
Sent: Wednesday, May 10, 2023 6:05 PM
To: 'Borgo, Mark' <MBorgo@blg.com>
Cc: Inquiries, Supreme Court <supcourtinquiries@supreme.court.nl.ca>; Hillier, Michelle <michellehillier@supreme.court.nl.ca>; Phil Clarke - BDO Canada Ltd. (Phil.Clarke@ca.gt.com) <Phil.Clarke@ca.gt.com>; Sharon Kour <skour@reconllp.com>; Caitlin Fell <cfell@reconllp.com>; Dunne, Ashley <AshleyDunne@supreme.court.nl.ca>; Punzo, Andrew <APunzo@blg.com>; Darren O'Keefe <dokeefe@okeefesullivan.com>
Subject: RE: In Re: Edward Collins Contracting Ltd. [2022 01G 1964] [BLG-DOCUMENTS.FID8425518]

Thank you. Consider it done.

Anette

From: Borgo, Mark <MBorgo@blg.com>
Sent: Wednesday, May 10, 2023 5:07 PM
To: Power, Anette <AnettePower@supreme.court.nl.ca>
Cc: Inquiries, Supreme Court <supcourtinquiries@supreme.court.nl.ca>; Hillier, Michelle <michellehillier@supreme.court.nl.ca>; Phil Clarke - BDO Canada Ltd. (Phil.Clarke@ca.gt.com) <Phil.Clarke@ca.gt.com>; Sharon Kour <skour@reconllp.com>; Caitlin Fell <cfell@reconllp.com>; Dunne, Ashley <AshleyDunne@supreme.court.nl.ca>; Punzo, Andrew <APunzo@blg.com>; 'Darren O'Keefe' <dokeefe@okeefesullivan.com>
Subject: RE: In Re: Edward Collins Contracting Ltd. [2022 01G 1964] [BLG-DOCUMENTS.FID8425518]

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Anette,

Please find enclosed correspondence from BLG LLP on behalf of Western Surety Company. Kindly forward same to the attention of Justice MacDonald.

Thank you,



Mark A. Borgo

Senior Associate

T 416.367.7887 | MBorgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON,
Canada M5H 4E3

BLG | Canada's Law Firm

Calgary | Montréal | Ottawa | Toronto | Vancouver

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Borden Ladner Gervais LLP

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From: Power, Anette <AnettePower@supreme.court.nl.ca>

Sent: May 9, 2023 3:29 PM

To: 'Darren O'Keefe' <dokeefe@okeefesullivan.com>

Cc: Inquiries, Supreme Court <supcourtinquiries@supreme.court.nl.ca>; Hillier, Michelle

<michellehillier@supreme.court.nl.ca>; Phil Clarke - BDO Canada Ltd. (Phil.Clarke@ca.gt.com) <Phil.Clarke@ca.gt.com>;

Sharon Kour <skour@reconllp.com>; Caitlin Fell <cfell@reconllp.com>; Dunne, Ashley

<AshleyDunne@supreme.court.nl.ca>; Punzo, Andrew <APunzo@blg.com>; Borgo, Mark <MBorgo@blg.com>

Subject: RE: In Re: Edward Collins Contracting Ltd. [2022 01G 1964]

[External / Externe]

Thank you.



E. Anette Power

Judicial Assistant

Supreme Court of Newfoundland and Labrador

PO Box 937, 309 Duckworth Street

St. John's, NL A1C 5M3

Direct Line: 709-729-6800

From: Darren O'Keefe <dokeefe@okeefesullivan.com>
Sent: Tuesday, May 9, 2023 4:56 PM
To: Power, Anette <AnettePower@supreme.court.nl.ca>
Cc: Inquiries, Supreme Court <supcourtinquiries@supreme.court.nl.ca>; Hillier, Michelle <michellehillier@supreme.court.nl.ca>; Phil Clarke - BDO Canada Ltd. (Phil.Clarke@ca.gt.com) <Phil.Clarke@ca.gt.com>; Sharon Kour <skour@reconllp.com>; Caitlin Fell <cfell@reconllp.com>; Dunne, Ashley <AshleyDunne@supreme.court.nl.ca>; Punzo, Andrew <APunzo@blg.com>; Borgo, Mark <MBorgo@blg.com>
Subject: RE: In Re: Edward Collins Contracting Ltd. [2022 01G 1964]

Annette –

Please see the attached correspondence. Can you please bring this to the attention of Mr. Justice MacDonald.

Thank you,

Darren D. O'Keefe
Partner, Lawyer | O'Keefe & Sullivan
P 709 700 0911 | C 709 699 3002
E dokeefe@okeefesullivan.com
80 Elizabeth Ave., 2nd Floor, St. John's, NL A1A 1W7

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2022 01G 1964

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the Companies Creditor Arrangement Act, R.S.C. 1985 c.C-36 as amended (the “CCAA”); and

AND IN THE MATTER OF an application of Edward Collins Contracting Ltd., Classic Security Limited, FGC Holdings Ltd., 51037 Newfoundland and Labrador Inc., and H & E Designs Ltd. (collectively “ECC” or the “Company”).

PROCEDURAL ORDER

Before the Honourable Justice Alexander MacDonald on April 26, 2023:

WHEREAS Western Surety Company (“**Western**”) has made an application on the 10 of February, 2023, for the determination of the ownership of certain holdback funds on a project known as the “Placentia Waterline Project” and the parties have appeared to set dates for certain steps to be taken in that matter;

AND WHEREAS Edward Collins Contracting Limited, Classic Security Ltd., FGC Holdings Ltd., 51037 Newfoundland and Labrador Inc. and H & E Designs Ltd. (collectively, the “**ECC**”) are subject to a stay of proceedings under .11 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), which stay was extended by this Honorable Court up until 31 May 2023.

ON HEARING the submissions of counsel for the Western, the Monitor, the Royal Bank of Canada, the ECC Group and such other counsel that were present, no one else appearing for any party, and including a review of the evidence submitted by the parties and the Monitor.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the materials filed, as set out in the Affidavit of Service, is hereby deemed adequate notice so that this Motion is properly returnable today and hereby dispenses with further service thereof.

PROCEDURAL OUTLINE

2. **THIS COURT ORDERS** as follows:

A. Documents:

- (i) Both Western and ECC would file their documents in the Placentia Waterline Holdback matter by 03 May 2023;

B. Affidavits:

3. Affidavits would be filed as follows:

- (a) Western filed its initial affidavit of James Toothill on 10 February 2023;
- (b) ECC's reply affidavit is to be filed by 12 May 2023;
- (c) Western's rebuttal affidavit is to be filed by 17 May 2023;
- (d) Any further affidavit of ECC to be filed by 19 May 2023; and
- (e) Cross examination on the affidavits would take place virtually between 22 – 26 May, 2023;

C. Briefs:

4. Briefs would be filed as follows:

- (a) On priorities, Western's brief to be filed by 15 May 2023;
- (b) On priorities, ECC's brief to be filed by 29 May 2023;
- (c) On priorities, other parties (i.e. RBC and CRA) to file by 05 June 2023;
- (d) On formation of contract, Westerns' brief to be filed by 29 May 2023;
- (e) On formation of contract, ECC's brief to be filed by 05 June 2023; and
- (f) Replies to be presented at the hearing.

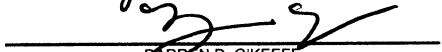
D. Hearing:

5. The hearing of the matter is scheduled for a full day on 09 June 2023.

GENERAL

6. **THIS COURT ORDERS** that this Order and all its provisions are effective as of 12:01 a.m. Newfoundland Time on the effective date of this Order.

ISSUED at St. John's, Newfoundland and Labrador effective the 26th day of April 2023.

This is Exhibit "E" to the affidavit of
Josh Collins sworn before me on the
17 day of August 2023.


DARREN D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "E"

Adam Baker

LAW OFFICE PLC INC.

40 Main Street
Corner Brook, NL A2H 1C3
T: +1.709.639.1110
F: +1.709.639.7617
newfoundlaw.com

September 14th, 2021

PRIVATE AND CONFIDENTIAL

Via facsimile and email: (888) 224-3504; rita.leslie@cranesupply.com

Crane Supply
145 English Drive
Moncton, NB E1E 3X3

Attn: Ms. Rita Leslie, Regional Credit Manager

Dear Ms. Leslie:

Re: Our client: Edward Collins Contracting Limited
Court file no.: n/a
Matter: Crane Canada Account

Please be advised that we have been engaged by Edward Collins Contracting Limited ("ECC"), in relation to its accounts with Crane Canada ("Crane").

Specifically, our client has forwarded copies of some correspondence between ECC and Crane.

We understand as follows:

1. ECC has been working on a project at the Town of Placentia, Newfoundland and Labrador (the "Project"), for the benefit of the owner, the Town of Placentia, (the "Owner").
2. The total value of the Project is in excess of \$2,300,000.00.
3. Crane participated in the bidding for the Project, and secured copies of the bid package and made recommendations on materials for the Project.
4. Crane supplied materials for the Project which ECC and its agents installed.
5. Some materials supplied by Crane were installed without issue.
6. Some materials supplied by Crane have been returned to Crane.

AdamBaker@newfoundlaw.com

7. Some materials supplied by Crane need to be returned to Crane according to the Owner's consultants on the Project.
8. Crane has rendered invoices to ECC for all materials supplied for the Project, including both materials that have been returned to it and materials that need to be returned to it.
9. There is a dispute about the amounts properly payable to Crane for the supplies.
10. Crane has nonetheless made demands on those invoices.
11. Crane has represented the amounts of those invoices to ECC's bonding provider, Western Surety Company, as amounts owing by ECC to Crane, without acknowledging the materials returned or the materials needing to be returned.
12. As a result of Crane's correspondence to the bonding company, ECC is now required to meet with its bonding company.

On the basis of these facts as stated we make the following observations:

1. Crane's active participation in the bidding process and material selection is in the nature of a consulting role.
2. Crane's arrangement with ECC further seems to be in the nature of a consignment contract.
3. If Crane makes a mistake in material selection, then it seems clear that the terms of the contract with ECC are that the materials are to be returned. That is, it has a clear responsibility to accept returns if its own estimates are wrong.
4. To this end Crane is more in the nature of a **co-venturer**, than a simple subcontractor or supplier.
5. This being the case, Crane may not properly have a direct contract for the purposes of ECC's bonding on the Project, and as such would not be entitled to make any claims under the bond.
6. In either case, Crane is in breach of its contract with ECC, to wit:
 - a. By failing to take back materials supplied which are returnable.
 - b. By refusing to credit ECC for the materials both returned and returnable.

7. Crane has also engaged in tortious activity by misrepresenting its account to ECC's bonding company, by defaming ECC to its bonding company, and by interfering unjustly with ECC's contract with its bonding company but putting the entirety of ECC's business as a contractor – for whom bonding capacity is essential – in jeopardy, and breached its duty of care towards ECC.
8. The amount properly payable on the account for the materials supplied by Crane to the Project remains unsettled.
9. The terms of the contract with Crane and ECC are 90 days payable, on settlement of the account.

For the foregoing reasons, please TAKE NOTICE that our client therefore DEMANDS as follows:

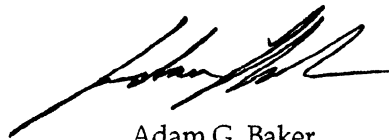
1. That Crane cease its actions in breach of its contract with ECC and **make good on its obligations** to accept returnable materials and give proper credit for all materials returned.
2. That Crane **cease and desist** its misrepresentation and defamation of ECC, whether to ECC's bonding company or otherwise.
3. That Crane forthwith write ECC's bonding company with a **letter of retraction** and confirm that ECC's account with Crane remains unsettled.

Our client looks forward to working together to resolve these issues with a view to the benefit of all parties.

We look forward to your prompt response and attention to this matter.

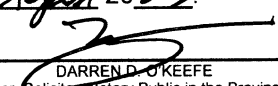
I trust you will find the foregoing to your satisfaction, and remain

Respectfully,



Adam G. Baker

be
c Josh Collins

This is Exhibit "F" to the affidavit of
Jane Collins sworn before me on the
17th day of August 2023.


DARREN D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "F"

SETTLEMENT AGREEMENT

BETWEEN:

EDWARD COLLINS CONTRACTING LTD

(hereinafter referred to as "ECCL")

AND:

CRANE CANADA CO

(hereinafter referred to the "Crane")

WHEREAS the parties herein have carried on business whereby Crane has provided goods and services to ECCL in relation to work on Project Part A 17-GI-20-00050 Water connection to Dunville and Part B – 17-SCF-19-00129 Pumphouse Upgrades;

AND WHEREAS ECCL has an outstanding balance owing to Crane in relation to those services and materials (the "Debt");

AND WHEREAS on or about September 9, 2021, Crane registered a Claim for Lien with the Registry of Deeds for the Province of Newfoundland and Labrador bearing Registration Number 19909 in relation to the Debt;

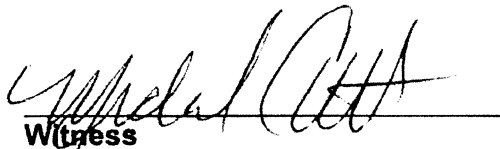
AND WHEREAS ECCL and Crane have agreed to settle the Debt on the terms as set out in this Agreement;

THE PARTIES therefore agree to the following mutually satisfactory terms and conditions thereby establishing an agreed settlement agreement:

1. The parties acknowledge and agree that ECCL shall pay \$178,070.71 plus HST to Crane in full and final settlement the Debt.
2. ECCL shall make payment by way of Irrevocable Direction to the Town of Placentia, directing that the \$178,070.71 plus HST currently held as holdback by the Town of Placentia be paid to Crane's solicitor. A copy of this Direction is attached at Schedule "A" to this Agreement.
3. Immediately on the receipt of the above referenced Direction, Crane shall vacate their Claim for Lien bearing Registration Number 19909.
4. Crane shall execute a Full and Final Release (a copy of which forms Schedule "B" to this Agreement) in favour of ECCL releasing ECCL from further claims in this matter.
5. Crane shall withdraw any and all claims made in relation to any bond(s) maintained by ECCL and Crane shall not make any further claims of this nature in the future.

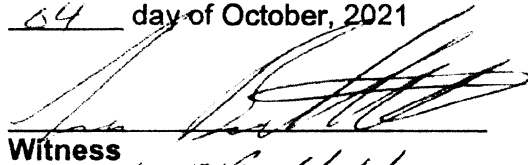
IN WITNESS WHEREOF this Agreement has been executed by the parties at the times and places hereinafter set forth.

EXECUTED at the City of
St. John's, in the Province of
Newfoundland and Labrador, this
1st day of October, 2021


Witness

J. Michael Cabot
Barrister, NL

EXECUTED at the City of
St. John's, in the Province of
Newfoundland and Labrador, this
04 day of October, 2021

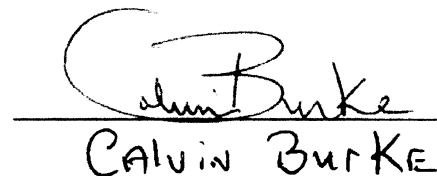

Witness

Lee E. Balliett
A Barrister, NL

**EDWARD COLLINS CONTRACTING
LTD**



CRANE CANADA CO.


CALVIN BURKE

Schedule "A"

IRREVOCABLE DIRECTION TO PAY

FROM: EDWARD COLLINS CONTRACTING LTD

TO: THE TOWN OF PLACENTIA

In the respect of the holdback funds identified in correspondence from the Town of Placentia dated September 28, 2021 in the amount of \$178,070.71 plus HST (the "**Funds**") held pursuant to the Multi Year Capital Works Project Part A 17-GI-20-00050 Water connection to Dunville and Part B – 17-SCF-19-00129 Pumphouse Upgrades, the undersigned hereby authorizes and directs you to advance and pay from the Funds to:

Crane Canada Co.
c/o **Duffy Law Office**
640 Torbay Road
St. John's, NL A1A 5G9

This authority and direction is given and made in consideration of a Settlement Agreement entered into by the Edward Collins Contracting Ltd. and Crane Canada Co to resolve outstanding debts due and owing by Edward Collins Contracting Ltd.

DATED at St. John's, in the
Province of Newfoundland and Labrador
This ____ day of October
A.D. 2021

Edward Collins Contracting Ltd.

Schedule "B"

FINAL RELEASE

The undersigned, **CRANE CANADA CO** (hereinafter the "**Releasor**") hereby acknowledges that, pursuant to the terms of settlement as agreed between the parties, to have this day received from **EDWARD COLLINS CONTRACTING LTD.** (hereinafter the "**Releasee**") payment in the amount of One Hundred Seventy Eight Thousand and Seventy dollars plus HST (\$178,070.71 plus HST) paid "In Trust" to their solicitor, Duffy Law Office, and in consideration thereof hereby releases and discharges the Releasee from all actions, suits, causes of action, debts, dues, accounts, bonds, covenants, contracts, costs, claims, and demands whatsoever, including all claims for compensation, loss of use, loss of time, loss of wages, expenses, disability, past, present or future, and any aggravation, foreseen or unforeseen, as well as for damages presently undisclosed and all demands and claims of any kind or nature including all claims whatsoever arising out of the claim by the Releasor for amounts due in relation to services and materials provided by the Releasor to the Releasee, including but not limited to Claim for Lien as registered at the Registry of Deeds, bearing Registration No. 19909, including any claim of principal, interest, and inclusive of all amounts claimed as deficiency or otherwise. Without limiting the generality of the foregoing, the Releasor agrees to release the Releasees from any and all claims raised or which could have been raised in this dispute.

AND for the consideration aforesaid the Releasor further agrees not to make any claim or take any proceedings against any other person, corporation or entity who might claim contribution or indemnity or other relief against the Releasees, under the provisions of any applicable law or at equity or otherwise in relation to any causes, matters or things released hereunder.

AND for the consideration aforesaid, the Releasor hereby covenants, agrees and undertakes to indemnify and save harmless and to keep indemnified the Releasee from any further claims, demands, actions or suits which may be brought by or on behalf of the Releasor against the Releasee for and in respect of any of the matters or things hereinbefore set forth.

AND THE RELEASOR HEREBY DECLARES that at all times relative hereto they have been represented by legal counsel of their own choosing who has advised them concerning this Release and that they fully understand the terms of this Release, and that in executing this Release they have done so with full knowledge of any and all rights which they may have as against the Releasees, either jointly or severally, and the issues raised in the within action, and that aforesaid consideration is accepted by them voluntarily in order to make a full and full compromise, adjustment and resolution of all claims, causes, matters and things released hereunder.

SIGNED, SEALED and DELIVERED by
the **Releasor Crane Canada Co.**
at _____,
in the Province of Newfoundland and Labrador
this _____ day of October 2021

CRANE CANADA CO.

WITNESS

AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY

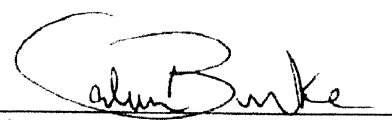
I, **CALVIN BURKE** of the city of St. John's, in the Province of Newfoundland and Labrador,
MAKE OATH AND SAY:

1. **THAT** I am an employee and representative of Crane Canada Co. named in the annexed Settlement Agreement.
2. **THAT** I have personal knowledge of the matters contained in the annexed Settlement Agreement
3. **THAT** I am authorized by the Corporation to execute the annexed Settlement Agreement without affixing a corporate seal.
4. **THAT** I make this Affidavit conscientiously believing the information contained herein to be true, and knowing that it is a criminal offence to falsely swear an Affidavit.

SWORN BEFORE ME at the City of St. John's, in the Province of Newfoundland and Labrador, this 04 day of October, 2021.



Lee E. Ballett
A Barrister, NL.



Calvin Burke CALVIN BURKE

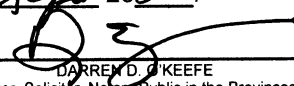
This is Exhibit "G" to the affidavit of
Jess Collins sworn before me on the
17 day of Sept 2023.

DARREN D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "G"

From: Michael Cabot <michael.cabot@occolaw.com>
Sent: November 2, 2021 9:27 AM
To:
Subject: FW: Edward Collins & Crane Canada, western Surety Bond No. 532,090

Michael Cabot
Partner

709 702 8902 709 702 8901
michael.cabot@occolaw.com
www.occolaw.com

ORR | CABOT
CROSBIE | OLEY
LAW

55 Duckworth St., St. John's, NL A1C 1E6

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From: James Toothill <JToothill@westernsurety.ca>
Date: Tuesday, November 2, 2021 at 12:27 PM
To: Lee Ballett <lballett@duffylawyers.com>, Michael Cabot <michael.cabot@occolaw.com>
Cc: ssharpe@duffylawyers.com <ssharp@duffylawyers.com>
Subject: Edward Collins & Crane Canada, Western Surety Bond No. 532,090

Good morning Michael and Lee,

I thought it easiest to have all of our parties on one email to help resolve the current payment issue between Edward Collins Contracting (ECC) and Crane Canada Co. (Crane).

Over the past few days there have been emails going back and forth related to the Agreement that is in place between ECC and Crane (attached). It is my understanding that ECC fully intends to provide payment as per the terms of the Agreement.

Lee, you have provided updated information to me today that the Town of Placentia's lawyer has asserted to you that a subsequent lien from another company is now in place against ECC, and that Town's lawyer has asserted the holdback funds are not going to be made available to Crane.

My recommendation is that both sides communicate directly with each other on this to resolve the payment issue, whether that be through discussions with the Town of Placentia to address the Agreement that has previously been made with them; or ECC agreeing to payment with other terms that are acceptable to Crane.

In regards to the Labour and Material Payment Bond that is in place for this project. The payment bond stipulates, among other things, that in order for Western Surety to have liability under the bond, there must be an agreed amount due and payable by the Principal to the claimant. Based on the information collected by Western Surety to date, there is a dispute as to the amounts payable, when the last date of supply of materials to the project was, as well as the aforementioned Agreement that has been posted for payment. With both ECC and Crane being engaged in discussions to resolve the dispute; Western Surety cannot provide payment under the Payment Bond at this time. That being said, Western Surety is not denying the claim under the Payment Bond, we are simply reserving our rights to a decision until the above items related to the previously signed Agreement can be discussed and hopefully resolved between ECC and Crane.

Regards,

James



James Toothill FCIP, CRM • **Chief Claims Manager**
Western Surety Company

t. (306) 777-0608 • 1 (800) 475-4454

jtoothill@westernsurety.ca • www.westernsurety.ca

2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

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This is Exhibit "H" to the affidavit of
Paul Collins sworn before me on the
17 day of Aug 2023.


DARREN D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "H"

**Department of Transportation and Infrastructure
Form 12 – Certificate of Substantial Performance**

Page 1 of 1

September 29, 2021

PROJECT NAME: Town of Placentia - Water System Upgrades CONTRACT NO. _____

CONTRACTOR AND ADDRESS: Edward Collins Contracting, PO Box 51, Jerseyside, NL A0B 2Y0

MI PROJECT NO. 17-GI-20-0005 / 17-SCF-21-00129 CONTRACT AWARD DATE: March 3, 2021

NAME AND LOCATION OF WORK: Town of Placentia

ORIGINAL CONTRACT: \$1,964,771.00 APPROVED CHANGES: \$252,999.75

HST: \$332,665.61 REVISED CONTRACT AMOUNT: \$2,550,436.36

1. Value of work completed to date as per Contract Payment Certificate # 12 :
\$2,534,290.30

2. Value of work certified as Substantially Performed: \$2,534,290.30

3. Date of Substantial Performance: March 28, 2022

4. Percent of Revised Contract Amount: 99%

5. Deficiencies

Existing electrical, control, chlorination panel to be removed / P1 to be connected to new panel / valve installed on P1 header.

\$ 5,000

Cover plate on junction box over main door.

\$ 100

Unused pipe to be delivered to Town (148m)

\$ 20,990

O&M manuals / warranties As-Builts.

\$ 5,000

\$ _____

\$ _____

2 X 31,090 = \$ 62,180

I certify that the work under this Contract is substantially performed, and is acceptable for use, except for the portion of the work listed under deficiencies. Pursuant to the Authority of Section 21 of the General Conditions, I hereby issue this Certificate of Substantial Performance.

PRIME CONSULTANT: Scott Smith TITLE: Project Manager DATE: March 28, 2022

REMARKS: _____

Notwithstanding this certificate, warranty for Subcontracts will not start until Substantial Performance of the General Contract.

This is Exhibit "I" to the affidavit of
Past Collins sworn before me on the
17 day of July 2023.


DARREN D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "I"

From: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Sent: May 11, 2022 2:06 PM
To: James Toothill; Connor Chow
Cc: Guaragna, Paul
Subject: RE: Western Surety - Edward Collins - Crane Supply update

Hi

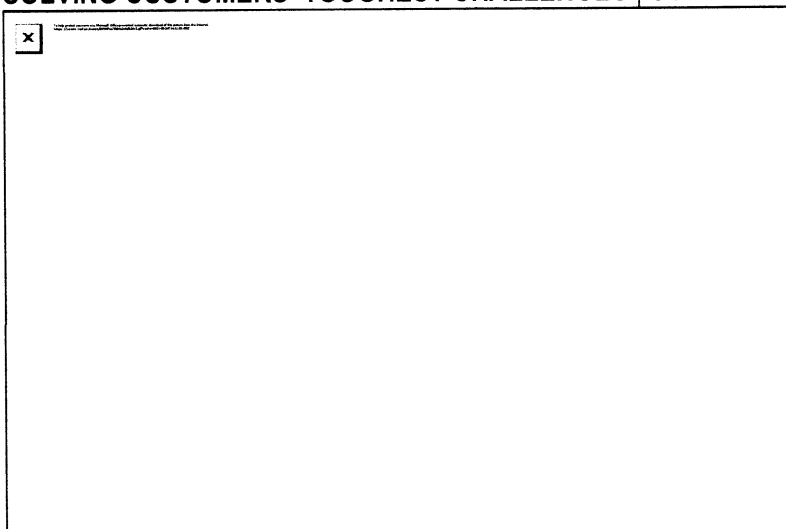
I have cc. my lawyer..

As of right now the holdback cannot be paid to ECC because of an outstanding lien by Rodco that exceeds the holdback amount. Secondly if substantial completion has been reached and the 30 day waiting period for the holdback has passed, that would constitute as breach.

Regards.

Stanley Muchynski C.C.P | Director of Credit | Crane Supply | 1755 Burlington Street E, Hamilton, Ontario L8H 3L5 | P: 905-667-1046 | C: 289-260-3495 stanley.muchynski@cranesupply.com www.cranesupply.com

SOLVING CUSTOMERS' TOUGHEST CHALLENGES | SUPPLY HOUSE OF CHOICE™



[Crane Supply LinkedIn](#)

From: James Toothill <JToothill@westernsurety.ca>
Sent: May 11, 2022 1:54 PM
To: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>; Connor Chow <CChow@westernsurety.ca>
Subject: RE: Western Surety - Edward Collins - Crane Supply update

[WARNING - Externally Sent Email - Do not click any links or open attachments that are unexpected, even from apparent known senders. Call the sender if in doubt.]

Hi Stanley,

Western Surety will only be responsible for paying the outstanding amount if ECC does not pay Crane as per the terms of the legal agreement you have in place with them. You will need to follow up with your lawyer to determine at what point the agreement has been breached by ECC.

As of right now it is our understanding that the holdback amount has not been paid to ECC by the Owner and therefore your agreement is in full force and has not been breached by ECC.

Regards,

James



James Toothill FCIP, CRM • Chief Claims Manager & Privacy Officer
Western Surety Company
t. (306) 777-0608 • 1 (800) 475-4454
jtoothill@westernsurety.ca • www.westernsurety.ca
2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

Signature of James Toothill

From: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>

Sent: May 11, 2022 7:42 AM

To: James Toothill <JToothill@westernsurety.ca>; Connor Chow <CChow@westernsurety.ca>

Subject: RE: Western Surety - Edward Collins - Crane Supply update

Importance: High

Hi

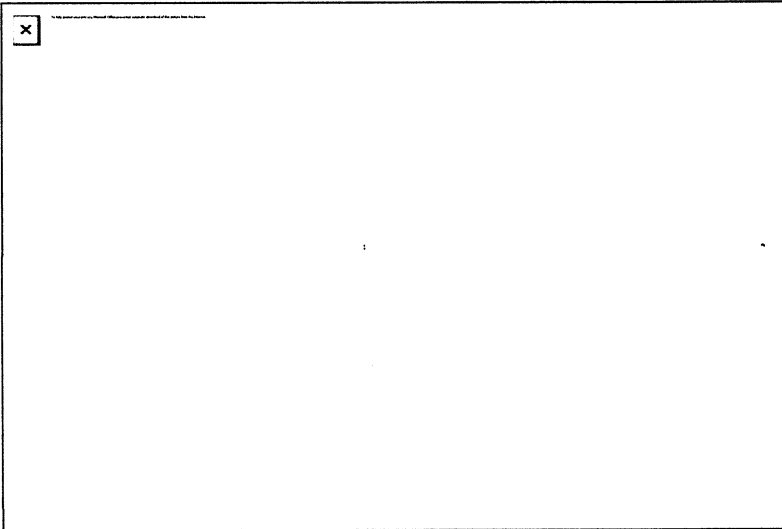
The date on substantial was March 28, 2022 according to GC, still trying to get a copy of it. So under my calculation the holdback is due now, and Rodco still has a lien on the property for \$328K.

If I can get a copy of the certificate, can we get paid now?

Please advise.

Stanley Muchynski C.C.P | Director of Credit | Crane Supply | 1755 Burlington Street E, Hamilton, Ontario L8H 3L5 | P: 905-667-1046 | C: 289-260-3495 stanley.muchynski@cranesupply.com www.cranesupply.com

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From: James Toothill <JToothill@westernsurety.ca>

Sent: May 10, 2022 1:38 PM

To: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>

Cc: Michel Prud'homme <michel.prudhomme@bbc.ca>; Connor Chow <CChow@westernsurety.ca>

Subject: RE: Western Surety - Edward Collins - Crane Supply update

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Hi Stanley, do you have a copy of the substantial completion certificate that you could send us?

In general terms, if ECC does not pay Crane after receiving the holdback funds, then yes, Western Surety would issue payment on their behalf as per the agreed amount between Crane and ECC. Without having a copy of the certificate or knowing if/when the holdback will be released, it is hard to put timelines on this.

We are still in the process of arranging discussions with ECC and other parties to ensure the funds flow as agreed. But we are having little success in getting a meeting set-up with them at this time.

We'll update you once we have more information to share.

James



James Toothill FCIP, CRM • **Chief Claims Manager & Privacy Officer**

Western Surety Company

t. (306) 777-0608 • 1 (800) 475-4454

jtoothill@westernsurety.ca • www.westernsurety.ca

2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

From: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Sent: May 9, 2022 6:10 AM
To: James Toothill <JToothill@westernsurety.ca>
Subject: RE: Western Surety - Edward Collins - Crane Supply update

Hi

James

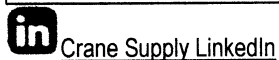
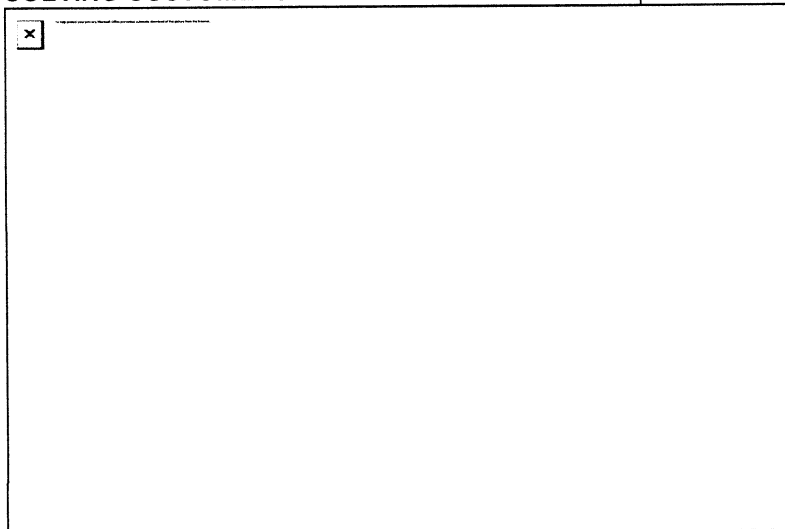
I found out that substantial Completion was issued on the week of April 18th, so under my calculation the holdback should be released next week.

Now I did not include Edward Collins on this e-mail, as they do not communicate with Crane Supply in anyway. If the holdback goes to Edward Collins or Rodco next week, and not re-directed to Crane Supply. Does Western Surety pay us?

Please advise.

Stanley Muchynski C.C.P | Director of Credit | Crane Supply | 1755 Burlington Street E, Hamilton, Ontario L8H 3L5 | P: 905-667-1046 | C: 289-260-3495 stanley.muchynski@cranesupply.com www.cranesupply.com

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From: James Toothill <JToothill@westernsurety.ca>
Sent: May 6, 2022 10:23 AM
To: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Cc: Joshua Collins <josh_56@icloud.com>; Michel Prud'homme <michel.prudhomme@bbcg.ca>; Michael Cabot <michael.cabot@occolaw.com>
Subject: FW: Western Surety - Edward Collins - Crane Supply update

[WARNING - Externally Sent Email - Do not click any links or open attachments that are unexpected, even from apparent known senders. Call the sender if in doubt.]

Good morning Stanley,

We have not received a copy of the substantial completion certificate and can not confirm if it has been issued by the Town yet or not. I have included Josh Collins and his lawyer Michael Cabot on this email in hopes that they can provide further information on the certificate and/or status of payment to Crane.

Thank-you,

James



James Toothill FCIP, CRM • **Chief Claims Manager & Privacy Officer**
Western Surety Company
t. (306) 777-0608 • 1 (800) 475-4454
jtoothill@westernsurety.ca • www.westernsurety.ca
2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

Edward Collins is not a Western Surety client.

From: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Sent: May 6, 2022 6:41 AM
To: James Toothill <JToothill@westernsurety.ca>
Subject: RE: Western Surety - Edward Collins - Crane Supply update

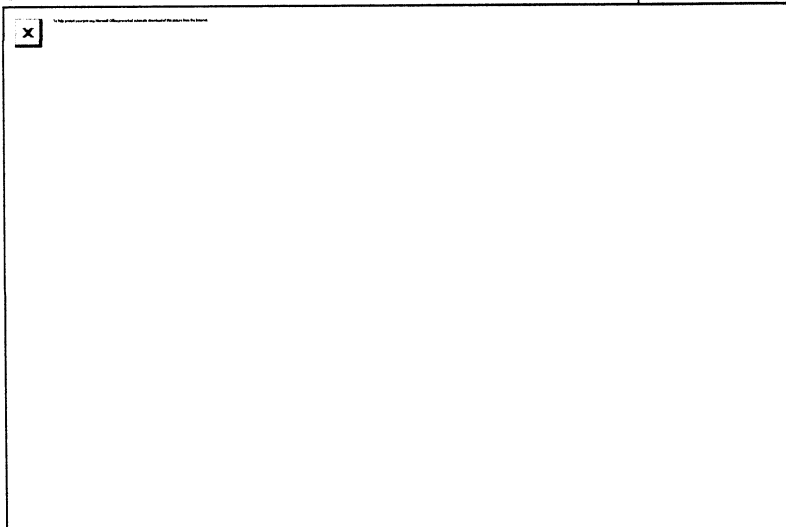
Hi

I still see a lien on the project, I guess Rodco has not been paid. Has the substantial completion certificate been issued?

Please advise.

Stanley Muchynski C.C.P. | Director of Credit | Crane Supply | 1755 Burlington Street E, Hamilton, Ontario L8H 3L5 | P: 905-667-1046 | C: 289-260-3495 stanley.muchynski@cranesupply.com www.cranesupply.com

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From: James Toothill <JToothill@westernsurety.ca>
Sent: April 23, 2022 1:24 PM
To: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Cc: Michel Prud'homme <michel.prudhomme@bbcg.ca>
Subject: Re: Western Surety - Edward Collins - Crane Supply update

[WARNING - Externally Sent Email - Do not click any links or open attachments that are unexpected, even from apparent known senders. Call the sender if in doubt.]

Hi Stanley,

We spoke to both ECC and Town of Placentia this week. ECC has sent in their paperwork for the request of substantial completion certificate. This was done about 1 week ago. The substantial completion certificate has not yet been issued on the project however they expect it will be in the next 1-2 weeks. Once that is issued the holdback money must be held for 30 days by the Town before it is payable.

We are working with ECC and the Town to ensure the payment is sent to Crane as soon as possible.

We will continue to update you on the timeframes for this.

James Toothill, FCIP, CRM
 Chief Claims Manager & Privacy Officer
 Western Surety Company
 Ph: 3067770608
 Email: jtoothill@westernsurety.ca

From: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Sent: Friday, April 22, 2022 11:01:52 AM
To: James Toothill <JToothill@westernsurety.ca>
Subject: RE: Western Surety - Edward Collins - Crane Supply update

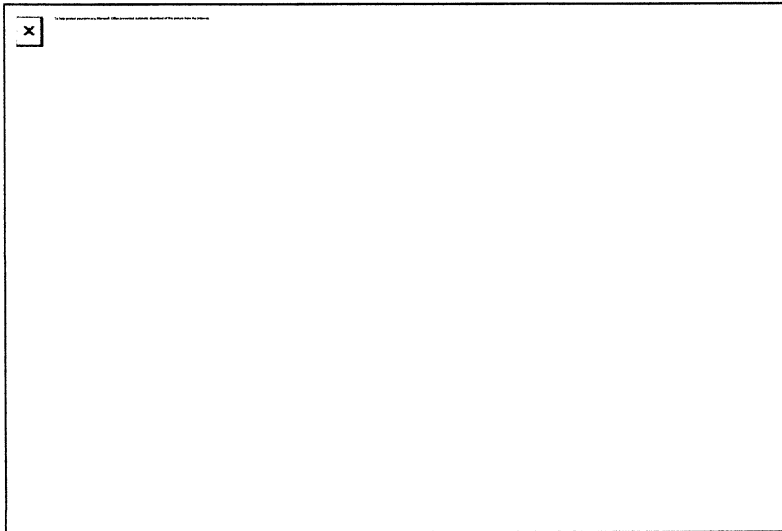
Hi

Any update on status of payment?

Please advise.

Stanley Muchynski C.C.P | Director of Credit | Crane Supply | 1755 Burlington Street E, Hamilton, Ontario L8H 3L5 | P: 905-667-1046 | C: 289-260-3495 stanley.muchynski@cranesupply.com www.cranesupply.com

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Crane Supply LinkedIn

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This is Exhibit "1" to the affidavit of Paul Collins sworn before me on the 17 day of Aug 20 23.

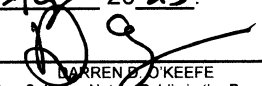

WARREN B. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "J"

May 13, 2022

VIA EMAIL pguaragna@millerthomson.com

Without Prejudice

Miller Thomson LLP
100 New Park Place, Suite 700
Vaughn, Ontario, L4K 0H9

Attention: Paul Guaragna

Dear Mr. Guaragna:

Regarding: Our Client – Edward Collins Contracting Limited (“**ECC**”)
Your Client – Crane Canada Co.
Settlement Agreement – October 7, 2021 (the “**Settlement Agreement**”)

We write further to your correspondence of May 11, 2022 and thank-you for same.

As you know, ECC and Crane did enter into a Settlement Agreement on or about October 7, 2021. Pursuant to the terms of that agreement, Crane agreed to accept payment from proceeds held by the Town of Placentia (the “**Town**”) from the holdback maintained on the project. We note that the Town did participate in the Settlement Agreement, confirming to our office in written correspondence dated September 28, 2021, that the Town would retain the holdback subject to further direction from ECC. On October 6, 2021, my office forwarded the Direction to Pay to the Town confirming ECC’s direction to pay Crane, in keeping with ECC’s obligations under the Settlement Agreement.

Regarding the completion of the project, I understand that Meridian issued a final certificate on May 9, 2022 to ECC and the Town to confirm substantial performance has been achieved as of March 28, 2022. The exact status of the certificate is somewhat unclear, as Meridian has added by hand an outstanding item to be resolved, and it therefore appears to identify an issue outstanding as of May 9, 2022.

In any event, it does appear that the substantial completion is either confirmed or will be shortly.

Michael Cabot | Partner

709 702 8902 709 702 8901 michael.cabot@occolaw.com
55 Duckworth Street, St. John’s, NL A1C 1E6

ORR | CABOT
CROSBIE | OLEY
LAW

With respect to payment to your client, I note that the release of any holdback funds is a decision under the Town's purview as project owner. As part of the Settlement Agreement my client provided a Direction to Pay Crane to the Town, however, ECC has no further authority to instruct the Town to release holdback funds to your client.

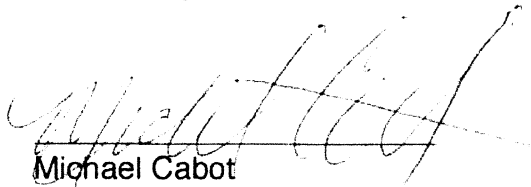
More generally, we understand Rodco Mechanical (2014) Ltd. has caused a Claim for Lien and Certificate of Action filed with the Supreme Court of Newfoundland and Labrador, General Division bearing court file number 2022 01G 0563 in the amount of \$508,271.50.

As a result, it appears that there are competing claims by Crane and Rodco as against the holdback funds for this project.

As you will appreciate, my client has no authority to resolve the relative priority of these claims. As a result, we suggest that your client's request for payment be directed to the Town.

We trust this answers your inquiry.

Yours Truly,



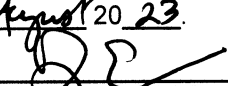
Michael Cabot

cc. James Toothill
Western Surety Company
Via email JToothill@westernsurety.ca

cc. Matthew Craig
Stewart McKelvey
Counsel for the Town of Placentia
Via email mcraig@stewartmckelvey.com

Michael Cabot | Partner

709 702 8902 709 702 8901 michael.cabot@occolaw.com
55 Duckworth Street, St John's, NL A1C 1E6

This is Exhibit "K" to the affidavit of
Josh Cellis sworn before me on the
14 day of August 2023.


DARREN D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "K"



May 12, 2022

Town of Placentia c/o
Matthew Craig, Stewart McKelvey
Suite 1100, Cabot Place, 100 New Gower St.
St. John's, N.L. A1C 6K3

Dear Madam/Sirs:

Re: Bond No.: 532,090 Performance and Labour & Material Payments bonds (the "Bonds")
Principal: Edward Collins Contracting Limited ("ECC")
Obligee: Town of Placentia
Project: Water System Upgrades 17-GI-20-00050 / 17-SCF-19-00129, Placentia,
Newfoundland and Labrador (the "Project")

As you know, Western Surety Company is the Surety which issued the Bonds for the Project. In consideration of the issuance of the Bonds, ECC and others executed the attached Indemnity and Security Agreement in favour of Western Surety Company.

Western Surety Company has received a number of claims on the Payment Bond 532,090 issued for the Project and has concerns regarding the use of Project funds consistent with the Indemnity and Security Agreement and provisions of the *Mechanics' Lien Act*. Currently the amounts payable on the two Labour & Material payment bond claims that have been submitted to Western Surety Company are as follows:

1. Crane Supply Co. **\$204,781.32**
 2. Rodco Mechanical (2014) Ltd. **\$398,607.88**
- We are also aware of lien(s) that have been submitted by subcontractors on this project.

In the circumstances, Western Surety Company respectfully request that all funds due and/or owing to ECC in connection with the Project not be released to ECC until arrangements can be put in place to administer the contract funds in accordance with the provisions of the Contract and the *Mechanics' Lien Act* and to ensure the payment of the unpaid ECC subcontractors. We would ask that you contact the undersigned to confirm receipt of this letter and to discuss arrangements for the payment of the remaining contract funds. We look forward to hearing from you.

Yours truly,

James Toothill
Chief Claims Manager & Privacy Officer
Western Surety Company
Ph: 306-777-0608 | E-mail: jtoothill@westernsurety.ca

Cc: Edward Collins Contracting Limited

This is Exhibit "L" to the affidavit of Jose Collins sworn before me on the 17 day of Aug 2023.

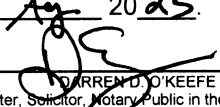

DARREN D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "L"

From: Guaragna, Paul <pguaragna@millerthomson.com>
Sent: September 6, 2022 3:58 PM
To: Punzo, Andrew
Cc: Borgo, Mark
Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Andrew,

Crane Canada advises that the funds were received today – thank you to you, Mark and Western Surety for facilitating the payment.

All the best,

PAUL GUARAGNA
Partner

Miller Thomson LLP
100 New Park Place, Suite 700
Vaughan, Ontario L4K 0H9
Direct Line: +1 905.532.6679
Fax: +1 905.660.0139
Email: pguaragna@millerthomson.com
millerthomson.com



Please consider the environment before printing this email.

From: Guaragna, Paul <pguaragna@millerthomson.com>
Sent: Wednesday, August 31, 2022 1:48 PM
To: Punzo, Andrew <APunzo@blg.com>
Cc: Borgo, Mark <MBorgo@blg.com>
Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Thanks for the update, Andrew.

PAUL GUARAGNA
Partner

Miller Thomson LLP
100 New Park Place, Suite 700
Vaughan, Ontario L4K 0H9

Direct Line: +1 905.532.6679
Fax: +1 905.660.0139
Email: pguaragna@millerthomson.com
millerthomson.com



Please consider the environment before printing this email.

From: Punzo, Andrew <APunzo@blg.com>
Sent: Wednesday, August 31, 2022 10:29 AM
To: Guaragna, Paul <pguaragna@millerthomson.com>
Cc: Borgo, Mark <MBorgo@blg.com>
Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Hi Paul,

Quick update. The payment request was sent through yesterday. Western cannot guarantee exactly when the transfer will go through though at this time. Payments typically go out 2 times per month (middle and end). Once the payment has been approved through the system we will get an update from our client on when it will issue.

In order to WS to pursue its assigned claims, please ensure your clients does not withdraw, discharge, etc. any claims for lien or other claims that it has. Once we sort out the holdback with the Town, if anything else is needed from Crane, we will let you know.

Thanks a lot,

Andrew Punzo

Partner

T 416.367.6005 | APunzo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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Borden Ladner Gervais LLP

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From: Punzo, Andrew
Sent: August 29, 2022 4:58 PM
To: Guaragna, Paul <pguaragna@millerthomson.com>
Cc: Borgo, Mark <MBorgo@blg.com>

Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Hi Paul, we have asked our client and do not anticipate any problems with that timeline. Let me get back to you if WS advises that it needs more time.

Andrew Punzo

Partner

T 416.367.6005 | APunzo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Guaragna, Paul <pguaragna@millerthomson.com>

Sent: August 29, 2022 8:58 AM

To: Punzo, Andrew <APunzo@blg.com>

Cc: Borgo, Mark <MBorgo@blg.com>

Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Good morning Andrew,

I am following up on my email below. Can you confirm that the funds will be delivered within the next 2 weeks?

We look forward to hearing from you.

PAUL GUARAGNA

Partner

Miller Thomson LLP

100 New Park Place, Suite 700

Vaughan, Ontario L4K 0H9

Direct Line: +1 905.532.6679

Fax: +1 905.660.0139

Email: pguaragna@millerthomson.com

millerthomson.com



Please consider the environment before printing this email.

From: Guaragna, Paul <pguaragna@millerthomson.com>
Sent: Thursday, August 25, 2022 2:44 PM
To: Punzo, Andrew <APunzo@blg.com>
Cc: Borgo, Mark <MBorgo@blg.com>
Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Good afternoon Andrew, ***WITHOUT PREJUDICE***

Attached is the executed settlement document from Crane, to be held in escrow pending the delivery of the settlement funds to Crane.

Also attached are the wire transfer particulars for Crane. Please advise when the funds are sent to Crane for our records.

Can you confirm that the funds will be delivered within the next 2 weeks? We hope that your client can appreciate that Crane has been waiting patiently for the resolution of this matter and has, as a courtesy to Western Surety, held off on commencing an action and kept the legal fees low.

We look forward to hearing from you.

PAUL GUARAGNA
Partner

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Vaughan, Ontario L4K 0H9
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Fax: +1 905.660.0139
Email: pguaragna@millerthomson.com
millerthomson.com



Please consider the environment before printing this email.

From: Punzo, Andrew <APunzo@blg.com>
Sent: Wednesday, August 24, 2022 12:05 PM
To: Guaragna, Paul <pguaragna@millerthomson.com>
Cc: Borgo, Mark <MBorgo@blg.com>

Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Hi Paul,

Please see attached. Let us know if you have any comments. Otherwise, once we have a signed copy back, we will hold it in escrow until you receive payment from WS. Please let us know who the payment recipient should be.

Thank you,

Andrew Punzo

Partner

T 416.367.6005 | APunzo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Guaragna, Paul <pguaragna@millertthomson.com>

Sent: August 23, 2022 11:28 AM

To: Punzo, Andrew <APunzo@blg.com>

Cc: Borgo, Mark <MBorgo@blg.com>

Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Good morning Andrew,

I am following up on our emails below. We look forward to receiving the draft agreement from your office.

PAUL GUARAGNA

Partner

Miller Thomson LLP

100 New Park Place, Suite 700

Vaughan, Ontario L4K 0H9

Direct Line: +1 905.532.6679

Fax: +1 905.660.0139

Email: pguaragna@millertthomson.com

millertthomson.com

I am away for an ABA conference until Friday, so is it alright if I get you a release & assignment next week?

Andrew Punzo

Partner

T 416.367.6005 | APunzo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Guaragna, Paul <pguaragna@millerthomson.com>

Sent: August 17, 2022 9:53 AM

To: Punzo, Andrew <APunzo@blg.com>

Cc: Borgo, Mark <MBorgo@blg.com>

Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Good morning Andrew,

Can we have a quick call on this today or tomorrow? Are you able to provide an update on payment?

Talk soon,

PAUL GUARAGNA

Partner

Miller Thomson LLP

100 New Park Place, Suite 700

Vaughan, Ontario L4K 0H9

Direct Line: +1 905.532.6679

Fax: +1 905.660.0139

Email: pguaragna@millerthomson.com
millerthomson.com



Please consider the environment before printing this email.

From: Guaragna, Paul <pguaragna@millerthomson.com>

Sent: Tuesday, August 9, 2022 9:38 AM



Please consider the environment before printing this email.

From: Guaragna, Paul <pguaragna@millerthomson.com>
Sent: Thursday, August 18, 2022 9:46 AM
To: Punzo, Andrew <APunzo@blg.com>
Cc: Borgo, Mark <MBorgo@blg.com>
Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Good morning Andrew,

Thank you for the update. Let's connect next week when you're back.

Enjoy the rest of your conference,

PAUL GUARAGNA
Partner

Miller Thomson LLP
100 New Park Place, Suite 700
Vaughan, Ontario L4K 0H9
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Fax: +1 905.660.0139
Email: pguaragna@millerthomson.com
millerthomson.com



Please consider the environment before printing this email.

From: Punzo, Andrew <APunzo@blg.com>
Sent: Wednesday, August 17, 2022 10:58 AM
To: Guaragna, Paul <pguaragna@millerthomson.com>
Cc: Borgo, Mark <MBorgo@blg.com>
Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Hey Paul,

We confirm our instructions that Western is going to pay the Crane claim in exchange for an ordinary release & assignment. I assume no issue with the release & assignment- the standard form you have seen before.

To: Punzo, Andrew <APunzo@blg.com>; James Toothill (JToothill@westernsurety.ca)
<jtoothill@westernsurety.ca>
Cc: Borgo, Mark <MBorgo@blg.com>
Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Good morning Andrew,

Nice to hear from you. All is well with me and I hope the same for you and the family.

We look forward to hearing from you.

PAUL GUARAGNA

Partner

Miller Thomson LLP
100 New Park Place, Suite 700
Vaughan, Ontario L4K 0H9
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Fax: +1 905.660.0139
Email: pguaragna@millerthomson.com
millerthomson.com



Please consider the environment before printing this email.

From: Punzo, Andrew <APunzo@blg.com>
Sent: Tuesday, August 9, 2022 9:35 AM
To: Guaragna, Paul <pguaragna@millerthomson.com>; James Toothill (JToothill@westernsurety.ca)
<jtoothill@westernsurety.ca>
Cc: Borgo, Mark <MBorgo@blg.com>
Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Hi Paul,

Hope all is well. Mark and I are going to handle this claim for James M moving forward. Give us a couple days to get back to you please. We just need to verify a couple things from ECC and the Town.

Andrew Punzo

Partner

T 416.367.6005 | APunzo@blg.com
Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

James

James MacLellan

Partner

T 416.367.6592 | JMACLELLAN@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Guaragna, Paul <pguaragna@millerthomson.com>

Sent: June 7, 2022 10:02 AM

To: MacLellan, James <JMACLELLAN@blg.com>

Cc: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>

Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Good morning James,

Are you able to provide an update on the status of payment flowing to Crane?

PAUL GUARAGNA

Partner

Miller Thomson LLP

100 New Park Place, Suite 700

Vaughan, Ontario L4K 0H9

Direct Line: +1 905.532.6679

Fax: +1 905.660.0139

Email: pguaragna@millerthomson.com

millerthomson.com



Please consider the environment before printing this email.

From: MacLellan, James <JMACLELLAN@blg.com>

Sent: Tuesday, May 31, 2022 9:10 PM

To: Guaragna, Paul <pguaragna@millerthomson.com>

Cc: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>

Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

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From: Guaragna, Paul <pguaragna@millerthomson.com>

Sent: Thursday, August 4, 2022 1:02 PM

To: MacLellan, James <JMACLELLAN@blg.com>

Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Good afternoon James,

I am following up on our email exchange below and whether you can provide an update on payment to Crane Canada.

Thank you,

PAUL GUARAGNA

Partner

Miller Thomson LLP

100 New Park Place, Suite 700

Vaughan, Ontario L4K 0H9

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Fax: +1 905.660.0139

Email: pguaragna@millerthomson.com

millerthomson.com



Please consider the environment before printing this email.

From: MacLellan, James <JMACLELLAN@blg.com>

Sent: Tuesday, June 7, 2022 10:08 AM

To: Guaragna, Paul <pguaragna@millerthomson.com>

Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades

Paul,

There is an agreement in place for Rodco to remove its lien and the Crane payment will be paid from the holdback. I will follow up with the lawyer for ECC to find out timing.

Paul,

It looks like a deal has been done with Rodco to remove its lien which should free up the holdback payment to Crane. I will report further in the next couple days once minutes of settlement are signed.

James

James MacLellan

Partner

T 416.367.6592 | JMACLELLAN@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Guaragna, Paul <pguaragna@millerthomson.com>

Sent: May 27, 2022 4:43 PM

To: MacLellan, James <JMACLELLAN@blg.com>

Cc: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>

Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Good afternoon James,

I am following up on our email exchange below.

PAUL GUARAGNA

Partner

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Vaughan, Ontario L4K 0H9

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Fax: +1 905.660.0139

Email: pguaragna@millerthomson.com

millerthomson.com



Please consider the environment before printing this email.

From: MacLellan, James <JMACLELLAN@blg.com>

Sent: Wednesday, May 25, 2022 10:16 AM

From: Guaragna, Paul <pguaragna@millerthomson.com>
Sent: Friday, May 20, 2022 2:26 PM
To: MacLellan, James <JMACLELLAN@blg.com>
Cc: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Hi James,

I am following up on my email below. Further to Stan's previous email, the amount being sought by Crane Canada pursuant to the settlement agreement is **\$204,781.32** (including 15% sale tax).

We look forward to hearing from you. Have a great long weekend,

PAUL GUARAGNA

Partner

Miller Thomson LLP
100 New Park Place, Suite 700
Vaughan, Ontario L4K 0H9
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Fax: +1 905.660.0139
Email: pguaragna@millerthomson.com
millerthomson.com



Please consider the environment before printing this email.

From: MacLellan, James <JMACLELLAN@blg.com>
Sent: Tuesday, May 17, 2022 2:58 PM
To: Guaragna, Paul <pguaragna@millerthomson.com>
Cc: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Paul,

Let me look into it and get back to you.

James

To: Guaragna, Paul <pguaragna@millerthomson.com>
Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

We are hoping to report to you later today.

James

James MacLellan

Partner

T 416.367.6592 | JMACLELLAN@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Guaragna, Paul <pguaragna@millerthomson.com>
Sent: May 25, 2022 9:57 AM
To: MacLellan, James <JMACLELLAN@blg.com>
Cc: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Good morning James,

Any word on this?

PAUL GUARAGNA

Partner

Miller Thomson LLP

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Vaughan, Ontario L4K 0H9

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Fax: +1 905.660.0139

Email: pguaragna@millerthomson.com

millerthomson.com



Please consider the environment before printing this email.

From: MacLellan, James <JMACLELLAN@blg.com>
Sent: Tuesday, December 28, 2021 12:55 PM
To: Guaragna, Paul <pguaragna@millerthomson.com>
Subject: Western Surety - ECC - Crane Town of Placentia Water System Upgrades

Paul,

Just following up on our call, as discussed ECC and Crane have entered into a settlement agreement related to the amount owing under the Crane subcontract. In the event that ECC does not pay the amount the amount owing at the time that the holdback is released then WSC will accept the claim under the payment bond so long as there are no changes to current facts.

Thanks

James

James MacLellan

Partner

T 416.367.6592 | JMACLELLAN@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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James MacLellan

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From: Guaragna, Paul <pguaragna@millerthomson.com>

Sent: May 17, 2022 2:49 PM

To: MacLellan, James <JMACLELLAN@blg.com>

Cc: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>

Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Good afternoon James,

I hope that you and yours are keeping well.

Further to our email exchange below, attached is an email from counsel for the Town confirming that substantial completion was reached on March 28, 2022. More than 30 days have passed and therefore, it is our understanding that the holdback is now payable to ECC, although those funds may be consumed by the lien claimant, Rodco, pursuant to Rodco's lien dated December 3, 2021.

ECC is in breach of its settlement agreement with Crane Canada, attached for your reserve reference. Accordingly, Crane Canada looks forward to receiving payment in the amount of \$201,219.90 (being \$178,070.71 plus HST) from Western Surety promptly.

We look forward to hearing from you.

PAUL GUARAGNA

Partner

Miller Thomson LLP

100 New Park Place, Suite 700

Vaughan, Ontario L4K 0H9

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Fax: +1 905.660.0139

Email: pguaragna@millerthomson.com

millerthomson.com



Please consider the environment before printing this email.

From: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Sent: May 11, 2022 2:06 PM
To: James Toothill; Connor Chow
Cc: Guaragna, Paul
Subject: RE: Western Surety - Edward Collins - Crane Supply update

Hi

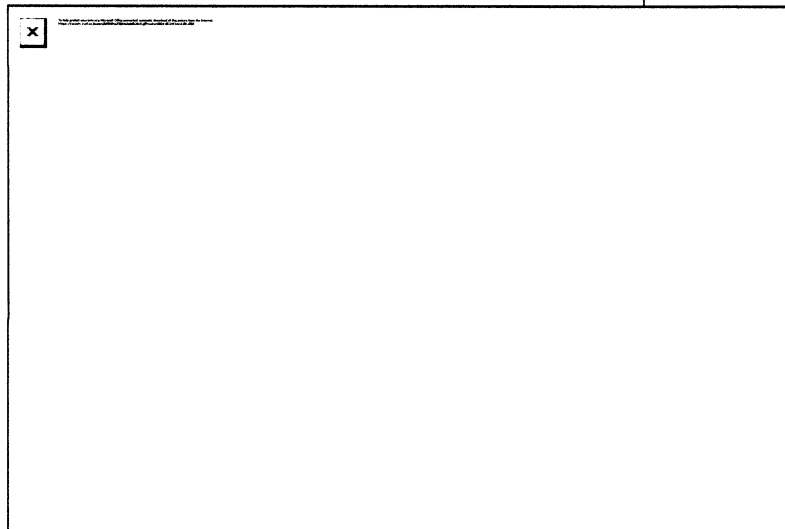
I have cc. my lawyer..

As of right now the holdback cannot be paid to ECC because of an outstanding lien by Rodco that exceeds the holdback amount. Secondly if substantial completion has been reached and the 30 day waiting period for the holdback has passed, that would constitute as breach.

Regards.

Stanley Muchynski C.C.P | Director of Credit | Crane Supply | 1755 Burlington Street E, Hamilton, Ontario L8H 3L5 | P: 905-667-1046 | C: 289-260-3495 stanley.muchynski@cranesupply.com www.cranesupply.com

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[Crane Supply LinkedIn](#)

From: James Toothill <JToothill@westernsurety.ca>
Sent: May 11, 2022 1:54 PM
To: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>; Connor Chow <CChow@westernsurety.ca>
Subject: RE: Western Surety - Edward Collins - Crane Supply update

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Hi Stanley,

Western Surety will only be responsible for paying the outstanding amount if ECC does not pay Crane as per the terms of the legal agreement you have in place with them. You will need to follow up with your lawyer to determine at what point the agreement has been breached by ECC.

As of right now it is our understanding that the holdback amount has not been paid to ECC by the Owner and therefore your agreement is in full force and has not been breached by ECC.

Regards,

James



James Toothill FCIP, CRM • Chief Claims Manager & Privacy Officer
Western Surety Company
t. (306) 777-0608 • 1 (800) 475-4454
jtoothill@westernsurety.ca • www.westernsurety.ca
2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

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From: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Sent: May 11, 2022 7:42 AM
To: James Toothill <JToothill@westernsurety.ca>; Connor Chow <CChow@westernsurety.ca>
Subject: RE: Western Surety - Edward Collins - Crane Supply update
Importance: High

Hi

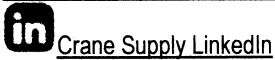
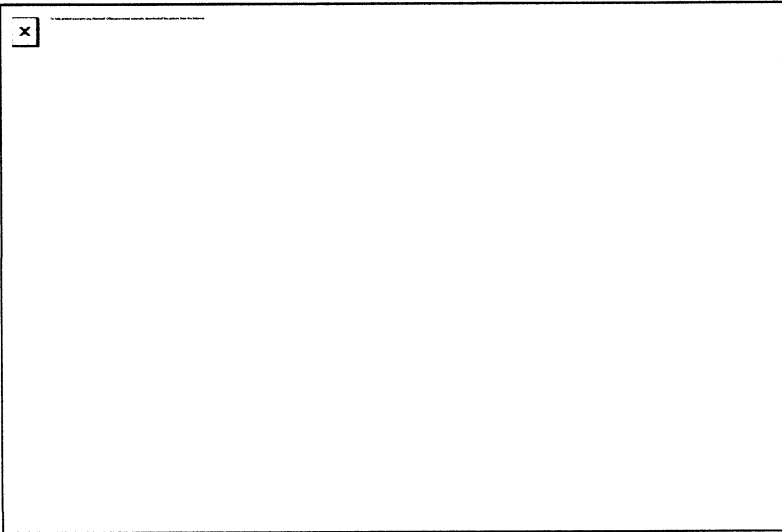
The date on substantial was March 28, 2022 according to GC, still trying to get a copy of it. So under my calculation the holdback is due now, and Rodco still has a lien on the property for \$328K.

If I can get a copy of the certificate, can we get paid now?

Please advise.

Stanley Muchynski C.C.P | Director of Credit | Crane Supply | 1755 Burlington Street E, Hamilton, Ontario L8H 3L5 | P: 905-667-1046 | C: 289-260-3495 stanley.muchynski@cranesupply.com www.cranesupply.com

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From: James Toothill <JToothill@westernsurety.ca>

Sent: May 10, 2022 1:38 PM

To: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>

Cc: Michel Prud'homme <michel.prudhomme@bbcg.ca>; Connor Chow <CChow@westernsurety.ca>

Subject: RE: Western Surety - Edward Collins - Crane Supply update

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Hi Stanley, do you have a copy of the substantial completion certificate that you could send us?

In general terms, if ECC does not pay Crane after receiving the holdback funds, then yes, Western Surety would issue payment on their behalf as per the agreed amount between Crane and ECC. Without having a copy of the certificate or knowing if/when the holdback will be released, it is hard to put timelines on this.

We are still in the process of arranging discussions with ECC and other parties to ensure the funds flow as agreed. But we are having little success in getting a meeting set-up with them at this time.

We'll update you once we have more information to share.

James



James Toothill FCIP, CRM • Chief Claims Manager & Privacy Officer
Western Surety Company

t. (306) 777-0608 • 1 (800) 475-4454

jtoothill@westernsurety.ca • www.westernsurety.ca

2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

Send a reply to this email to request

From: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Sent: May 9, 2022 6:10 AM
To: James Toothill <JToothill@westernsurety.ca>
Subject: RE: Western Surety - Edward Collins - Crane Supply update

Hi

James

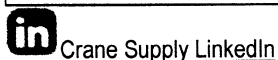
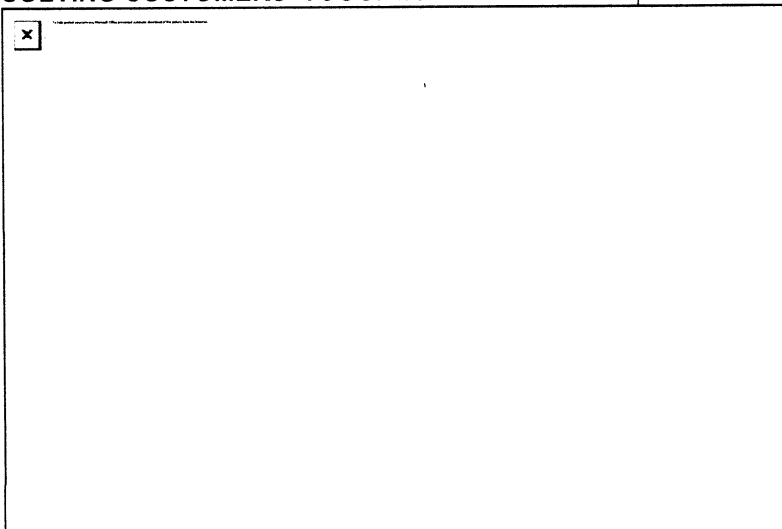
I found out that substantial Completion was issued on the week of April 18th, so under my calculation the holdback should be released next week.

Now I did not include Edward Collins on this e-mail, as they do not communicate with Crane Supply in anyway. If the holdback goes to Edward Collins or Rodco next week, and not re-directed to Crane Supply. Does Western Surety pay us?

Please advise.

Stanley Muchynski C.C.P | Director of Credit | Crane Supply | 1755 Burlington Street E, Hamilton, Ontario L8H 3L5 | P: 905-667-1046 | C: 289-260-3495 stanley.muchynski@cranesupply.com www.cranesupply.com

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From: James Toothill <JToothill@westernsurety.ca>
Sent: May 6, 2022 10:23 AM
To: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Cc: Joshua Collins <josh_56@icloud.com>; Michel Prud'homme <michel.prudhomme@bbcg.ca>; Michael Cabot <michael.cabot@occolaw.com>
Subject: FW: Western Surety - Edward Collins - Crane Supply update

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Good morning Stanley,

We have not received a copy of the substantial completion certificate and can not confirm if it has been issued by the Town yet or not. I have included Josh Collins and his lawyer Michael Cabot on this email in hopes that they can provide further information on the certificate and/or status of payment to Crane.

Thank-you,

James



James Toothill FCIP, CRM • **Chief Claims Manager & Privacy Officer**
Western Surety Company
t. (306) 777-0608 • 1 (800) 475-4454
jtoothill@westernsurety.ca • www.westernsurety.ca
2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

Good morning Stanley, from the 300000

From: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Sent: May 6, 2022 6:41 AM
To: James Toothill <JToothill@westernsurety.ca>
Subject: RE: Western Surety - Edward Collins - Crane Supply update

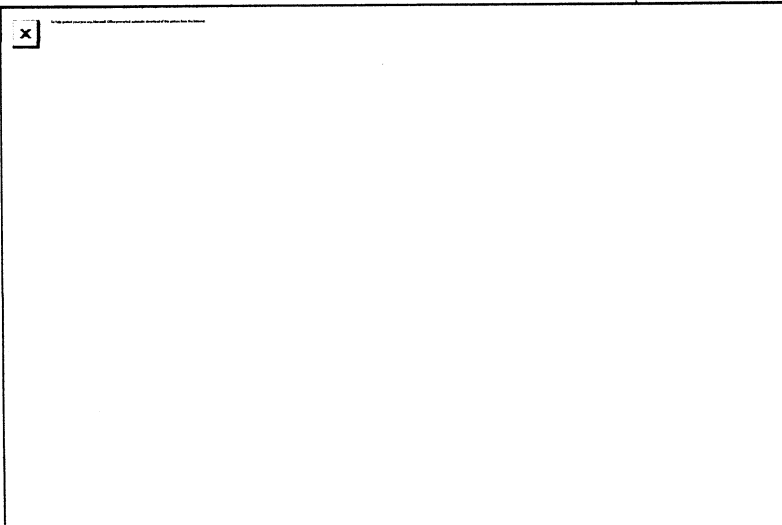
Hi

I still see a lien on the project, I guess Rodco has not been paid. Has the substantial completion certificate been issued?

Please advise.

Stanley Muchynski C.C.P | Director of Credit | Crane Supply | 1755 Burlington Street E, Hamilton, Ontario L8H 3L5 | P: 905-667-1046 | C: 289-260-3495 stanley.muchynski@cranesupply.com www.cranesupply.com

SOLVING CUSTOMERS' TOUGHEST CHALLENGES | SUPPLY HOUSE OF CHOICE™



From: James Toothill <JToothill@westernsurety.ca>
Sent: April 23, 2022 1:24 PM
To: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Cc: Michel Prud'homme <michel.prudhomme@bbcg.ca>
Subject: Re: Western Surety - Edward Collins - Crane Supply update

[WARNING - Externally Sent Email - Do not click any links or open attachments that are unexpected, even from apparent known senders. Call the sender if in doubt.]

Hi Stanley,

We spoke to both ECC and Town of Placentia this week. ECC has sent in their paperwork for the request of substantial completion certificate. This was done about 1 week ago. The substantial completion certificate has not yet been issued on the project however they expect it will be in the next 1-2 weeks. Once that is issued the holdback money must be held for 30 days by the Town before it is payable.

We are working with ECC and the Town to ensure the payment is sent to Crane as soon as possible.

We will continue to update you on the timeframes for this.

James Toothill, FCIP, CRM
Chief Claims Manager & Privacy Officer
Western Surety Company
Ph: 3067770608
Email: jtoothill@westernsurety.ca

From: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>
Sent: Friday, April 22, 2022 11:01:52 AM
To: James Toothill <JToothill@westernsurety.ca>
Subject: RE: Western Surety - Edward Collins - Crane Supply update

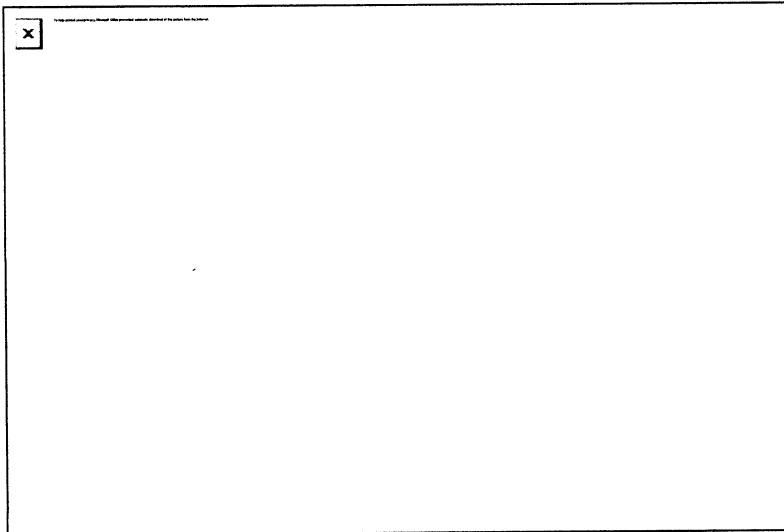
Hi

Any update on status of payment?

Please advise.

Stanley Muchynski C.C.P | Director of Credit | Crane Supply | 1755 Burlington Street E, Hamilton, Ontario L8H 3L5 | P: 905-667-1046 | C: 289-260-3495 stanley.muchynski@cranesupply.com www.cranesupply.com

SOLVING CUSTOMERS' TOUGHEST CHALLENGES | SUPPLY HOUSE OF CHOICE™



Crane Supply LinkedIn

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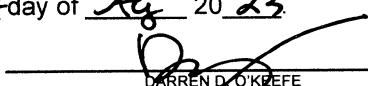
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If you no longer wish to receive electronic messages from Western Surety Company, contact us at wscinfo@westernsurety.ca.

This is Exhibit "M" to the affidavit of
Jon Collins sworn before me on the
17 day of Aug 20 23


DARREN D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "M"

SETTLEMENT AGREEMENT entered into with effect as of this ____ day of June, 2022.

BETWEEN: **EDWARD COLLINS CONTRACTING LIMITED**, a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

("ECC")

AND: **RODCO MECHANICAL (2014) LTD.** a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

("Rodco")

AND: **WESTERN SURETY COMPANY**, a corporation duly incorporated and existing under the laws of the Province of Ontario,

("Western")

WHEREAS

- A. The Town of Placentia and ECC entered into an agreement for the supply of certain construction works and services dated March 19, 2021 (the "**Contract**").
- B. Pursuant to the Contract, ECC agreed to supply the construction works and services necessary in connection with a water system upgrade project being undertaken in the Town of Placentia (the "**Project**").
- C. ECC engaged Rodco to provide certain works and services in connection with the completion of the Contract.
- D. The Town of Placentia is in possession of a holdback in relation to the Project in the amount of \$244,977.53.
- E. Rodco has caused to be registered a mechanics' lien bearing Lien No. 19963 and had further caused a Certificate of Action to be registered with the Supreme Court of Newfoundland and Labrador General Division bearing court file no. 2022 01G 0563. Rodco has also issued a mechanics' lien bearing Lien No 20096.
- F. Western has issued a labour and materials bond in relation to the Project (the "**Bond**").
- G. Rodco has submitted a claim under the labour and materials bond which bond was issued by Western Surety Company for amounts due and owing to Rodco by ECC.
- H. ECC, Rodco and Western (the "Parties") have agreed to enter into this Settlement Agreement (the "**Settlement Agreement**"), for purposes of setting out the terms and

conditions of the agreement reached between ECC, Rodco and Western with respect to the completion of the Project and release of holdback.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth and contained, and other good and valuable consideration passing between ECC and Rodco (hereinafter collectively referred to as the “**Parties**”), the Parties agree as follows:

AGREEMENT

1. The Parties acknowledge and agree that the holdback can be released and paid as follows:
 - (a) Crane Supply to be paid from the holdback the amount of \$204,781.32.
 - (b) Rodco to be paid from the holdback the amount of \$40,196.17
2. ECC agrees to:
 - (a) Pay the balance of monies due and owing to Rodco in the amount of \$358,411.71 to Rodco on or before July 28, 2022.
 - (b) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of ECC under this Settlement Agreement.
3. Rodco agrees to:
 - (a) Discharge any and all mechanics' liens as registered in connection with the Project, including but not limited to claim for lien No. 19963 and Certificate of Action bearing court file no. 2022 01G 0563 and lien No. 20096.
 - (b) Not register any additional mechanics' liens or initiate legal proceedings in relation to the Contract, with the exception of legal proceedings to enforce this Settlement Agreement.
 - (c) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of Rodco under this Settlement Agreement and to take all steps required to have the holdback for the Project released.
4. Western Agrees to:
 - (a) Make full payment to Rodco in the amount of \$358,411.71 less any payments made by ECC following the date of these Minutes of Settlement that remains due to Rodco by ECC as outstanding on July 28, 2022 within 7 business days of Rodco providing written notice to Western of the outstanding amount.
5. General Terms
 - (a) This Settlement Agreement, including the schedules hereto, embodies the entire Agreement between the Parties concerning the subject matters mentioned herein, and supersedes all previous discussions, correspondence,

understandings or agreements, whether written or oral, with respect to such matters.

- (b) Rodco and ECC agree that this Settlement Agreement is intended to be in complete satisfaction of all matters arising between Rodco and ECC in relation to the Contract and/or the Project.
- (c) The invalidity of any of the provisions of this Settlement Agreement, or any of the provisions of the documents attached as schedules to this Settlement Agreement, shall not invalidate or affect any of the other provisions of this Settlement Agreement, which shall remain in full force and effect.
- (d) This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- (e) None of the terms, conditions or provisions of this Settlement Agreement shall be changed, waived, varied, modified or altered unless done so in writing and signed by all of the Parties.
- (f) This Settlement Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Newfoundland and Labrador, and the laws of Canada applicable therein, and the Parties shall attorn to the jurisdiction of the courts of the Province of Newfoundland and Labrador.
- (g) This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together constitute one and the same instrument. This Settlement Agreement may be executed and transmitted by facsimile or by email attachment in .pdf.

[Remainder of page intentionally blank. Signature pages to follow.]

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed as of the day and year first before written.

Witness

} **EDWARD COLLINGS CONTRACTING LIMITED**

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the Town

Witness

} **RODCO MECHANICAL (2014) LTD.**

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

Witness

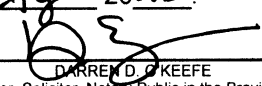
} **WESTERN SURETY COMPANY**

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

This is Exhibit "N" to the affidavit of
Josh Collins sworn before me on the
17 day of Aug 2023.


DARREN D. KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "N"

From:
Sent:
To:
Subject:

Begin forwarded message:

From: Michael Cabot <michael.cabot@occolaw.com>
Date: June 23, 2022 at 2:10:09 PM NDT
To: Joshua Collins <josh_56@icloud.com>
Subject: FW: Town of Placentia Water System Upgrades

Michael Cabot
Partner

709 702 8902 709 702 8901
michael.cabot@occolaw.com
www.occolaw.com

ORR | CABOT
CROSBIE | OLEY
LAW

55 Duckworth St., St. John's, NL A1C 1E6

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From: James Toothill <JToothill@westernsurety.ca>

Date: Thursday, June 23, 2022 at 2:05 PM

To: Matthew Craig <mccraig@stewartmckelvey.com>, Michael Cabot <michael.cabot@occolaw.com>, Michel Prud'homme <michel.prudhomme@bbcg.ca>, MacLellan, James <JMACLELLAN@blg.com>

Subject: Re: Town of Placentia Water System Upgrades

Hi everyone. Hold off on a call with this. This should be handled by the lawyers for each company participating in the agreement. James M from BLG will be able to speak on behalf of Western.

I will follow up further when I am in the office in a few hours.

Thank-you.

James Toothill, FCIP, CRM
Chief Claims Manager & Privacy Officer
Western Surety Company
Ph: 3067770608
Email: jtoothill@westernsurety.ca

From: Matthew Craig <mccraig@stewartmckelvey.com>

Sent: Thursday, June 23, 2022, 10:25 a.m.

To: Michael Cabot <michael.cabot@occolaw.com>; Michel Prud'homme <michel.prudhomme@bbcg.ca>; James Toothill <JToothill@westernsurety.ca>; MacLellan, James <JMACLELLAN@blg.com>

Subject: RE: Town of Placentia Water System Upgrades

Michael,

I haven't had any contact with Rodco or Rodco's counsel. I would expect that Rodco's willingness to discharge its lien and sign a release in favour of the Town would be conditional on Rodco having a satisfactory agreement with ECC and/or Western Surety with respect to the settlement of its claim.

It is also my understanding that Crane Canada expects to be paid the full amount of its claim directly out of the holdback fund, in which case there will be limited holdback funds available for Rodco, and the majority of its claim would presumably be paid by ECC or Western Surety.

Happy to arrange a call to discuss as needed or helpful, otherwise I look forward to a further update on the status of the Rodco matter.

Best regards,
Mat

Matthew N. Craig

Partner
Stewart McKelvey
D: 709.570.8827
C: 709.725.2501

From: Michael Cabot <michael.cabot@occolaw.com>
Sent: Thursday, June 23, 2022 12:19 PM
To: Matthew Craig <mccraig@stewartmckelvey.com>; Michel Prud`homme <michel.prudhomme@bbcg.ca>; James Toothill <JToothill@westernsurety.ca>; MacLellan, James <JMACLELLAN@blg.com>
Subject: Re: Town of Placentia Water System Upgrades

This is an external email.

Hi Matt –

I was of the understanding that there was releases being sought from Rodco as well – is that the case and if so, can you confirm the status?

Mike

Michael Cabot
Partner

Direct 709 702 8902 Fax 709 702 8901
Email michael.cabot@occolaw.com
Web www.occolaw.com



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From: Matthew Craig <mccraig@stewartmckelvey.com>
Date: Thursday, June 23, 2022 at 11:26 AM
To: Michel Prud`homme <michel.prudhomme@bbcg.ca>, James Toothill <JToothill@westernsurety.ca>, Michael Cabot <michael.cabot@occolaw.com>, MacLellan, James <JMACLELLAN@blg.com>
Subject: Town of Placentia Water System Upgrades

All,

Further to recent correspondence with Michael Cabot (copied on this email) and Paul Guaragna (counsel to Crane Canada), the Town and Crane Canada are working on negotiating a form of release to be provided by Crane Canada to the Town in connection with the Town's release of holdback funds to Crane Canada.

With that said, as recently discussed, and as I have advised Paul, the Town is unable to release any amount out of the holdback fund until such time as the Rodco Mechanical lien claim has been resolved.

I am therefore writing to request an update on the status of discussions between Western Surety, ECC and Rodco with respect to Rodco's lien claim.

Best regards,
Matt



Matthew N. Craig

Partner

D: 709.570.8827

C: 709.725.2501

mcraig@stewartmckelvey.com

stewartmckelvey.com

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This is Exhibit "O" to the affidavit of
Josh Lillis sworn before me on the
17 day of Aug 2023.


DARREN O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "O"

From:
Sent:
To:
Subject:

Sent from my iPhone

Begin forwarded message:

From: Joshua Collins <josh_56@icloud.com>
Date: June 29, 2022 at 2:38:42 PM NDT
To: Michael Cabot <michael.cabot@occolaw.com>
Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Sent from my iPhone

On Jun 29, 2022, at 2:21 PM, Michael Cabot <michael.cabot@occolaw.com> wrote:

Michael Cabot
Partner

From: C. Brad Leyte <bleyte@nf.aibn.com>
Sent: Tuesday, June 28, 2022 10:23:38 AM
To: Michael Cabot <michael.cabot@occolaw.com>; JMACLELLAN@blg.com
<JMACLELLAN@blg.com>; JToothill@westernsurety.ca <JToothill@westernsurety.ca>
Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Hi Michael,

My client attended with me this morning to execute the Agreement and the Discharges of Liens.

I have yet to receive anything from the Town or Crane with regard to proposed Releases.

Brad

On 23/06/2022 2:50 p.m., Michael Cabot wrote:

Hi Brad –

I am following up on my email below and the attached agreement.

I understood that the attached draft is acceptable to all parties, but it remains to be executed.

Can you confirm, so we can get this completed and in turn make arrangements with the Town (Matt Craig) to have the funds released.

I note that Matt had previously inquired about releases from Rodco and Crane. I know there was a draft sent to Crane, but I Matt advised he has not had any correspondence with you in relation to such a release.

I have confirmed with the Town and they will also require a release from Rodco, so I am going to ask that they send that to your attention ASAP. I recall that you previously indicated that your client had no issue with that.

Once the above is completed, I understand that the Town is agreeable to release of funds.

I look forward to your response, and hopefully we can get this concluded.

Kind Regards,
Mike

Michael Cabot
Partner

Direct 709 702 8902 Fax 709 702 8901
Email michael.cabot@occolaw.com
Web www.occolaw.com

<image001.png>

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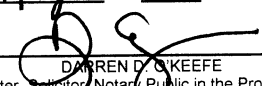
This is Exhibit "P" to the affidavit of
Josh Collins sworn before me on the
12 day of Aug 2023.

DARREN D. O'KEEFE
Barrister, Solicitor/Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "P"

Subject:

From: James Toothill <JToothill@westernsurety.ca>

Date: Monday, July 4, 2022 at 12:29 PM

To: Michael Cabot <michael.cabot@occolaw.com>, C. Brad Leyte <bleyte@nf.aibn.com>, Punzo, Andrew <APunzo@blg.com>

Cc: MacLellan, James <JMACLELLAN@blg.com>, Michel Prud'homme <michel.prudhomme@bbcg.ca>

Subject: RE: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Hi Mike,

It was my understanding that Western did not need to sign the agreement. The initial draft that I reviewed did not have a signing place for Western. We have not received a final version, however if there is a place for Western to sign can you please forward to either myself or Andrew Punzo and we will get it signed.

Please note, Andrew Punzo from BLG is now handling this matter for Western. Please include Andrew in all emails moving forward. You do not have to include James M from BLG in future emails.

Thanks in advance,

James



James Toothill FCIP, CRM • Chief Claims Manager & Privacy Officer

Western Surety Company

t. (306) 777-0608 • 1 (800) 475-4454

jtoothill@westernsurety.ca • www.westernsurety.ca

2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

From: Michael Cabot <michael.cabot@occolaw.com>

Sent: July 4, 2022 8:20 AM

To: James Toothill <JToothill@westernsurety.ca>; MacLellan, James <JMACLELLAN@blg.com>; C. Brad Leyte <bleyte@nf.aibn.com>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

James –

Matt Craig (counsel for the Town) asked whether WS had signed the settlement agreement. Can you confirm?

Kind Regards,

Mike

Michael Cabot
Partner

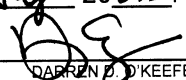
Direct 709 702 8902 Fax 709 702 8901
Email michael.cabot@occolaw.com
Web www.occolaw.com



ORR | CABOT
CROSBIE | OLEY
LAW

55 Duckworth St., St. John's, NL A1C 1E6

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This is Exhibit "Q" to the affidavit of
Derek Collins sworn before me on the
17 day of Aug 2023.


DARREN D. KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "Q"

From: Michael Cabot <michael.cabot@occolaw.com>
Sent: July 5, 2022 7:58 AM
To: Punzo, Andrew; James Toothill; C. Brad Leyte
Cc: Michel Prud'homme; Borgo, Mark
Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

[External / Externe]

Thanks, Andrew.

Just as an fyi, I checked my file and this draft previously circulated on June 2 and approved by James M. subject to one revision.

Kind Regards,
Mike

Michael Cabot
Partner

Office: 709 702 8902 Fax: 709 702 8901
Email: michael.cabot@occolaw.com
Web: www.occolaw.com



ORR | CABOT
CROSBIE | OLEY
LAW

55 Duckworth St., St. John's, NL A1C 1E6

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From: Punzo, Andrew <APunzo@blg.com>
Date: Monday, July 4, 2022 at 9:52 PM
To: Michael Cabot <michael.cabot@occolaw.com>, James Toothill <JToothill@westernsurety.ca>, C. Brad Leyte <bleyte@nf.aibn.com>
Cc: Michel Prud'homme <michel.prudhomme@bbcg.ca>, Borgo, Mark <MBorgo@blg.com>
Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Thanks Michael/ James. I will take a look and circle back to James with any comments.

Andrew Punzo
Borden Ladner Gervais LLP

From: Michael Cabot <michael.cabot@occolaw.com>
Sent: Monday, July 4, 2022 2:35 PM
To: James Toothill <JToothill@westernsurety.ca>; C. Brad Leyte <bleyte@nf.aibn.com>; Punzo, Andrew <APunzo@blg.com>
Cc: Michel Prud'homme <michel.prudhomme@bbcg.ca>
Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

[External / Externe]

Hi James –

Welcome aboard Andrew.

I have attached the final version agreement, that has WS as a party.

I understand that Rodco has signed for their part and I am making arrangements for ECC to do the same. We are proceeding in counterparts.

Matt Craig sent along additional documents today, so this should be moving towards a conclusion.

Kind Regards,
Mike

Michael Cabot
Partner

Phone: 709 702 8902 Fax: 709 702 8901
Email: michael.cabot@occolaw.com
Web: www.occolaw.com



55 Duckworth St., St. John's, NL A1C 1E6

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Subject:

FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

From: James Toothill <JToothill@westernsurety.ca>

Date: Monday, July 4, 2022 at 12:29 PM

To: Michael Cabot <michael.cabot@occolaw.com>, C. Brad Leyte <bleyte@nf.aibn.com>, Punzo, Andrew <APunzo@blg.com>

Cc: MacLellan, James <JMACLELLAN@blg.com>, Michel Prud'homme <michel.prudhomme@bbcg.ca>

Subject: RE: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Hi Mike,

It was my understanding that Western did not need to sign the agreement. The initial draft that I reviewed did not have a signing place for Western. We have not received a final version, however if there is a place for Western to sign can you please forward to either myself or Andrew Punzo and we will get it signed.

Please note, Andrew Punzo from BLG is now handling this matter for Western. Please include Andrew in all emails moving forward. You do not have to include James M from BLG in future emails.

Thanks in advance,

James



James Toothill FCIP, CRM • Chief Claims Manager & Privacy Officer

Western Surety Company

t. (306) 777-0608 • 1 (800) 475-4454

jtoothill@westernsurety.ca • www.westernsurety.ca

2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

Forward from: Western Surety Company

From: Michael Cabot <michael.cabot@occolaw.com>

Sent: July 4, 2022 8:20 AM

To: James Toothill <JToothill@westernsurety.ca>; MacLellan, James <JMACLELLAN@blg.com>; C. Brad Leyte <bleyte@nf.aibn.com>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

James –

Matt Craig (counsel for the Town) asked whether WS had signed the settlement agreement. Can you confirm?

Kind Regards,

Mike

Michael Cabot
Partner

Phone: 709 702 8902 Fax: 709 702 8901
Email: michael.cabot@occolaw.com
Web: www.occolaw.com



ORR | CABOT
CROSBIE | OLEY
LAW

55 Duckworth St., St. John's, NL A1C 1E6

THIS EMAIL TRANSMISSION IS SOLICITOR-CLIENT PRIVILEGED and is intended only for the person(s) to whom it is addressed. Any other distribution, copying or disclosure is strictly prohibited. If you receive this message in error please notify us by return email and delete the message and any attachments received with it.

This is Exhibit "R" to the affidavit of
Derek Collins sworn before me on the
17 day of Aug 2023.


DARREN P. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "R"

From: Michael Cabot <michael.cabot@occolaw.com>

Sent: July 6, 2022 10:11 AM

To: Punzo, Andrew <APunzo@blg.com>; James Toothill <JToothill@westernsurety.ca>; C. Brad Leyte <bleyte@nf.aibn.com>

Cc: Michel Prud'homme <michel.prudhomme@bbcg.ca>; Borgo, Mark <MBorgo@blg.com>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

[External / Externe]

Andrew –

Just checking in on this to let you know that ECC has signed this agreement.

I understand that Rodco has done the same.

Have you had an opportunity to review it?

Mike

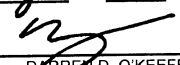
Michael Cabot
Partner

709 702 8902 709 702 8901
michael.cabot@occolaw.com
www.occolaw.com

ORR | CABOT
CROSBIE | OLEY
LAW

55 Duckworth St., St. John's, NL A1C 1E5

THIS EMAIL TRANSMISSION IS SOLICITOR-CLIENT PRIVILEGED and is intended only for the person(s) to whom it is addressed. Any other distribution, copying or disclosure is strictly prohibited. If you receive this message in error please notify us by return email and delete the message and any attachments received with it.

This is Exhibit "S" to the affidavit of
Josh Collins sworn before me on the
17 day of Aug 2023.


DARREN D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "S"

Subject:

FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd. [BLG-DOCUMENTS.FID8425518]

Attachments:

Settlement Agreement (BLG Approved).doc; Settlement Agreement Blackline(130647952.1).pdf; 2022-06-07 Settlement Agreement FINAL[82] (130503556.1).doc

From: James Toothill <JToothill@westernsurety.ca>

Sent: July 13, 2022 12:26 PM

To: Michael Cabot <michael.cabot@occolaw.com>

Cc: Punzo, Andrew <APunzo@blg.com>; Borgo, Mark <MBorgo@blg.com>

Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd. [BLG-DOCUMENTS.FID8425518]

[External / Externe]

Hi Michael,

Please see the below comments from our counsel, as well as the attached blackline copy of the agreement. There are a couple items on the original agreement that we think are worthwhile changing, especially from Western's perspective. Can you advise if you are ok with these changes and recirculating this for signatures? Or if that may cause some hardship with the parties.

Thanks,

James



James Toothill FCIP, CRM • Chief Claims Manager & Privacy Officer
Western Surety Company
t. (306) 777-0608 • 1 (800) 475-4454
jtoothill@westernsurety.ca • www.westernsurety.ca
2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

Save & close. Keep it on the screen.

SETTLEMENT AGREEMENT entered into with effect as of this ____ day of June, 2022.

BETWEEN: **EDWARD COLLINS CONTRACTING LIMITED**, a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

(“**ECC**”)

AND: **RODCO MECHANICAL (2014) LTD.** a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

(“Rodco”)

AND: **WESTERN SURETY COMPANY**, a corporation duly incorporated and existing under the laws of the Province of Ontario,

(“**Western**”)

WHEREAS

- A. The Town of Placentia and ECC entered into an agreement for the supply of certain construction works and services dated March 19, 2021 (the “**Contract**”).
- B. Pursuant to the Contract, ECC agreed to supply the construction works and services necessary in connection with a water system upgrade project being undertaken in the Town of Placentia (the “**Project**”).
- C. ECC engaged Rodco to provide certain works and services in connection with the completion of the Contract.
- D. The Town of Placentia is in possession of a holdback in relation to the Project in the amount of \$244,977.53.
- E. Rodco has caused to be registered a mechanics’ lien bearing Lien No. 19963 and had further caused a Certificate of Action to be registered with the Supreme Court of Newfoundland and Labrador General Division bearing court file no. 2022 01G 0563. Rodco has also issued a mechanics’ lien bearing Lien No 20096.
- F. Western has issued a labour and material payment bond in relation to the Contract (the “**Bond**”).
- G. Rodco has submitted a claim under the Bond.
- H. ECC, Rodco and Western (the “Parties”) have agreed to enter into this Settlement Agreement (the “**Settlement Agreement**”), for purposes of setting out the terms and

conditions of the agreement reached between ECC, Rodco and Western with respect to the completion of the Project and release of holdback.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth and contained, and other good and valuable consideration passing between the Parties, the Parties agree as follows:

AGREEMENT

1. The Parties acknowledge and agree that the holdback can be released and paid as follows:
 - (a) Crane Supply to be paid from the holdback the amount of \$204,781.32.
 - (b) Rodco to be paid from the holdback the amount of \$40,196.17
2. ECC agrees to:
 - (a) Pay the balance of monies due and owing to Rodco in the amount of \$358,411.71 to Rodco on or before July 28, 2022 in full satisfaction of Rodco's claims against ECC and Western.
 - (b) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of ECC under this Settlement Agreement.
3. Rodco agrees to:
 - (a) Discharge any and all mechanics' liens as registered in connection with the Project, including but not limited to claim for lien No. 19963 and Certificate of Action bearing court file no. 2022 01G 0563 and lien No. 20096.
 - (b) Not register any additional mechanics' liens or initiate legal proceedings in relation to the Contract, with the exception of legal proceedings to enforce this Settlement Agreement.
 - (c) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of Rodco under this Settlement Agreement and to take all steps required to have the holdback for the Project released.
4. Western agrees to:
 - (a) In exchange for a Release and Assignment from Rodco in Western's standard form, make full payment to Rodco in the amount of \$358,411.71 less any payments made by ECC following the date of this Settlement Agreement that remains due to Rodco by ECC as outstanding on July 28, 2022 within 7 business days of Rodco providing written notice to Western of the outstanding amount.
5. General Terms
 - (a) This Settlement Agreement, including the schedules hereto, embodies the entire Agreement between the Parties concerning the subject matters mentioned

herein, and supersedes all previous discussions, correspondence, understandings or agreements, whether written or oral, with respect to such matters.

- (b) Rodco and ECC agree that this Settlement Agreement is intended to be in complete satisfaction of all matters arising between Rodco, ECC and Western in relation to the Contract and/or the Project.
- (c) The invalidity of any of the provisions of this Settlement Agreement, or any of the provisions of the documents attached as schedules to this Settlement Agreement, shall not invalidate or affect any of the other provisions of this Settlement Agreement, which shall remain in full force and effect.
- (d) This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- (e) None of the terms, conditions or provisions of this Settlement Agreement shall be changed, waived, varied, modified or altered unless done so in writing and signed by all of the Parties.
- (f) This Settlement Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Newfoundland and Labrador, and the laws of Canada applicable therein, and the Parties shall attorn to the jurisdiction of the courts of the Province of Newfoundland and Labrador.
- (g) This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together constitute one and the same instrument. This Settlement Agreement may be executed and transmitted by facsimile or by email attachment in .pdf.

[Remainder of page intentionally blank. Signature pages to follow.]

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed as of the day and year first before written.

_____ Witness	}	EDWARD COLLINGS CONTRACTING LIMITED Per: _____ Name: _____ Title: _____ I/We have the authority to bind the Town
------------------	---	---

_____ Witness	}	RODCO MECHANICAL (2014) LTD. Per: _____ Name: _____ Title: _____ I/We have the authority to bind the corporation
------------------	---	---

_____ Witness	}	WESTERN SURETY COMPANY Per: _____ Name: _____ Title: _____ I/We have the authority to bind the corporation
------------------	---	---

SETTLEMENT AGREEMENT entered into with effect as of this ____ day of June, 2022.

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("ECC")

AND: **RODCO MECHANICAL (2014) LTD.** a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

("Rodco")

AND: **WESTERN SURETY COMPANY**, a corporation duly incorporated and existing under the laws of the Province of Ontario,

("Western")

WHEREAS

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- C. ECC engaged Rodco to provide certain works and services in connection with the completion of the Contract.
- D. The Town of Placentia is in possession of a holdback in relation to the Project in the amount of \$244,977.53.
- E. Rodco has caused to be registered a mechanics' lien bearing Lien No. 19963 and had further caused a Certificate of Action to be registered with the Supreme Court of Newfoundland and Labrador General Division bearing court file no. 2022 01G 0563. Rodco has also issued a mechanics' lien bearing Lien No 20096.
- F. Western has issued a labour and materials material payment bond in relation to the ~~Project~~ Contract (the "**Bond**").
- G. Rodco has submitted a claim under the ~~labour and materials bond which bond was issued by Western Surety Company for amounts due and owing to Rodco by ECC~~ Bond.

- H. ECC, Rodco and Western (the “Parties”) have agreed to enter into this Settlement Agreement (the “**Settlement Agreement**”), for purposes of setting out the terms and conditions of the agreement reached between ECC, Rodco and Western with respect to the completion of the Project and release of holdback.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth and contained, and other good and valuable consideration passing between ~~ECC and Rodco~~ (hereinafter collectively referred to as the “Parties”), the Parties agree as follows:

AGREEMENT

1. The Parties acknowledge and agree that the holdback can be released and paid as follows:
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 - (b) Rodco to be paid from the holdback the amount of \$40,196.17
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 - (b) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of ECC under this Settlement Agreement.
3. Rodco agrees to:
 - (a) Discharge any and all mechanics' liens as registered in connection with the Project, including but not limited to claim for lien No. 19963 and Certificate of Action bearing court file no. 2022 01G 0563 and lien No. 20096.
 - (b) Not register any additional mechanics' liens or initiate legal proceedings in relation to the Contract, with the exception of legal proceedings to enforce this Settlement Agreement.
 - (c) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of Rodco under this Settlement Agreement and to take all steps required to have the holdback for the Project released.
4. Western ~~Agrees~~agrees to:
 - (a) Make in exchange for a Release and Assignment from Rodco in Western's standard form, make full payment to Rodco in the amount of \$358,411.71 less any payments made by ECC following the date of ~~these Minutes of this~~ Settlement Agreement that remains due to Rodco by ECC as outstanding on July 28, 2022 within 7 business days of Rodco providing written notice to Western of the outstanding amount.
5. General Terms

- (a) This Settlement Agreement, including the schedules hereto, embodies the entire Agreement between the Parties concerning the subject matters mentioned herein, and supersedes all previous discussions, correspondence, understandings or agreements, whether written or oral, with respect to such matters.
- (b) Rodco and ECC agree that this Settlement Agreement is intended to be in complete satisfaction of all matters arising between Rodco, ECC and ECCWestern in relation to the Contract and/or the Project.
- (c) The invalidity of any of the provisions of this Settlement Agreement, or any of the provisions of the documents attached as schedules to this Settlement Agreement, shall not invalidate or affect any of the other provisions of this Settlement Agreement, which shall remain in full force and effect.
- (d) This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- (e) None of the terms, conditions or provisions of this Settlement Agreement shall be changed, waived, varied, modified or altered unless done so in writing and signed by all of the Parties.
- (f) This Settlement Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Newfoundland and Labrador, and the laws of Canada applicable therein, and the Parties shall attorn to the jurisdiction of the courts of the Province of Newfoundland and Labrador.
- (g) This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together constitute one and the same instrument. This Settlement Agreement may be executed and transmitted by facsimile or by email attachment in .pdf.

[Remainder of page intentionally blank. Signature pages to follow.]

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed as of the day and year first before written.

Witness

} **EDWARD COLLINGS CONTRACTING LIMITED**

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the Town

Witness

} **RODCO MECHANICAL (2014) LTD.**

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

Witness

} **WESTERN SURETY COMPANY**

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

Document comparison by Workshare Compare on July 12, 2022 7:02:49 PM

Input:	
Document 1 ID	file://C:\Users\MBorgo\Desktop\2022-06-07 Settlement Agreement FINAL[82](130503556.1).doc
Description	2022-06-07 Settlement Agreement FINAL[82](130503556.1)
Document 2 ID	file://C:\Users\MBorgo\Desktop\Settlement Agreement (BLG Comments).doc
Description	Settlement Agreement (BLG Comments)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<u>Deletion</u>	
<u>Moved from</u>	
<u>Moved to</u>	
Style change	
Format change	
<u>Moved deletion</u>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	10
Deletions	10
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	20

This is Exhibit "T" to the affidavit of
Joh Wells sworn before me on the
17 day of Aug 20 23.


DARREN D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "T"

From: James Toothill <JToothill@westernsurety.ca>

Sent: July 19, 2022 9:18 AM

To: C. Brad Leyte <bleyte@nf.aibn.com>; Michael Cabot <michael.cabot@occolaw.com>; Punzo, Andrew <APunzo@blg.com>

Cc: Michel Prud'homme <michel.prudhomme@bbcg.ca>; Borgo, Mark <MBorgo@blg.com>

Subject: RE: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

[External / Externe]

Hi Brad,

I will be signing and returning a copy to all parties in the next few hours.

James

From: C. Brad Leyte <bleyte@nf.aibn.com>

Sent: July 18, 2022 6:13 AM

To: James Toothill <JToothill@westernsurety.ca>; Michael Cabot <michael.cabot@occolaw.com>; Punzo, Andrew <APunzo@blg.com>

Cc: Michel Prud'homme <michel.prudhomme@bbcg.ca>; Borgo, Mark <MBorgo@blg.com>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Please advise as to the current status of the settlement agreement.

Brad

This is Exhibit "U" to the affidavit of
John Caluso sworn before me on the
17 day of Aug 2023.


DARREN D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "U"

From: James Toothill <JToothill@westernsurety.ca>
Sent: August 8, 2022 2:30 PM
To: C. Brad Leyte; Punzo, Andrew; Borgo, Mark
Subject: RE: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

[External / Externe]

Hi Brad,

Andrew and Mark are following up on this and I will let them reply with further updates and information.

Regards,

James

From: C. Brad Leyte <bleyte@nf.aibn.com>
Sent: August 8, 2022 6:35 AM
To: James Toothill <JToothill@westernsurety.ca>; Punzo, Andrew <APunzo@blg.com>; Borgo, Mark <MBorgo@blg.com>
Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Hi James,

Following up on your email from last week. Update?

Brad

On 02/08/2022 3:01 p.m., James Toothill wrote:

Hi Brad,

We are currently reviewing this and will be in touch hopefully by the end of the day tomorrow with additional information. I was away last week and am working on this now.

Regards,

James



James Toothill FCIP, CRM • **Chief Claims Manager & Privacy Officer**
Western Surety Company
t. (306) 777-0608 • 1 (800) 475-4454
jtoothill@westernsurety.ca • www.westernsurety.ca
2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

From: C. Brad Leyte <bleyte@nf.aibn.com>

Sent: August 2, 2022 10:37 AM

To: James Toothill <JToothill@westernsurety.ca>; Punzo, Andrew <APunzo@blg.com>; Borgo, Mark <MBorgo@blg.com>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

James,

May we have your reply, please?

Brad

On 29/07/2022 10:09 a.m., C. Brad Leyte wrote:

Anxiously awaiting your reply.

Brad

On 28/07/2022 9:26 a.m., C. Brad Leyte wrote:

Hi James,

As you know, today (28 July) was the date for triggering payout under the bond (regardless of whether we receive the signed agreement from ECC at this point.)

My client has received no further payments from ECC.

Please advise whether there is anything else you need from my client in order to advance its claim under the bond.

Regards,

Brad

On 26/07/2022 12:08 p.m., James Toothill wrote:
Hi Andrew and Mark,

Could one of you please follow up with Michael Cabot to see why he is not responding. And include Brad on the emails Thanks.

James Toothill, FCIP, CRM
Chief Claims Manager & Privacy Officer
Western Surety Company
Ph: 3067770608
Email: jtoothill@westernsurety.ca

From: C. Brad Leyte <bleyte@nf.aibn.com>
Sent: Tuesday, July 26, 2022, 8:35 a.m.
To: James Toothill <JToothill@westernsurety.ca>
Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

James,

Given the silence that is now increasingly apparent from the other parties, the settlement agreement appears increasingly unlikely.

My client has moved to secure its claim by completing all of the statutory steps necessary to perfect the liens.

Can you offer any assurances regarding the payout of the bond?

Brad

On 21/07/2022 9:41 a.m., C. Brad Leyte wrote:

Thank you, James. Still waiting to hear from the other parties.

Michael?

Brad

From: Michael Cabot <michael.cabot@occolaw.com>
Sent: July 27, 2022 6:31 AM
To: Borgo, Mark <MBorgo@blg.com>
Cc: C. Brad Leyte <bleyte@nf.aibn.com>; James Toothill <JToothill@westernsurety.ca>; Michel Prud'homme <michel.prudhomme@bbcg.ca>; Punzo, Andrew <APunzo@blg.com>
Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd. [BLG-DOCUMENTS.FID8425518]

[External / Externe]

Mark -

I am no longer acting for ECC on this matter.

I have passed your correspondence along to ECC.

Kind regards,

Michael Cabot
Partner

From: Borgo, Mark <MBorgo@blg.com>
Sent: Tuesday, July 26, 2022 5:40:35 PM
To: Michael Cabot <michael.cabot@occolaw.com>
Cc: C. Brad Leyte <bleyte@nf.aibn.com>; James Toothill <JToothill@westernsurety.ca>; Michel Prud'homme <michel.prudhomme@bbcg.ca>; Punzo, Andrew <APunzo@blg.com>
Subject: RE: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd. [BLG-DOCUMENTS.FID8425518]

Hi Michael,

May we please hear from you regarding the below. We would like to conclude the settlement.

Thank you,

From: Steve Puddicombe <steve@rodcomechanical.com>
Sent: April 26, 2023 1:51 PM
To: Borgo, Mark
Subject: FW: Proposed settlement agreement June 2022
Attachments: cbslegal@nf.aibn.com_20230426_130240.pdf

[External / Externe]

Hi Mark

Attached was the proposed settlement agreement between ECC, the town and Rodco. (ECC or the towns lawyer drafted this agreement)

We signed the agreement that was sent over too us, but the other Parties never executed the agreement I believe Crane Supply put a stop

To the agreement because they already had a existing agreement in place with ECC for the Holdback Funds.

Best regards
STEVE PUDDICOMBE

Rodco Mechanical (2014) Ltd.

POX 169
Holyrood, NL
A0A 2R0

Office (709) 231-2399 ext 102
Cell (709) 728-2155
Email: steve@rodcomechanical.com
Website: www.rodcomechanical.com



From: C. Brad Leyte <bleyte@nf.aibn.com>
Sent: Wednesday, April 26, 2023 1:51 PM
To: Steve Puddicombe <steve@rodcomechanical.com>
Cc: Stephen Puddicombe <rodcomechanical@hotmail.com>
Subject: Proposed settlement agreement June 2022

As discussed.

----- Forwarded Message -----

Subject: Scanned image from MX-M3570

Date: Wed, 26 Apr 2023 13:02:41 -0330

From: cbslegal@nf.aibn.com <cbslegal@nf.aibn.com>

Reply-To: cbslegal@nf.aibn.com

To: bleyte@nf.aibn.com

Reply to: cbslegal@nf.aibn.com <cbslegal@nf.aibn.com>

Device Name: Not Set

Device Model: MX-M3570

Location: Not Set

File Format: PDF MMR(G4)

Resolution: 200dpi x 200dpi

Attached file is scanned image in PDF format.

Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.

Adobe(R)Reader(R) can be downloaded from the following URL:

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<http://www.adobe.com/>



Virus-free www.avast.com

SETTLEMENT AGREEMENT entered into with effect as of this ____ day of June, 2022.

BETWEEN: **EDWARD COLLINS CONTRACTING LIMITED**, a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

(**"ECC"**)

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(**"Rodco"**)

AND: **WESTERN SURETY COMPANY**, a corporation duly incorporated and existing under the laws of the Province of Ontario,

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- (c) The invalidity of any of the provisions of this Settlement Agreement, or any of the provisions of the documents attached as schedules to this Settlement Agreement, shall not invalidate or affect any of the other provisions of this Settlement Agreement, which shall remain in full force and effect.
- (d) This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- (e) None of the terms, conditions or provisions of this Settlement Agreement shall be changed, waived, varied, modified or altered unless done so in writing and signed by all of the Parties.
- (f) This Settlement Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Newfoundland and Labrador, and the laws of Canada applicable therein, and the Parties shall attorn to the jurisdiction of the courts of the Province of Newfoundland and Labrador.
- (g) This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together constitute one and the same instrument. This Settlement Agreement may be executed and transmitted by facsimile or by email attachment in .pdf.

[Remainder of page intentionally blank. Signature pages to follow.]

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed as of the day and year first before written.

Witness

**EDWARD COLLINGS CONTRACTING
LIMITED**

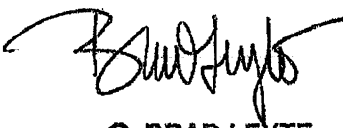
Per: _____

Name: _____

Title: _____

I/We have the authority to bind the Town

Witness


C. BRAD LEYTE
"A BARRISTER" (NL)

RODCO MECHANICAL (2014) LTD.

Per: Steph Ruddicombe

Name: Stephen Ruddicombe

Title: president.

I/We have the authority to bind the corporation

Witness

WESTERN SURETY COMPANY

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

From: Steve Puddicombe <steve@rodcomechanical.com>
Sent: April 25, 2023 12:50 PM
To: Borgo, Mark
Cc: Punzo, Andrew; C. Brad Leyte
Subject: Re: Western Surety - ECC - Town of Placentia | Rodco Mechanical (2014) Ltd. [BLG-DOCUMENTS.FID8425518]

[External / Externe]

Hi Mark

I am just returning from vacation, it will probably be a week or more before I can compile the information.
I believe we already sent most of this to western surety to prove our claim.
I will call tomorrow to discuss.

Stephen Puddicombe
Rodco Mechanical (2014) Ltd.
257 Conception Bay Highway
PO Box 169
Holyrood, NL
A0A 2R0
(C) (709)728-2155
(O) (709)231-2399 ext 102
www.rodcomechanical.com



From: Borgo, Mark <MBorgo@blg.com>
Sent: Tuesday, April 25, 2023 2:16:03 PM
To: Steve Puddicombe <steve@rodcomechanical.com>
Cc: Punzo, Andrew <APunzo@blg.com>; C. Brad Leyte <bleyte@nf.aibn.com>
Subject: RE: Western Surety - ECC - Town of Placentia | Rodco Mechanical (2014) Ltd. [BLG-DOCUMENTS.FID8425518]

Mr. Puddicombe:

We are following up on our email below. Please let us know when we can expect the requested documents/information.

Thank you,



Mark A. Borgo

Senior Associate

T 416.367.7887 | MBorgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W. Toronto, ON.
Canada M5H 4E3

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Borden Ladner Gervais LLP

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From: Borgo, Mark

Sent: April 14, 2023 11:15 AM

To: Steve Puddicombe <steve@rodcomechanical.com>

Cc: Punzo, Andrew <APunzo@blg.com>; C. Brad Leyte <bleyte@nf.aibn.com>

Subject: Western Surety - ECC - Town of Placentia | Rodco Mechanical (2014) Ltd. [BLG-DOCUMENTS.FID8425518]

Dear Mr. Puddicombe:

We represent Western Surety Company ("Western") in connection with the above-noted matter.

Mr. Brad Leyte of CBS Legal Services, copied, advised that we could contact Rodco Mechanical (2014) Ltd. ("Rodco") directly for certain documents.

On June 28, 2022, Mr. Leyte confirmed by way of email (enclosed) that Rodco attended at his office to sign the attached Settlement Agreement. Can you please provide us with a copy of the Settlement Agreement signed by Rodco.

We also require further information about the dispute between Rodco and Edward Collins Contracting Ltd. ("ECC") that resulted in Rodco registering the attached Claim for Lien on December 3, 2021, specifically all documents in support of Rodco's position:

- Rodco contract and/or purchase order;
- Evidence substantiating that Rodco was on site performing work on or before November 10, 2021, as indicated in the Claim for Lien registered December 3, 2021;
- Payment certificates;
- Communications between ECC and Rodco where ECC admits and acknowledges Rodco's performance;
- Communications from Rodco to ECC requesting payment;
- Communications between Rodco and ECC regarding the \$135,000 payment from ECC after registration of the lien along with a copy of the cheque;
- All Rodco invoices (we are in receipt of invoices #5072; #5075; #5079; and #5081);
- Invoices and cheques supporting payments Rodco made to suppliers for materials;
- Rodco timesheets;
- Pictures of the project site showing Rodco's work; and
- Certificate of substantial performance.

Please note that Western's request for information from Rodco is being made pursuant to the attached Release, Assignment, Undertaking & Grant, which Rodco signed on August 24, 2022 (the "Release") in exchange for payment under the Payment Bond. Pursuant to the terms of the Release, Rodco agreed to cooperate and assist Western in recovering amounts paid under the Payment Bond. We require the requested information from Rodco to do that.

We are available to discuss Western's request for information further if you have any questions.

Thank you,



Mark A. Borgo

Senior Associate

T 416.367.7887 | MBorgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON,
Canada M5H 4E3

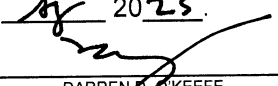
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This is Exhibit "V" to the affidavit of
John Collins sworn before me on the
11 day of July 2023.


DARREND O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "V"

RELEASE, ASSIGNMENT, UNDERTAKING AND GRANT

WHEREAS RODCO MECHANICAL (2014) LTD. of the Province of Newfoundland and Labrador (hereinafter called the "Claimant") represents to **WESTERN SURETY COMPANY** having an office in the Province of Saskatchewan (hereinafter called the "Surety") and covenants with the Surety that **EDWARD COLLINS CONTRACTING LIMITED** (hereinafter called the "Contractor") is indebted to the Claimant in the amount of \$398,607.88 for labour or material or rentals provided by the Claimant to the Contractor and used on the contract between the Contractor and **TOWN OF PLACENTIA** (hereinafter called the "Obligee") made the 19TH day of March, 2021 for water system upgrades in the Town of Placentia (the "Contract");

AND WHEREAS the Surety has issued, *inter alia*, a Labour & Material Payment Bond in connection with the Contract (the "Bond");

AND WHEREAS the Claimant has made a claim against the Surety and the Contractor in the amount of \$398,607.88 ("Claim");

AND WHEREAS the Surety has agreed to settle the Claim in exchange for the Claimant's assignment to the Surety of its rights and interests in the Claim;

AND WHEREAS the Claimant hereby warrants and represents to the Surety that it is entitled to payment from the Contractor and it is agreed and acknowledged that the Surety is relying on this warranty and representation in respect of this Agreement;

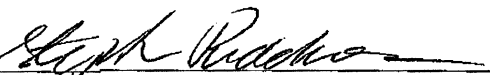
NOW THEREFORE THIS DEED WITNESSETH that in consideration of the promise of payment of \$398,607.88, which is the verified amount as per the Surety's correspondence dated August 15, 2022, by the Surety to the Claimant, the mutual covenants and agreements contained in this Agreement and the other good and valuable consideration set out herein, the receipt and sufficiency of which are hereby acknowledged by the parties, the Claimant covenants and agrees as follows:

- (1) hereby releases and forever discharges the Surety from any claims related to the Contract; and
- (2) hereby subrogates, assigns and transfers to the Surety any and all liens, claims, causes of action, actions, judgments and rights to recovery which the Claimant may have against any person, firm or corporation in connection with or in any way related to the Claim or the Contract, and authorizes the Surety to sue, compromise or settle in the Claimant's name or otherwise all such claims, causes of action and rights to recovery and without in any way limiting the generality of the foregoing, hereby subrogates, assigns and transfers to the Surety any and all claims, including lien claims and breach of trust claims which the Claimant has or may have by reason of any statute of the Province of Newfoundland and Labrador; and

- (3) hereby covenants, agrees and undertakes to execute such further and other documents and to perform such further and other acts which may reasonably be required by the Surety (including assisting with the prosecution of the Claim) in order that the Surety may realize upon the rights hereby subrogated, assigned and transferred to it; and
- (4) and honour all contractual obligations and/or warranties and/or guarantees in relation to labour or materials supplied or to be supplied by the Claimant; and
- (5) hereby grants to the Obligee, the Surety, and the Contractor and any person which the Surety may designate, all guarantees and warranties and other benefits with respect to the labour or material provided by the Claimant to which the Contractor would have been entitled had the Contractor paid the Claimant in a timely and proper manner; and
- (6) solemnly declares that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Claimant in the performance of its work as required by the subcontract between the Claimant and the Contractor, and for which the Contractor might in any way be held responsible, have been paid in full, as required by the subcontract up to and including the latest progress payment received.

IN WITNESS WHEREOF the Claimant has executed this Release, Assignment, Undertaking and Grant this 24
day of August, 2022, at Kelligrow's, Newfoundland and Labrador by its proper signing
officers.

RODCO MECHANICAL (2014) LTD.

Signature: 

Print Name: Stephen Rodoncomle

Title: president.

I have authority to bind the Corporation

Witness Signature: 

Print Name: **C. BRAD LEYTE**
"A BARRISTER" (NL)

RELEASE, ASSIGNMENT, UNDERTAKING AND GRANT

WHEREAS CRANE SUPPLY A DIVISION OF CRANE CANADA CO. of the Province of New Brunswick (hereinafter called the "Claimant") represents to **WESTERN SURETY COMPANY** having an office in the Province of Saskatchewan (hereinafter called the "Surety") and covenants with the Surety that **EDWARD COLLINS CONTRACTING LIMITED** (hereinafter called the "Contractor") is indebted to the Claimant in the amount of \$204,781.32 for labour or material or rentals provided by the Claimant to the Contractor and used on the contract between the Contractor and the **TOWN OF PLACENTIA** (hereinafter called the "Obligee") made the 19TH day of March, 2021 for water system upgrades in the Town of Placentia (the "Contract");

AND WHEREAS the Surety has issued, *inter alia*, a Labour & Material Payment Bond in connection with the Contract (the "Bond");

AND WHEREAS the Claimant has made a claim against the Surety and the Contractor in the amount of \$204,781.32 ("Claim");

AND WHEREAS the Surety has agreed to settle the Claim in exchange for the Claimant's assignment to the Surety of its rights and interests in the Claim;

AND WHEREAS the Claimant hereby warrants and represents to the Surety that it is entitled to payment from the Contractor and it is agreed and acknowledged that the Surety is relying on this warranty and representation in respect of this Agreement;

NOW THEREFORE THIS DEED WITNESSETH that in consideration of the promise of payment of \$204,781.32, which is the verified amount as per the Surety's correspondence dated **August 17, 2022**, by the Surety to the Claimant, the mutual covenants and agreements contained in this Agreement and the other good and valuable consideration set out herein, the receipt and sufficiency of which are hereby acknowledged by the parties, the Claimant covenants and agrees as follows:

- (1) hereby releases and forever discharges the Surety from any claims related to the Contract; and
- (2) hereby subrogates, assigns and transfers to the Surety any and all liens, claims, causes of action, actions, judgments and rights to recovery which the Claimant may have against any person, firm or corporation in connection with or in any way related to the Claim or the Contract, and authorizes the Surety to sue, compromise or settle in the Claimant's name or otherwise all such claims, causes of action and rights to recovery and without in any way limiting the generality of the foregoing, hereby subrogates, assigns and transfers to the Surety any and all claims, including lien claims and breach of trust claims which the Claimant has or may have by reason of any statute of the Province of Newfoundland and Labrador; and

- (3) hereby covenants, agrees and undertakes to execute such further and other documents and to perform such further and other acts which may reasonably be required by the Surety (including assisting with the prosecution of the Claim) in order that the Surety may realize upon the rights hereby subrogated, assigned and transferred to it; and
- (4) and honour all contractual obligations and/or warranties and/or guarantees in relation to labour or materials supplied or to be supplied by the Claimant; and
- (5) hereby grants to the Obligee, the Surety, and the Contractor and any person which the Surety may designate, all guarantees and warranties and other benefits with respect to the labour or material provided by the Claimant to which the Contractor would have been entitled had the Contractor paid the Claimant in a timely and proper manner; and
- (6) solemnly declares that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Claimant in the performance of its work as required by the subcontract between the Claimant and the Contractor, and for which the Contractor might in any way be held responsible, have been paid in full, as required by the subcontract up to and including the latest progress payment received.

IN WITNESS WHEREOF the Claimant has executed this Release, Assignment, Undertaking and Grant this August day of 25, 2022, at Hamilton, Ontario New Brunswick by its proper signing officers.

CRANE SUPPLY A DIVISION OF CRANE CANADA CO.

Signature: _____

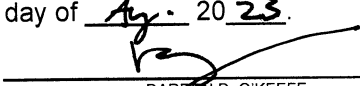
Print Name: Stanley Muchynski

Title: Director of Credit

I have authority to bind the Corporation

Witness Signature: _____

Print Name: PAT RINALDI

This is Exhibit "W" to the affidavit of
John Kelly sworn before me on the
17 day of Aug. 20 23.


DARREN D. O'KEEFE
Barrister, Solicitor, Notary Public in the Provinces of
Newfoundland and Labrador and Nova Scotia

EXHIBIT "W"

O'KEEFE & SULLIVAN

BY EMAIL

Borden Ladner Gervais LLP
Solicitors for Western Surety Company
Bay Adelaide Centre, East Tower 22 Adelaide Street West
Toronto, ON, M5H 4E3 Canada
Attn: Mark Borgo and Andrew Punzo
Email: mborgo@blg.com
apunzo@blg.com

Matthew Craig
Stewart McKelvey
Solicitors for the Town of Placentia
Suite 1100, 100 New Gower Street,
St. John's, NL, A1C 6K3
Email: mcraig@stewartmckelvey.com

20 January 2023

Dear Sirs:

**Re: Town of Placentia Mechanics Holdback Funds
Placentia Waterline Upgrades**

As you are aware we represent Edward Collins Contracting Ltd. and its affiliated companies ("ECC"). We refer to the email of Andrew Punzo dated of 05 January 2022 where Mr. Punzo said (on behalf of Western Surety) as follows:

"[We] ...are confirming that Western's preference is for the Town to hold onto the funds rather than paying the funds into court. This approach contemplates one hearing to determine who/where the Town ought to pay the funds.

We will leave it to Matt to advise if the Town does not want to hold the funds and prefers to incur the costs and take affirmative steps under the MLA to pay them into court or otherwise."

With respect to the forgoing, it is our client's position that the mechanics lien holdback funds in the amount of \$237,785.76 currently in the possession of the Town of Placentia should be paid to ECC. These funds constitute an ECC receivable and should be made available for the benefit of its creditors. Western Surety disagrees with that position.

O'KEEFE & SULLIVAN LAWYERS
St. Johns: 80 Elizabeth Ave., Suite 202, St. John's, NL, A1A 1W7
Corner Brook: 40 Main Street, Corner Brook, NL, A2H 1C3
Main Office: (709) 800 6536 | Main Facsimile: (709) 700 0343
www.okeefesullivan.com

Therefore, we would ask that you accept this letter as our **formal demand** that the holdback funds be paid either to ECC's Monitor or directly or into Court (in the CCAA matter) within **five (5) business days** from the date hereof. Failing compliance with this demand, we have instructions to make an application to Court to compel the Town of Placentia to pay these funds into Court and seek our costs on the same.

We trust the foregoing is clear.

Regards,



DARREN D. O'KEEFE
dokeefe@okeefesullivan.com

cc.

Phil Clarke
Grant Thornton Ltd.
phil.clarke@ca.gt.com

Appendix “F”

2022 01G 1964
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C-36 as Amended (the “**CCAA**”); and

AND IN THE MATTER OF an application of Edward Collins Contracting Ltd., Classic Security Limited, FGC Holdings Limited, 51037 Newfoundland and Labrador Inc. and H&E Designs Ltd. (collectively, “**ECC**” or the “**Company**”).

MEMORANDUM OF FACT AND LAW
ON BEHALF OF THE COMPANY

O’KEEFE & SULLIVAN
Counsel for the Company
Suite 200, 80 Elizabeth Ave.
St. John’s, NL, A1A 1W7
Attn: Darren O’Keefe
Email: dokeefe@okeefesullivan.com

TO:

GRANT THORNTON LIMITED
In its capacity as Monitor of the Debtors
Nova Centre, North Tower
1675 Grafton Street, Suite 1000
Halifax, NS B3J 0E9

Attn: Allan MacDonald/Phil Clarke
Email: allan.macdonald@ca.gt.com
Email: phil.clarke@ca.gt.com

TABLE OF ABBREVIATIONS	
Edward Collins Contracting Ltd., Classic Security Limited, FGC Holdings Limited, 51037 Newfoundland and Labrador Inc. and H&E Designs Ltd.	The "Company" or "ECC"
Canada Revenue Agency	"CRA"
<i>Companies Creditor Arrangement Act</i> , RSC 1985 c-13	"CCAA"
Crane Canada Co.	"Crane"
Grant Thornton Ltd.	"GTL" or the "Monitor"
<i>Mechanics Lien Act</i> , RSNL 1990, M-13	the "Mechanics Lien Act"
Town of Placentia Water Systems Upgrade Project	the "Project"
Rodco Mechanical (2014) Ltd.	"Rodco"
Royal Bank of Canada	"RBC"
<i>The Rules of the Supreme Court</i> , RSNL 1986	the "Rules of Court"
Western Surety Company	"Western"

A. INTRODUCTION:

The Contract and the Bond

1. On 19 March 2021, ECC entered into a contract with the Town (the “**Contract**”) to complete the “Town of Placentia Water Systems Upgrade” construction project (the “**Project**”) for a total sum of \$2,259,486,65 inclusive of HST (the “**Contract Price**”). The Contract specifies that monthly payments would be made to ECC for the value of the work certified as completed, with 10% being held back and becoming due when the Project reached Substantial Completion (the “**Holdback**”) pursuant to the *Mechanics’ Lien Act*.
2. The Contract required ECC to provide security in the form of a Performance Bond and Labour & Material Payment Bond. On 10 March 2021, Western issued a Performance Bond and Labour & Material Payment Bond No. 532,090 each in the amount of \$1,129,743.33, with ECC as Principal, the Town as Obligee (beneficiary or the person to whom Western is bound under the Bonds) and Western as Surety.
3. In connection with the Project, ECC then hired a number of subcontractors, including Crane and Rodco, for the supply of certain goods and services.

The Issue – Priority to the Holdback

4. During the fall of 2021, Crane and Rodco each advanced claims against ECC for non-payment. As outlined in detail below, both parties asserted an entitlement to reimbursement from the Holdback for their respective claims, but neither were paid prior to ECC entering a CCAA restructuring process in July 2022, nor did either have a valid mechanics lien on the Project.
5. Crane and Rodco were ultimately paid by Western under the Labour and Materials Bond in August, 2022. Western now claims entitlement to the Holdback as the assignee of the Crane and Rodco claims. It is important to note that Western’s assignments from Crane and Rodco were obtained subsequent to the CCAA filing and thus their validity is in question.
6. As a result of ECC’s failure to remit payroll deductions to the Crown, the CRA claims entitlement to the Holdback in priority to Western based on the deemed trust provisions of the *Income Tax Act*¹, which confer the CRA a super-priority over ECC’s assets up to the amount of the unremitted payroll amounts.
7. The Holdback, which was worth \$244,977.53 when Substantial Completion was achieved on 9 May 2022, has been paid to the Monitor. The Holdback amount is insufficient to

¹ *Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.))

satisfy all claims. ECC takes the position that the Holdback should be paid to the CRA in partial satisfaction of its claim as a result of the statutory regime governing this proceeding and asks that the Monitor find accordingly.

B. PROCEDURAL HISTORY:

Proceeding under the CCAA

8. On 09 July 2022, RBC, in its capacity as the senior secured lender for ECC, applied to the Supreme Court of Newfoundland and Labrador to appoint a receiver over all the assets and undertakings of the Company (the “**Receivership Application**”).
9. In response to the Receivership Application, ECC filed its own application under s.11 of the CCAA for creditor protection (the “**CCAA Application**”). Both applications were set for an initial hearing on 19 July 2022 (the “**Initial Hearing**”). At the Initial Hearing the Court set both applications over for full hearing on 17 September 2022. For the interim period, RBC and ECC agreed to a consent order under Rule 22 of the *Rules of Court* that would essentially provide the same creditor protection as the model CCAA Order (the “**Rule 22 Order**”).
10. The competing CCAA and Receivership applications were heard 16-17 September, and 07 October 2022. The Receivership Application was adjourned *sine die*. The Initial CCAA Order (the “**Initial Order**”) was subsequently granted on 07 October 2022, followed by an Amended and Restated Initial Order on 17 October 2022 (the “**ARIO**”)². The Initial Order and the ARIO maintained the effect of the Rule 22 Order, such that the effect of the Rule 22 Order has remained in place since 20 July 2022 to present.
11. At the next comeback hearing following the ARIO, on 16 December 2022, the Monitor and its counsel indicated that a claims process was necessary to deal with the unresolved accounts receivable of ECC. The Court directed the Monitor to work with the parties to present a claims process for approval. One of the claims in question was regarding the Holdback at issue here.
12. As the parties involved in the dispute over the Holdback could not agree on its treatment, ECC brought an application on 02 February 2023 to have the Holdback paid to the Monitor on behalf of the Estate. At that time, ECC indicated that, in its view, the Holdback should be paid to CRA on account of its deemed trust claim (the “**ECC Holdback Application**”).
13. In response to the ECC Holdback Application, Western filed an application on 10 February 2023 where it sought, *inter alia*, confirmation of purported settlement agreements with Rodco and Crane and a declaration that the Holdback should be paid to the Monitor for

² See **Exhibit “A”** to the Affidavit of Josh Collins dated 17 August 2023 (the “**Collins Affidavit**”)

Western's benefit as alleged assignee of the certain purported settlement agreements (the "**Western Holdback Application**").

14. On 14 March 2023, the Monitor presented a draft order (the "**Claims Process Order**") to the Court which was approved by all parties except for Western. Western requested a separate claims process to deal with the dispute over the Holdback and dispose of the ECC Holdback Application and Western Holdback Application. The Monitor and Company agreed to enter a separate process with Western if one could be agreed upon.
15. On 26 April 2023, the parties finally agreed on a claims process for the Holdback which was reflected in a Court Order (the "**Western Claims Process Order**").
16. On 05 May 2023, Western supplied disclosure as required by the Western Claims Process Order. Upon review, ECC noted that Western had not provided the full and comprehensive disclosure agreed upon. ECC sought an adjournment of the timetable included in the Western Claims Process Order. Western responded seeking to maintain the timetable.
17. On 11 May 2023, the Court directed, *inter alia*, that the Western Holdback Application and ECC Holdback Applications be adjourned *sine die*, the Holdback be paid to the Monitor and the Town released of its obligations, and that the Monitor return on 24 May 2023 with a proposal on how to address the Western Claims Process. Also at this hearing, the CRA indicated that they would be filing a position with respect to the ownership of the Holdback.
18. The parties appeared again on 24 May 2023, and 16 June 2023, but at both hearings the Western Claims Process was not discussed. Each of these hearing was consumed with the presentation and approval of the Company's proposed stalking horse sales, investment, and solicitation process, which was ultimately approved on 16 June 2023 (the "**SISP**"). The proposed closing date for the SISP is mid-September 2023.
19. Between 16 June 2023 and 31 July 2023, the parties agreed over e-mail that both CRA and Western would submit their Holdback claims to the Monitor by 31 July 2023, in the same format used in the original Claims Process Order, for determination.

C. MATERIAL FACTS:

20. The background to the two disputes underlying Western's purported claim to the Holdback as assignee to the rights of Crane and Rodco, respectively, is outlined below.

Crane Claim

21. By August 2021, a dispute had arisen between ECC and Crane concerning the quality of the materials supplied by Crane and adequacy of its work. Despite not having resolved

ECC's concerns, Crane issued invoices to ECC and demanded to be paid in full. ECC declined to do so absent the outstanding matters being addressed to its satisfaction.

22. On 01 September 2021, Crane filed a claim with Western under the Labour & Material Payment Bond for the amount allegedly owing under its unpaid invoices (the "**Crane Claim**"). Crane then also registered a Claim for Lien against the Project on 09 September 2021.
23. Notwithstanding its position on the merits of the Crane Claim and its own prospective counterclaim, ECC entered into settlement negotiations with Crane in an effort to avoid the costs of litigation and to minimize disruption to the Project.
24. During negotiations, ECC was not prepared to pay any portion of the Crane Claim up front but agreed to provide Crane with an irrevocable direction to pay (the "**Direction to Pay**") directing the Town to pay the Crane Claim from the Holdback when it became due. In exchange, Crane agreed to provide a full and final release to ECC and Western and agreed not to make any further claims against the Payment Bond. Both parties had legal counsel throughout these settlement negotiations.
25. The compromise negotiated by ECC and Crane was captured in a written settlement agreement (the "**Crane Settlement Agreement**"), which provided as follows:
 1. The parties acknowledge and agree that ECCL shall pay \$178,070.71 plus HST to Crane in full and final settlement of the Debt.
 2. ECCL shall make payment by way of Irrevocable Direction to the Town of Placentia, directing that the \$178,070.71 plus HST currently held as holdback by the Town of Placentia be paid to Crane's solicitor. A copy of this Direction is attached at Schedule "A" to this Agreement.
 3. Immediately on the receipt of the above referenced Direction, Crane shall vacate their Claim for Lien bearing Registration Number 19909.
 4. Crane shall execute a Full and Final Release (a copy of which forms Schedule "B" to this Agreement) in favour of ECCL releasing ECCL from further claims in this matter.
 5. Crane shall withdraw any and all claims made in relation to any bond(s) maintained by ECCL and Crane shall not make any further claims of this nature in the future.
26. On 05 October 2021, Crane released its Claim for Lien.
27. On 06 October 2021, ECC delivered the mutually agreed upon Direction to Pay to the Town. The amount of the Direction to Pay was \$204,781.31 inclusive of HST.
28. The Crane Settlement Agreement was executed on 07 October 2021³.
29. As noted above, Crane had the full benefit of legal advice and understood all risks and

³ *Supra.* n.2, Collins Affidavit, para. 16

advantages associated with the Crane Settlement Agreement prior to executing it.

30. On or around 24 October 2021, Crane followed up with ECC and the Town on the timing for its payment from the Holdback. In response, the Town indicated that the Project would not be completed for a number of months. Crane protested, saying it was their expectation, based on earlier statements made by ECC's counsel, that the Holdback would be released within 3-4 weeks.
31. All parties understood throughout the negotiations that the Holdback would be released at Substantial Completion. ECC's counsel made no definitive representations as to when this would be. Any estimates offered were made in good faith subject to the uncertainty attendant with a large construction project. Most importantly, the Crane Settlement Agreement did not stipulate any specific timeline or outside date by which ECC would be obligated to achieve Substantial Completion and obtain a release of the Holdback.

Rodco Claim/Crane Priority Dispute

32. Like Crane, Rodco asserted a claim for non-payment in the fall of 2021. This was not resolved and on 26 October 2021, Rodco filed a Claim for Lien against the Project which gave Rodco priority to the Holdback as a registered lienholder and left inadequate funds in the Holdback to satisfy the Crane Claim.
33. On 27 October 2021, Crane's lawyer, Lee Ballett at Micheal Duffy Law ("**Ballett**") wrote to ECC and alleged that ECC had misrepresented the timeline for release of the Holdback, and, as such, that they could avoid their obligations under the Crane Settlement Agreement. Ballett indicated that Crane would be refiling its bonding claim with Western (strictly prohibited under the Crane Settlement Agreement and the Release) in an effort to get paid.
34. In response to Crane's request to re-instate its prior bonding claim, Western's Chief Claims Manager, James Toothill ("**Toothill**"), obtained a copy of the Crane Settlement Agreement and Release and was thus aware that Crane had waived its right to make a bonding claim, and further, had released ECC and "any person claiming indemnity from ECC" (including Western) from any future claim in connection with the Crane Claim⁴.
35. On 27 November 2021, Crane retained Paul Gauranga ("**Guaranga**") at Miller Thompson to replace Ballett as solicitor on the file. The Town, ECC, Crane, Rodco, and Western (through Toothill) discussed a potential resolution to the competing Rodco and Crane claims to the Holdback and a draft settlement agreement was circulated. In anticipation of finalizing the draft agreement, Rodco released its lien on the Project.
36. By 02 December 2021, negotiations had stalled, and the draft settlement agreement remained unsigned. On that date, Rodco made a claim for unpaid invoices under the Payment Bond in the amount of \$508,271.50 (the "**Rodco Claim**"). Rodco also re-registered its previous Claims for Lien and filed a Certificate of Action and Statement of

⁴ *Supra.* n.2, Collins Affidavit, para. 21

Claim (the “**First Rodco Lien**”). As before, this meant that Rodco had priority over the entire Holdback, and this was the position taken by its counsel.

37. In December 2021 and January 2022, ECC continued to work on the Project and was paid by the Town in the ordinary course as per the terms of the Contract. On 03 January 2022 Crane wrote to ECC seeking payment. ECC refused on the basis that its only obligation to Crane was, pursuant to the Crane Settlement Agreement, duly discharged when they provided the Direction to Pay. Crane did not contest this interpretation.
38. The Project was issued a Substantial Completion Certificate on 28 March 2022⁵. As per Western’s correspondence to the Town on 12 May 2022, the amounts owed at Substantial Completion were alleged to be \$204,781.32 to Crane and \$398,607.88 to Rodco. ECC does not accept these numbers are correct, but for the purposes of the within application, the exact amounts owed are irrelevant. In this correspondence, Western directed the Town not to pay the Holdback to ECC until “arrangements can be put in place to administer the contract funds in accordance with the provisions of the Contract and the *Mechanics Lien Act* and to ensure the payment of the unpaid ECC subcontractors”⁶.
39. On 11 May 2022, Crane wrote to both ECC and to Western to inquire about the Holdback. Toothill replied that day advising that, “as of right now, it is [Western’s] understanding that the holdback amount has not been paid to ECC by the Owner and therefore the [Crane Settlement Agreement] is in full force and has not been breached by ECC”⁷. ECC replied to Crane on 13 May 2022 stating that the Crane Settlement Agreement was in effect and, given that ECC had fulfilled its obligations by providing the Direction to Pay to the Town, it had no further authority to direct the Town to release Holdback funds to Crane or to resolve the relative priority of the two claims⁸.
40. Between January 2022 and May 2022, the previous discussions around a potential global settlement governing payment from the Holdback continued slowly. After Substantial Completion, given the uncertainty with respect to priority to the Holdback funds and the Town’s inability to act due to the unreleased Rodco Liens, these discussions continued with more vigor.
41. On 25 May 2022 Rodco filed a second Claim for Lien. At this time, Crane was pressuring Western to pay its reinstated bond claim⁹. Notwithstanding Western’s awareness that Crane’s claim was made in violation of the Crane Settlement Agreement and Release, Toothill began discussing potential payment to Crane¹⁰. ECC was not aware of this until after these proceedings commenced and disclosure by Western was made.
42. On 03 June 2022, ECC’s counsel circulated a proposed settlement agreement regarding payout of the Holdback to counsel for Rodco, Brad Leyte, copying Toothill and counsel

⁵ *Supra.* n.2, Collins Affidavit, para. 25

⁶ *Supra.* n.2, Collins Affidavit, para. 28

⁷ *Supra.* n.2, Collins Affidavit, para. 26

⁸ *Supra.* n.2, Collins Affidavit, para. 27

⁹ *Supra.* n.2, Collins Affidavit, para. 30

¹⁰ *Supra.* n.2, Collins Affidavit, para. 30

for Crane. Although the draft agreement dealt with payment to both Rodco and Crane, it is referred to as the “Rodco” agreement because resolution of the Rodco Liens was necessary for the Holdback to be released to either party (the “**Rodco Agreement Version 1**”).

43. Although the Town was not a party to the proposed Rodco Agreement Version 1 and did not participate meaningfully in the negotiations, due to the legal situation overall and specifically after having been put on notice by Western as Owner/Obligee not to release funds, its participation was necessary to the extent that it required a release from each of Crane and Rodco as a precondition to any disbursement of the Holdback.
44. As of 26 June 2022, the draft agreement still had not been finalized and the parties had not resolved the form of releases required by the Town. In an email exchange between Cabot and Leyte on this date, Leyte confirms that “I have yet to receive anything from the Town or Crane with regard to proposed Releases”¹¹. Nonetheless, both Cabot and Leyte arranged to have their respective clients sign the agreement and hold the signature pages in escrow pending presentation of the final form of the agreement.
45. On 04 July 2022, Cabot followed up with Toothill on the proposed Rodco Agreement Version 1. Toothill acknowledged that Western had not yet signed off on any draft and requested a copy of the “final version” for review¹². Toothill instructed Cabot to send the final version to him and his counsel Andrew Punzo, at Borden Ladner Gervais (“**Punzo**”). Cabot sent the Rodco Agreement Version 1 to Toothill and Punzo on the same day¹³.
46. By 06 July 2022, having heard nothing from Toothill or Punzo, Cabot followed up with an email asking if Punzo had had an opportunity to review¹⁴. Punzo did not reply.
47. In Western’s materials, it alleges that on or around 07 July 2022, ECC, Western and Rodco entered into a Settlement Agreement to pay both the Crane Claim and the Rodco Claim out of the Holdback¹⁵. This is factually incorrect. There is no basis upon which Western can suggest that the Settlement Agreement was signed on that date. This appears to be an arbitrary date selected by Western to align with the filing date of the Receivership Application.
48. On 08 July 2022, RBC filed the Receivership Application.
49. On 13 July 2022 ECC filed the CCAA Application. On the same day, Toothill provided Cabot with a clean draft containing numerous changes and an attached blackline (“**Rodco Agreement Version 2**”) for ECC’s review and approval.
50. When ECC reviewed Rodco Agreement Version 2, it determined that there were material

¹¹ *Supra.* n.2, Collins Affidavit, para. 35

¹² *Supra.* n.2, Collins Affidavit, para. 37

¹³ *Supra.* n.2, Collins Affidavit, para. 37

¹⁴ *Supra.* n.2, Collins Affidavit, para. 39

¹⁵ See the Western Holdback Application dated 10 February 2023 at para. 9. and para. 20 of the affidavit of James Toothill of even date.

changes from ECC's perspective. ECC instructed Cabot to terminate settlement discussions and informed him not to release the signature pages from escrow¹⁶.

51. On 15 July 2022, Western wrote to ECC regarding all its outstanding claims. In this letter, Toothill acknowledged that the proposed Rodco Agreement Version 1 was still considered "tentative" (i.e., it remained unfinalized)¹⁷. This was the same view held by Rodco and its counsel¹⁸.
52. On 19 July 2022, ECC and RBC appeared on the Receivership Application and CCAA Application. As noted, Justice Marshall issued a Rule 22 Order on that day, effectively ending ECC's ability to finalize the Rodco Agreement or conduct any further negotiations with Rodco or Western that would have the effect of compromising its debts or rearranging the priorities among its creditors.

Post-Rule 22/CCAA Filing

53. On the same date as the Rule 22 Order was issued, Toothill circulated Western's executed signature page to the Rodco Agreement Version 1, despite the fact that this draft had never been agreed upon and finalized by the parties *and* had been replaced by the draft Rodco Agreement Version 2 (and there being no agreed upon form of release with the Town.)
54. Western now claims that Rodco Agreement Version 1 was a valid and binding contract as of 07 July 2022, notwithstanding its own ongoing efforts to negotiate its preferred terms into draft Rodco Agreement Version 2 after that date *and* the absence of a consensus between the parties on a final draft (including agreement from the Town on form of Release) as of the date of the Rule 22 Order.
55. Priority to the Holdback remained undetermined as of 14 March 2023, when the CRA wrote to the Monitor asserting its entitlement to a "deemed trust" claim attaching to ECC's asserts, including the Holdback, in the amount of \$2,127,872.52 relating to outstanding payroll deductions (the "**CRA Claim**").
56. On 05 April 2023, Western supplied its disclosure as required by the Western Claims Process Order. Upon review, ECC discovered that Western had convinced Rodco to provide its previously unreleased signature page to Rodco Agreement Version 1, presumably to bolster Western's attempt to argue that it was valid and in effect prior to the date of the Rule 22 Order.
57. The documentation demonstrates that, in releasing its signature page to Western, Rodco acknowledged that throughout the CCAA process it was their understanding there was no

¹⁶ *Supra.* n.2, Collins Affidavit, para. 38

¹⁷ *Supra.* n.2, Collins Affidavit, para. 43

¹⁸ *Supra.* n.2, Collins Affidavit, para. 51

settlement agreement in place¹⁹. As such, at the time of the Rule 22 Order, the only party asserting there to have been a valid and enforceable settlement was Western.

58. ECC maintains that there was no valid and enforceable contract reached in relation to the Rodco Claim. The conditions were never met to release the signature pages completed for Rodco Agreement Version 1 from escrow, i.e., no acceptable agreement was reached between the parties, nor were the amounts owed to Rodco reconciled, prior to the Court's issuance of the Rule 22 Order.
59. In addition to the foregoing, while Western now alleges that Rodco Agreement Version 1 was agreed by all parties (as a matter of convenience), it fails to recognize that following 19 July 2022, virtually all of its conduct aligned with the proposed Rodco Agreement Version 2 (including accepting an assignment of the Rodco and Crane claims, paying the balances owed to Rodco and Crane as a bonding claim, etc.). In other words, Western did not behave as if Rodco Agreement Version 1 was binding upon the parties, and only took that position later in the CCAA proceedings in an attempt to improve their position as a creditor.

D. LEGAL ARGUMENTS

Priorities in a CCAA Proceeding

60. The general scheme of priorities in a CCAA proceeding is as follows:

- (a) Super-priority claims, including:
 - a. super-priority pension and wage claims;
 - b. claims under the *Wage Earner Protection Act*;
 - c. certain claims of Canada Revenue under *the Income Tax Act*;
 - d. qualified unpaid supplier claims, commonly referred to as "30-day good claims" or "revendication claims";
 - e. unremitted payroll deductions; and
 - f. court-ordered charges
- (b) Secured claims.
- (c) Preferred unsecured claims.
- (d) General unsecured claims.

Analysis of the Competing Claims

¹⁹ *Supra.* n.2, Collins Affidavit, para. 51

61. The CRA Claim is based on the deemed trust mechanism governed by s. 227(4) and (4.1) of the *Income Tax Act* (the “ITA”), as well as the parallel provisions in the *Canada Pension Plan Act* (s. 23(4)) (“CPP”) and the *Employment Insurance Act* (s. 86(2.1)) (“EI”). These statutory mechanisms confer a super-priority to the federal Crown when, as in this case, an employer fails to remit payroll deductions in accordance with the ITA.
62. In its 14 March 2023 correspondence, the CRA summarized the effect of its super-priority deemed trust claim as follows:
- When an employer does not pay an amount deemed to be held in trust, the CRA becomes the beneficial owner of, and has a priority interest over, all of the employer’s property, even if there are registered or unregistered interests of other creditors. The CRA is not legally required to register a deemed trust debt against the employer’s property.
- The CRA also has a priority claim over the proceeds from selling, liquidating, distributing, or disposing of the employer’s property. This is the case even if you received the proceeds because the employer voluntarily sold the property or if your interests in the property occurred before the deemed trust date.
63. The CRA further stated that, absent a registered mortgage prior to the date the deemed trust arose (a prescribed security interest as defined under the ITA Regulations, s. 2201), the Monitor was required to apply the Holdback to the CRA Claim.
64. Meanwhile, Western’s purported claim to the Holdback is one as assignee to the Crane Claim and the Rodco Claim. Even if the assignments are valid, which is disputed below, neither of these claims constitute a secured claim, and even a secured claim would in any event be subordinate to the CRA Claim.²⁰
65. With respect to the Rodco Claim, Western concedes that the Rodco Liens are invalid and therefore it is not a secured creditor by virtue of a mechanics lien. The allegedly assigned claim is not tantamount to a security or lien, and even if it was it would not raise Rodco’s position to one that could compete with the CRA.²¹
66. As for Crane, by virtue of the Crane Settlement Agreement and Release it held only a Direction to Pay. This likewise represents only a contractual promise to pay. As CRA rightly points out in their submissions, no one can enter a private agreement that effectively trumps the CRA “deemed trust” over the Holdback. Thus, Crane’s rights under the Crane Settlement Agreement are also that of an unsecured creditor.
67. ECC submits that the CRA’s claim unquestionably takes precedence over Western’s claim. Western’s position is that of a general unsecured creditor with a contractual entitlement to the Holdback funds which is subordinate to the CRA’s super priority. As highlighted by the CRA materials, parties cannot contract out of the operation of the ITA.

²⁰ *Dias v. MacLean* (1993), 123 N.S.R. (2d) 231 [TAB 1]

²¹ *PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc.*, 2009 BCSC 95, para 63 [TAB 2]

Legal Ownership of the Holdback

68. In recognition of its weak position as an unsecured creditor, Western argues that ECC did not have legal title to the Holdback at the time the deemed trust arose. This is incorrect. The Holdback represents funds earned but unpaid. Like all mechanics lien holdbacks, this money is due to be paid to ECC, subject only to (a) valid liens registered under the *Mechanics Lien Act*, or (b) any contractual agreement whereby ECC undertakes to have the funds directed to another party upon the underlying obligation to ECC becoming due. In neither case does legal title leave ECC prior to the Holdback being released and money paid.²²
69. In support of its position on ownership, Western argues that CRA's deemed trust does not apply because the Holdback funds are not the property of ECC. Western relies on the case of ***PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc.***²³ *Norex* is inapplicable as it considers neither the CCAA nor the *Mechanics Lien Act*. It was decided on the basis of the British Columbia lien legislation, which is fundamentally different because it imposes a statutory trust on the holdback fund, such that the equitable title resides with the lien claimants despite the legal title remaining with the contractor.
70. A holdback under the *Mechanics Lien Act* in our jurisdiction does not represent a trust and, as such, the creation of the holdback fund under the *Mechanics Lien Act* does not alter the legal ownership of those funds. Both legal and equitable title always remain with the contractor. This distinction between the NL lien legislation and that in other Canadian jurisdictions was confirmed by our Court of Appeal in ***Brook Construction (2007) Inc. v Blackwood Contractors Limited***²⁴ in distinguishing that case from a New Brunswick decision:

[23] Unlike New Brunswick, **Newfoundland and Labrador does not have trust provisions in its legislation.** The New Brunswick trust provisions impress with a trust all sums received by a builder, contractor or sub-contractor under any contract in the construction pyramid for the benefit of those contractors, subcontractors, workers and materials suppliers who have worked on or supplied materials to the project. As such, it is a separate security for payment that exists independently of any lien security on the land of the owner. It is not made subject to the existence of a lien on the land as is the case in this province with respect to the lien on the holdback. It was precisely because of a perceived injustice caused by the parasitic nature of the holdback-lien provisions that the trust amendments in New Brunswick and some other provinces, such as Ontario, were enacted (see the comments of Rand J. in *Canadian Bank of Commerce*, p. 482). In this province, the Newfoundland Law Reform Commission addressed this issue and, while concluding that "[t]he current Newfoundland statute contains no trust provisions," recommended that the remedies of the lien against the land and the holdback "be reinforced by inclusion of trust provisions" along the lines of the Ontario legislation: Newfoundland Law Reform Commission, Report on The Mechanics' Lien Act: Certain Substantive Issues (St. John's, NL: NLRC-R3, 1990), Chapter 5 at pages 84-87). No such amending legislation was ever enacted.

²² *Dias v. MacLean* (1993), 123 N.S.R. (2d) 231 [TAB 3]

²³ *PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc.*, 2009 BCSC 95 [TAB 4]

²⁴ *Brook Construction (2007) Inc. v Blackwood Contractors Limited*, 2015 NLCA 18 [TAB 5]

71. Western further claims that the alleged Rodco Agreement constituted an “assignment” of ECC’s title to the Holdback. This is also incorrect. Even if the Rodco Agreement had been validly executed, it did not constitute an assignment of ECC’s title to the Holdback. There was no draft of the proposed Rodco Agreement that would have represented an assignment. Neither draft includes any language that constitutes an “assignment”.
72. In an assignment, the assignee steps into the shoes of the assignor and may enforce in his own name the contractual right against the original obligor, and the assignor retains no rights to enforce the contract after it has been assigned. In contrast, a direction to pay is essentially the appointment of an agent to carry out a task. It does not confer any rights to that third party²⁵. The law in Canada is clear that, absent clear and unambiguous wording to the contrary, a direction to pay does not constitute an assignment”. This threshold is not met where the instrument is ambiguous.²⁶
73. The difference between the present situation and a true assignment is demonstrated by a case that Western cites in its materials, ***Northwest Angle 33 First Nations v Razar Contracting Services Ltd.***²⁷ for its position that CRA does not have a claim to the Holdback. *Razar* involved a general contractor on a construction project for a First Nation. During the project, the First Nation exercised its right under a provision of the contract to take the balance of the work on the project out of Razar’s hands, i.e. taking assignment of the underlying construction contract itself, as opposed to the holdback only. The statutory holdback and the maintenance holdback were no longer either Razar’s property or a debt owing to it, as Razar ceased to be party to the contract governing the holdback.

Validity of Assignments

74. Although Western’s claim is clearly subordinate to the CRA claim, ECC further submits that Western is relying on invalid assignments and that this provides an alternative basis to deny its claimed entitlement.
75. It is trite law that an assignment will generally be permitted under the law unless there is an express prohibition against assignment in the underlying contract or by operation of statute. While the Crane Agreement did not expressly address assignment, all versions of the draft Rodco Agreement provide that it may only be assigned to “permitted assigns”. The term “permitted assigns” is not defined but implies at least some level of consent²⁸. This consent was never obtained from ECC.
76. More importantly, Western did not obtain the assignments of the Settlement Agreements until 24 August 2022. Pursuant to the Rule 22 Order, which was extended by the ARIO and remains in effect, as of 19 July 2022, no person could take any steps to alter any contract to which ECC was a party – which includes any assignment of such contract – without the leave of the Court. The relevant portions of the Rule 22 Order are as follows:

²⁵ *Nicolson v Trozzo*, 2014 SKQB 182 [TAB 6]

²⁶ *Colonial Bank v. Butech International Chemical Corp.*, [1986] B.C.J. No. 882 (QL) (B.C.S.C.) [TAB 7]

²⁷ *Northwest Angle 33 First Nations v Razar Contracting Services Ltd.* 2023 ONSC 1233 [TAB 8]

²⁸ A “permitted assign” would require an express permission, i.e., “permission that is clearly and unmistakably granted by actions or words, oral or written”. See B.A. Garner, *Black’s Law Dictionary*, 8th Ed. 2004 ISBN 0-314-15199-0, page 1176 [TAB 9]

NO EXERCISE OF RIGHTS OR REMEDIES

6. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Company, or affecting the Business or the Property are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall (i) empower the Company, to carry on any business which the Company is not lawfully entitled to carry on, (ii) prevent the filing of any registration to preserve or perfect a security interest, or (iii) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

7. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Company, except with leave of this Court.
77. Under the Rule 22 Order and subsequent ARIQ, an assignment cannot have any adverse effect on ECC, nor can it rearrange the priorities among creditors as they existed prior to filing. The date of commencement of proceedings was 13 July 2022. The effect of the post-CCAA assignment was to convert Western's pre-CCAA unsecured obligation to pay under the Bond (i.e. its unsecured debt) to a post-CCAA secured obligation by virtue of their assumption of the Rodco Liens.
78. Further, the effect of the assignment of the Crane Settlement Agreement affects the "Business or Property" of ECC, because it eliminates the practical utility of the Release that ECC bargained for. Despite being a released party, Western made a business decision to waive its rights and make payment to Crane and Rodco after the CCAA was commenced, without consulting ECC or obtaining the approval of the Court.
79. Ultimately, even if the assignment of the Crane Settlement Agreement is valid, it is of no use to Western in claiming the Holdback. As is demonstrated on a plain reading of the Crane Settlement Agreement, Crane released all claims against ECC, Western, and the Bond. If Western assumed the Crane Settlement Agreement, then it assumed both the benefit (i.e. the direction to pay) and the burden (i.e. the Release and the agreement to the negative covenants).

E. SUMMARY AND CONCLUSION:

80. ECC submits that Western is not relying on valid assignments. Under the CCAA, priorities are fixed as of the date of filing. Western, having maintained its responsibility to pay under the Bond despite the CCAA filing, is attempting to subvert this restriction and improve its position over the CRA Claim in reliance on a post-CCAA filing assignment of the agreements despite not having taken the necessary steps to effect the assignments.

81. Even if Western's assignments were valid, Western's claim is no better than that of Crane or Rodco, both unsecured creditors.
- a. Crane entered a contractual agreement as a sophisticated party with the benefit of counsel. Pursuant to the Crane Settlement Agreement, Western was able to assert its right not to pay Crane but chose to do so anyway.
 - b. Rodco was paid as required by the Bond. Western entered a contractual agreement and received valuable consideration to act as a surety on the Project with full understanding of the risk that it may be required to pay on a bond in circumstances where it cannot recover from the contractor through assignment of the underlying claim. This is the case on any construction project.
82. It is *fundamental* that *even if* both Crane and Rodco had valid and perfected liens under the NL Mechanics Lien Act, those liens would still be subordinate to the CRA Claim.
83. Western's argument that ownership of the Holdback did not lie with ECC when CRA's claim arose cannot succeed. There was no assignment of the Holdback and *even if* there were valid liens involved (which there are not) the *Mechanics Lien Act* in Newfoundland and Labrador does imbue the lien with a trust as is the case in decisions cited by Western.
84. ECC therefore submits that the CRA is entitled to the Holdback. The CRA Claim is based on rights acquired by operation of law which cannot be displaced by any of the avenues argued by Western.

F. DISPOSITION:

85. ECC submits that the entirety of the Holdback is payable to the CRA in partial satisfaction of its Proof of Claim, with the issue of costs to be dealt with following the Monitor's decision.
86. Following delivery of the Monitors decision, and subject to the parties' respective rights to appeal, ECC will seek leave of the Court to make submissions on costs.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 14 day of August, 2023.

O'KEEFE & SULLIVAN


Darren D. O'Keefe
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TAB 1

Dias v. MacLean

Nova Scotia Judgments

Nova Scotia Supreme Court

Amherst, Nova Scotia

Bateman J.

Heard: April 15, 1993.

Judgment: June 1, 1993.

Action S.A.M. No. 2047 and S.A.M. No. 2063

[1993] N.S.J. No. 218 | 123 N.S.R. (2d) 231 | 10 C.L.R. (2d) 178 | [1994] 1 C.T.C. 127 | 40 A.C.W.S. (3d) 1039

Between Joseph Dias, Plaintiff, and Angus Kenneth MacLean, Deborah Ann MacLean and Fundy Housing & Recreation Limited, Defendants

(10 pp.)

Case Summary

Liens — Priorities — Priority between lien claimant and Revenue Canada.

Determination of priority between lien claimants. F was hired to build a home. Liens were filed against the property before completion. The owners paid into court the balance of the contract price. Revenue Canada made a demand against F which exceeded the amount paid into court. One of the lien claimants sought to determine priority as against Revenue Canada.

HELD: Revenue Canada had priority over the lien claimants in respect of the funds paid into court.

STATUTES, REGULATIONS AND RULES CITED:

Builders' Lien Act, S.S. 1984-85-86, c. B-7.1 Constitutional Questions Act, R.S.N.S. 1989, c. 89. Income Tax Act, S.C. 1970-71-72, c. 63, ss. 13(4), 224(1), 224(1.2), 224(1.3), 224(2). Labour Standards Code, S.N.S. 1972, c. 10. Mechanics' Lien Act, R.S.N.S. 1989, c. 277, s. 15(1).

David H. Christie, Q.C., for the plaintiff. John J. Ashley, for Revenue Canada.

BATEMAN J.

Angus and Deborah MacLean hired Fundy Housing & Recreation Limited to construct a home. The contract price was \$114,000. The home was substantially

complete on December 31, 1992. The balance of the contract price, including the statutory holdback, after adding extras, was \$23,072.65.

Dias v. MacLean

Liens were filed against the MacLean property on January 12, 1993 by C.E. Harrison & Sons Limited and J.K. Electric Limited. On January 13, 1993 Joseph Dias filed a lien claim. Fundy had ceased construction on the property about January 12, 1993. Revenue Canada Taxation made a Third Party demand (Requirement to Pay) upon the MacLean's solicitors claiming an interest in monies owing by the MacLeans to Fundy. On March 10, 1993, Fundy made an Assignment in Bankruptcy. Deloitte & Touche Inc. are the Trustees.

The MacLeans have paid \$18,500.28 into Court on an Interpleader. This is the balance of the contract price, including the statutory holdback, reduced by the amount necessary to complete the home.

The amount owing by Fundy to Revenue Canada exceeds the amount of monies paid in. The funds owing were assessed by Revenue Canada on February 9, 1993, and a Notice of

Assessment issued on that date. In all respects Revenue Canada has complied with the technical requirements of section 224(1.2) of the Income Tax Act.

This is an application by lien claimant Dias to determine entitlement to the funds as between the lien claimants and Revenue Canada. At issue is the effect of the Requirement to Pay.

Section 224(1.2) of the Income Tax Act provides:

(1.2) Idem. - Notwithstanding any other provision of this Act, the Bankruptcy Act, any other enactment of Canada, any enactment of a province or any law, where the Minister has knowledge or suspects that a particular person is or will be come, within 90 days, liable to make a payment

- (a) to another (in this subsection referred to as the "tax debtor") who is liable to pay an amount assessed under subsection 227(10.1) or a similar provision, or
- (b) to a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor,

the Minister may, by registered letter or by a letter served personally, require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case, as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under subsection 227(10.1) or a similar provision, and on receipt of that letter by the particular person, the amount of those moneys that is required by that letter to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty and shall be paid to the Receiver General in priority to any such security interest.

S.224(1.3) defines 'security interest':

(1.3) In subsection (1.2),

"secured creditor" means a person who has a security interest in the property of another person or who acts for or on behalf of that person with respect to the security interest and includes a trustee appointed under a trust deed relating to a security interest, a receiver or receiver-manager appointed by a secured creditor or by a court on the application of a secured creditor, a sequestrator, or any other person performing a similar function;

"security interest" means any interest in property

that secures payment or performance of an

obligation and includes an interest created by or arising out of a debenture, mortgage, hypothec,

lien, pledge, charge deemed or actual trust,

assignment or encumbrance of any kind whatever,

however or whenever arising, created, deemed to

arise or otherwise provided for;

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"similar provision" means a provision, similar to subsection 227(10.1) of any Act of a province that imposes a tax similar to the tax imposed under this Act, where the province has entered into an agreement with the Minister of Finance for the collection of the taxes payable to the province under that Act. (emphasis added)

If the funds are immediately due, the person receiving the notice must pay (Revenue Canada) 'forthwith'; in any other case, 'when the moneys become payable'.

The sum in dispute is a combination of statutory 'holdback funds' and monies in excess of the holdback, sometimes called 'contract funds'.

The Applicant Dias submits that the issue is the meaning of "liable to pay" and of "liable to make a payment". It is submitted on behalf of Mr. Dias that, at the time of service of the Requirement to Pay, the MacLeans were under no obligation to pay Fundy and that they never

became liable to pay Fundy the balance of the funds. He says that the lien claims, filed prior to the requirement to pay, effectively froze any further payment, not only of the holdback funds, but also of the excess funds.

Revenue Canada submits that, on the wording of s.224(1.2), it has absolute claim to the entire fund. The lien claimants, it submits are in the same position as secured creditors.

It is settled that Revenue Canada has priority over secured creditors;(see Berg and Hazell v. Parker Pacific Equipment Sales and Revenue Canada, B.C.S.C., February 1991, as yet unreported)

Revenue Canada says that the effect of the Requirement to Pay on lien claimants was determined in Transgas Ltd. v. Mid-Plains Contractors et al, (Sask.C.A., 1 March, 1993, unreported). Revenue Canada submits that Transgas stands for the proposition that the Minister has priority notwithstanding that the liens had been registered before the Requirement to Pay.

Transgas involved a dispute over 'contract funds' as distinct from 'holdback funds'. The Minister, in that case, made no claim to the holdback funds.

The applicant Dias submits that the decision in Transgas can be distinguished in that 'contract funds', under the Builders Lien Act, S.S.1984-85-86, c.B-7.1, are subject to trust provisions.

The B.L.A. creates certain trusts. All monies payable by a Crown owner under a contract constitute 'a trust fund for the benefit of the contractor'. As amounts become owing to a contractor, whether due or payable, they 'constitute a trust fund for the benefit of subcontractors and others.

It was the submission in Transgas that the lien claimants were the beneficial owners of the funds as distinct from secured creditors.

Thus, when the contractor abandoned the contracts, the monies still in the hands of owner Transgas, but payable under the contract, were trust funds for the benefit of the subcontractor lien claimants. It was held by the court that,

but for the operation of the trust sections of the B.L.A., Transgas would have been liable to pay the funds to the contractor.

At p.31:

"We accordingly cannot give effect to the respondents' contention that the trust created under the B.L.A. is a "true trust" in contra-distinction to a "security trust"."

The court held that the definition of 'security interest' clearly applied in that factual situation. Specifically, that lien claimants are 'secured creditors' within the meaning of the Section.

The Court says at p.32:

"....The B.L.A. not only provides for the "trusts" as a statutory basis for security, but also provides for "liens" on the statutory holdbacks and the remainder of the contract price as an additional security device."

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While the Mechanics Lien Act does not contain similar trust provisions, the lien claimants here cannot be in a stronger position than those in Transgas. One would have expected that the trust sections might place the Transgas lien claimants in the better position. The Court having rejected that submission, however, it would appear that the Transgas lien claimants were in exactly the same position as the lien claimants here.

The question as to whether the funds were 'payable' at the relevant time was not specifically argued before the Court, in Transgas. The Court says, however, at p.30:

"According to the contracts between Transgas and Mid-Plains, their abandonment or termination did not relieve Transgas from having to pay Mid-Plains for the work done to the date of the abandonment or termination."

The Applicant relies upon C.P.Masonry Ltd. et al. v. Royal Bank Realty et al., (1984), 64 N.S.R.(2d) 338 (N.S.Co.Ct.)

In that case, as in Transgas, the Minister did not pursue its claim as against the statutory holdback. The court was concerned with entitlement to 'contract funds'.

Section 15(1) of the Mechanics Lien Act provides:

15 (1) The lien shall have priority over all judgments, executions, assignments, attachments, garnishments and receiving orders recovered, issued or made after the lien arises, and over all payments or advances made on account of any conveyance or mortgage after notice in writing of the lien to the person making such payments or after registration of a claim for such lien as hereinafter provided.

While in C.P.Masonry the Minister did not pursue entitlement to the holdback funds, the Director of Labour Standards did so. In considering that claim, MacDonnell J. says at p.345:

"...Once the said mechanics' lien claims had been

filed there was no possibility whatsoever that the statutory holdback required by s.12(2) of the Mechanics' Lien Act, R.S.N.S. 1967, c.178, could have been paid by Lindsay to Geo-Rob until such time as said liens had been satisfied. The statutory holdback fund in these circumstances was not, and never had been, an asset of Geo-Rob, and thus, would not be subject to a lien, charge or mortgage under the provisions of ss.84(1) and 34(1) of the Labour Standards Code, S.N.S. 1972, c.10.

The Court's decision on this point appears to have turned on the wording of the Labour Standards Code.

MacDonnell J. went on to hold that the lien claimants had a "charge on the statutory holdback". He held that the lien claimants had priority over the Minister of Revenue.

Judge MacDonnell, however, was dealing with s.224(1) of the Income Tax Act. The wording has now changed substantially with the addition to the section of "Notwithstanding any other provision of this Act, the

Bankruptcy Act, any other enactment of Canada, any enactment of a province or any law.." and "notwithstanding any security interest in those moneys".

Section 13(4) states:

"The lien shall be a charge upon the amount directed to be retained by this Section in favour of subcontractors whose liens are derived under persons to whom such moneys so required to be retained are respectively payable." (my emphasis)

In my view the lien claimants are, as regards s.224(1.2 and 1.3) of the Income Tax Act, 'secured creditors', being holders of a security interest. That is the plain meaning of s.13(4).

The argument that the funds paid into Court would never become 'payable to' the tax debtor (Fundy), is initially attractive. Those funds are, however, under the contract, payable by the owners to Fundy and to no one else. The Mechanics Lien Act simply creates a statutory scheme to

divert those funds to the lien claimants in certain circumstances. Although diverted through the operation of the Act, the funds are nevertheless payable (to the lien claimants) on behalf of Fundy. The Act simply operates to suspend the movement of funds to ensure the security interest of the lien claimants is satisfied.

Dias v. MacLean

I share the views of Mr. Justice Robinson, as expressed in *Berg and Hazell*, supra, that one must feel some sympathy for the secured creditors, here, the lien claimants. As he notes, however, the funds over which Revenue Canada claims priority are for the benefit of the employees of Fundy, which company failed to remit to Revenue Canada moneys deducted from its employees for tax, Canada Pension and Unemployment Insurance purposes.

I see no rationale for distinguishing between the 'contract funds' and 'holdback funds' on this issue.

It is submitted on behalf of Mr. Dias that to allow interception of the funds by Revenue Canada exposes the owners to a continuing obligation for the holdback. Section 224(2) of the Income Tax Act specifically states that the

payment to Revenue Canada in response to the demand is a discharge of the payor's liability. I do not, therefore, accept that submission.

The Applicant Dias has challenged, as well, the constitutionality of the s.224(1.2). As this issue was first raised in a post hearing memorandum and without notice under the Constitutional Questions Act, I am without jurisdiction to adjudicate upon it. I add, however, that the constitutional issue was raised in *Transgas* and the provision held to be valid.

In summary, I find that the Minister of Revenue is entitled to the funds paid into Court in priority to the lien claimants.

Notwithstanding the above, I am satisfied that the Applicants Joseph Dias, C.E. Harrison and Sons Limited, and J. & K. Electric Limited have proved their claims in the amounts of \$4,300.00, \$29,288.90 and \$7,469.79 respectively.

BATEMAN J.

TAB 2

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***PCL Constructors Westcoast Inc. v.
Norex Civil Contractors Inc.,***
2009 BCSC 95

Date: 20090202
Docket: S083736
Registry: Vancouver

Between:

PCL Constructors Westcoast Inc.

Petitioner

And:

**Norex Civil Contractors Inc.,
G. & R. Singh & Son Trucking Ltd.,
Raydon Rentals Ltd. (D.B.A. The Cat Rental Store) and
Her Majesty The Queen in Right of Canada
(Canada Revenue Agency)**

Respondents

Docket: S072815
Registry: Vancouver

Between:

Condura Forming Ltd.

Plaintiff

And:

Menkis Construction Ltd.

Defendant

And:

Condura Forming Ltd. and Roberto Farinha

Defendants by Counterclaim

Docket: S082685
Registry: Vancouver

Between:

Binar Investments Inc.

And:

Petitioner

**Norex Civil Contractors Inc.,
G. & R. Singh & Son Trucking Ltd.,
United Lock-Block Ltd.,
Action Holdings Ltd., and
Her Majesty The Queen In Right Of Canada
(Canada Revenue Agency)**

Respondents

Before: The Honourable Madam Justice E.A. Arnold-Bailey

Reasons for Judgment

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Amanda Lord

Date and Place of Hearing:

September 11 and 12, 2008
Vancouver, B.C.

Introduction

[1] The Court was advised that these applications are the first of a series to be brought to determine whether the Canada Revenue Agency ("CRA") is entitled to priority, pursuant to ss. 227(4) and (4.1) and/or s. 224(1.2) of the ***Income Tax Act***, R.S.C. 1985, c.1 [***ITA***], to various funds that certain general contractors held back from two sub-contractors, Condura Forming Ltd. ("Condura") and Norex Civil Contractors Inc. ("Norex"), who defaulted on a number of contracts and also owed the CRA monies.

[2] The funds at issue represent the 10% holdbacks made under s. 4 of the ***Builders' Lien Act***, S.B.C. 1997, c. 45 [***BLA***]. The position of the general contractors who held back the monies is that the funds are not due and owing to Condura and Norex by virtue of right of setoff. As no money is or ever was owed by them to Condura or Norex, the CRA is unable to claim any interest in the holdback funds. Several sub-subcontractors who in turn were working for Norex and/or Condura and filed liens in relation to their work are also resisting the CRA being granted priority over their claims to the holdback monies.

[3] The facts underlying these applications are not disputed.

The Applications

1. ***PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc. et al.***
(S083736)

Nature of the Application

[4] The notice of motion in this action was filed on behalf of the CRA, which seeks that the funds paid into court in this proceeding by the petitioner, PCL

Constructors Westcoast Inc. ("PCL"), plus any accrued interest, be paid to the Receiver General for Canada pursuant to the Requirement to Pay ("RTP") served on the petitioner by the CRA under s. 224(1.2) of the *ITA*; or alternatively, that the funds paid into court in this proceeding by the petitioner, plus any accrued interest, be paid to the Receiver General for Canada pursuant to a deemed trust arising by virtue of ss. 227(4) and (4.1) of the *ITA*; and costs.

Factual Background

[5] PCL and Norex entered into a contract under which Norex was to provide construction services and PCL was to pay Norex \$1,093,000.00 plus GST, later adjusted to \$1,134,593.72 plus GST. The contract specified that monthly payments would be for 90% of the value of the work completed, with 10% being held back and becoming due when the project was completed. PCL made payments to Norex between August 11, 2006, and February 2, 2007, totalling \$1,017,291.71. Norex defaulted on its obligations under the contract and PCL terminated the contract on October 17, 2007. PCL hired another sub-contractor to complete the work left undone by Norex, paying it a total of \$290,674.21 plus GST. The first invoice from the new sub-contractor was received on December 6, 2007. PCL claims that the amounts paid to Norex exceed the value of the work it did under the contract and that Norex owes it more than \$100,000.00.

[6] Over the course of its work for PCL, multiple Notices of Assessment were issued to Norex by the CRA. These assessments included amounts deducted by Norex from employee paycheques for federal and provincial income tax and the

employee portion of the ***Employment Insurance Act***, S.C. 1996, c. 23 [***EI***] and ***Canada Pension Plan Act***, R.S.C. 1985, c. C-8 [***CPP***] remittances, as well as Norex's corresponding portion of the ***EI*** and ***CPP*** contributions, and penalties and interest. The assessments were issued as follows:

<u>Date of Assessment</u>	<u>Payroll Deductions</u>	<u>Total Assessment</u>
July 12, 2007	\$590,749.66	\$822,753.71
September 12, 2007	\$554,749.39	\$835,623.81
October 17, 2007	\$624,525.29	\$937,461.12
February 12, 2008	\$653,433.94	\$1,019,537.86

[7] On November 26, 2007, the CRA served PCL with an RTP, pursuant to s. 224(1.2) of the ***ITA***, to garnish any amount owing from PCL to Norex up to \$908,315.88.

[8] Norex hired sub-subcontractors to assist it in completing work under its contract with PCL. Two of those sub-subcontractors, Raydon Rentals Ltd. ("Raydon") and G. & R. Singh & Son Trucking Ltd. ("G&R"), filed claims of lien in relation to their work. G&R filed liens against two pieces of property in relation to the same debt of \$22,388.42, the first on November 5, 2007, and the second on May 13, 2008. The first of these liens was discharged by a trust agreement made between PCL and G&R. Raydon filed its lien on December 12, 2007, in the amount of \$5,616.93. On May 29, 2008, PCL paid \$28,005.35 into court pursuant to s. 23 of the ***BLA*** in order to discharge the two outstanding liens. In this proceeding, the CRA claims a right to the monies paid into court by PCL to satisfy the liens of G&R and Raydon.

Position of the CRA

[9] The CRA submits that under ss. 227(4) and (4.1) of the *ITA*, a deemed trust in the property of an employer arises in favour of Her Majesty for any payroll deductions withheld by an employer at the time the deduction is made, and despite any other security interest in or other priority to the employer's assets provided by law. This deemed trust is similar in principle to a floating charge over the assets of a tax debtor in the amount of the default: ***First Vancouver Finance v. Canada (M.N.R.)***, 2002 SCC 49 at paras. 40-41. The deemed trust in favour of Her Majesty in the property of Norex is said to have been \$590,749.66 on July 12, 2007, rising to \$653,433.94 by February 12, 2008, these amounts being the cumulative total of the payroll deductions Norex withheld from its employees and did not remit to the CRA.

[10] In the alternative, the CRA submits that it is entitled to any monies owed to Norex by PCL up to a total of \$908,315.88 by virtue of the CRA's delivery to PCL of the RTP of November 26, 2007. Under s. 224(1.2) of the *ITA*, the RTP gives Her Majesty a beneficial interest in any monies owed to a tax debtor by a third party, up to the amount of the RTP. This ownership interest has priority over subsequently arising debts, including liens: ***TransGas Ltd. v. Mid-Plains Contractors Ltd.*** (1993), 101 D.L.R. (4th) 238 (Sask. C.A.), aff'd [1994] 3 S.C.R. 753.

[11] The CRA claims that as of February 2, 2007, PCL's holdback under the contract with Norex totalled \$101,729.17 and that this money was either beneficially owned by Norex, or owed to Norex under the contract. Beneficial ownership is said to come via s. 5(2) of the *BLA*, which provides that the money is held in trust by PCL

in favour of Norex, and charged with any liens filed by sub-subcontractors hired by Norex.

[12] The debt is said to come via the contract, under which the 10% holdback was a debt in favour of Norex for which PCL was liable. Although PCL might have used this debt to setoff obligations of Norex arising from Norex's default, there is no evidence of any such obligation arising prior to December 6, 2007, when the new contractor submitted its first invoice. Even if a setoff claim could be said to have arisen prior to the issuing of the RTP, which the CRA does not concede, it would have remained merely a "potential" debt, and as such would not have priority over the RTP: ***Wa-Bowden Real Estate Reports v. Canada***, [1997] G.S.T.C. 49 (T.C.C.), aff'd [1998] G.S.T.C. 46 (F.C.A.). Furthermore, even if the claim to setoff could be established with certainty, it would still be subject to any deemed trust arising in favour of Her Majesty: ***Ledcor Construction Limited v. 54033 BC Ltd.*** (5 June 2006), Vancouver L041814 (S.C.); ***Canada (M.N.R.) v. Caisse Populaire du Bon Conseil***, 2006 FCA 366 at para. 4, leave to appeal to S.C.C. granted, 31787 (29 February 2008).

[13] Whether the holdback funds were beneficially owned by Norex under the **BLA** or a debt owing to Norex under the contract, because it remained due to Norex until at least the time the RTP was delivered to PCL, the CRA claims it became subject to the deemed trust in favour of Her Majesty, arising in the property of Norex because of the unremitted payroll deductions and/or the operation of the RTP.

[14] The CRA submits that the funds paid into court in this proceeding, having been deposited to discharge the sub-subcontractors' liens, must have formed part of the holdback fund that PCL was required to maintain under the **BLA**. As such, the CRA claims that Her Majesty is the beneficial owner of the funds for the reasons given above.

[15] With respect to the claims of the lien-holders, G&R and Raydon, the CRA submits that it is settled law that the deemed trust claims of the CRA have priority over lien claims under the **BLA**, relying on **Ledcor Construction** and **Ledcor Design-Build (B.C.) Inc. v. Smithers Constructors Inc.**, 2000 BCSC 1120.

Position of the Petitioner

[16] For its part, PCL submits that at no time, whether at the time the RTP was served or earlier, has it owed Norex any money that Norex was not paid. In fact, at the time PCL terminated its contract with Norex on October 17, 2007, Norex had been overpaid, and owed PCL money.

[17] With regards to the deemed trust, which the CRA claims arises in Norex's property because of the unremitted payroll deductions, PCL submits that because such a trust could only attach to the property belonging to Norex at the time it arose, and because Norex had no right to the holdback funds at any time, the trust could not have attached to those funds: **First Vancouver Finance** at paras. 40-43.

[18] With regards to the RTP, PCL submits that as it is not and was not "liable to make a payment" to Norex within the meaning of s. 224(1.2) of the **ITA**, the section

does not apply and PCL is not liable to the CRA for any amount. PCL asserts that the **BLA**, which authorizes the holdback in the first place, makes PCL a guarantor of the claims of any sub-subcontractors hired by Norex, and that PCL's liability to them is a direct one, not an indirect one via money PCL owes to Norex. As PCL's liability to Norex's sub-subcontractors is direct, there are no payments from PCL to Norex which the CRA could "intercept" via the RTP: **Alberta (Treasury Branches) v. M.N.R.**, [1996] 1 S.C.R. 963 at para. 5. Put another way, PCL submits that Norex has no statutory entitlement to the holdback funds; its only entitlement to payment from PCL arises as a result of the contract between them. As Norex could not, at any point, have claimed any more money under the contract other than what it received, it has no right to any money in the hands of PCL, including the holdback funds.

Position of the Sub-subcontractors / Lien-holders

[19] Submissions have been made on behalf of the lien-holders in all three of these matters. As they are essentially the same, I will summarize the position here and not repeat it below.

[20] The lien-holders join with the general contractors in asserting that because nothing is owed to the sub-contractors, there is no debt or property available for the CRA to claim a beneficial interest in. They argue that their lien claims under the **BLA** entitle them to be paid out of the holdback, and that the CRA has no legal basis for interfering with this entitlement: **Kamloops Indian Band v. 314162 B.C. Ltd. et al**, 2000 BCSC 1187.

2. ***Condura Forming Ltd. v. Menkis Construction Ltd. and Condura Forming Ltd. and Roberto Farinha (Defendants by Counterclaim) (S072815)***

Nature of the Application

[21] The first notice of motion in this action was filed on behalf of Menkis Construction Ltd. ("Menkis"), and seeks directions from the court with regards to holdback funds in the amount of \$77,772.11, representing 10% of the amounts paid by Menkis to Condura pursuant to the contract between them.

[22] The second notice of motion was filed on behalf of the CRA. It seeks that the holdback funds being held by the defendant Menkis be paid to the Receiver General for Canada pursuant to the RTP served on Menkis by the CRA. As with the first application described above, the CRA claims that Her Majesty is entitled to receive the holdback funds due to the operation of ss. 227(4) and (4.1) and/or s. 224(1.2) of the *ITA*.

Factual Background

[23] Menkis and Condura entered into a contract on June 7, 2006, for Condura to provide construction services and under which Menkis was to pay Condura \$1,487,666.00. Condura defaulted on its obligations and Menkis terminated the contract on January 31, 2007. Prior to the termination of the contract, Menkis paid Condura \$766,822.11 plus GST, and paid \$162,710.21 including GST to sub-subcontractors hired by Condura. Menkis withheld \$77,772.11 from those payments as required under s. 4 of the *BLA* and continues to hold those funds. Menkis later paid other contractors \$1,565,240.09 to complete the work that otherwise would

have been performed under the Condura contract and to correct deficiencies in the work performed by Condura.

[24] In February, March, and April 2007, Condura and various sub-subcontractors filed liens in relation to their work under Condura's contract with Menkis. Only one of the sub-subcontractors, National Concrete Associates ("National"), started an action to enforce its lien claim of \$19,688.81 within the required time frame set out in the ***BLA***, and as such, is the only outstanding lien claim to the holdback funds.

[25] The CRA conducted an audit of Condura and found that it had unremitted payroll deductions of \$86,401.17 for 2006 and \$17,946.51 for the month of January 2007. On March 29, 2007, the CRA issued an RTP to Menkis for \$117,483.30, that being the total of the unremitted deductions along with penalties and interest. The RTP bore the names of both Menkis and its principal, Leon Menkis. A second RTP was served on Menkis on April 2, 2008, which Menkis returned to the CRA advising that "no monies were due and owing to Condura".

[26] In April 2007, Condura began an action to enforce a claim under the contract against Menkis. Menkis has filed a statement of defence and counterclaim alleging that Condura was overpaid, or if they were not, a setoff is claimed for the cost of completing and correcting Condura's work.

Position of the CRA

[27] The CRA makes essentially the same submissions as it does in the first application. It asserts that a deemed trust in Condura's property in the amount of

the unremitted payroll deductions, \$80,656.67, arises in favour of Her Majesty by virtue of ss. 227(4) and (4.1) of the *ITA*.

[28] In the alternative, the CRA submits that Her Majesty obtained beneficial ownership of the holdback funds when the RTP was delivered to Menkis on March 29, 2007. In addition to the arguments developed above, the CRA submits that the holdback funds are subject to the RTP because they are “payable” to Condura, payment simply being suspended temporarily by the *BLA: Dias v. MacLean et al.* (1993), 123 N.S.R. (2d) 231 (S.C.).

Position of Menkis

[29] Menkis argues that s. 227(4.1) does not apply in the circumstances at bar. First, because Condura has no greater right to the holdback funds than it has to any other monies advanced under the contract, and because it has no rights under the contract because of its default, Condura has no right to the holdback funds. It follows that the holdback funds are not the “property of the [tax debtor]” as referred to in s. 227(4.1). Second, the holdback funds cannot be characterized as “property held by any secured creditor of the [tax debtor]” because Menkis is not a secured creditor of Condura. As the holdback funds are not caught by the wording of s. 227(4.1), the section does not apply.

[30] Menkis further argues that because it is not liable to Condura for any monies in respect of the contract, there is no debt that the RTP could garnish: *Alberta (Treasury Branches)*. On the contrary, Menkis submits that it became entitled to a setoff from the holdback funds because of overpayment to Condura, and on account

of costs incurred to complete work left undone or poorly done by Condura. This setoff arose at the moment of Condura's default. An RTP does not attach to funds affected by a setoff claim: ***Wa-Bowden***. Menkis asserts that setoff is always available to a party to a contract unless the contract explicitly prohibits it: ***Swagger Construction Ltd. v. University of British Columbia***, 2000 BCSC 1839 at paras. 20, 25; ***Kinetic Construction Ltd. v. Tuscany Village Holdings Ltd.***, 2008 BCSC 67 (now affirmed in the result but modified in part by 2008 BCCA 417).

[31] Lastly, Menkis argues that because the RTPs purported to attach to funds owed jointly by Menkis and its principal Leon Menkis, and because any debt owed to Condura is not owed jointly by Menkis and its principal, but by Menkis only, the RTP is defective and unenforceable: ***Ledcor Design-Build***.

CRA's Response to the Claim of Setoff

[32] In response to Menkis' asserted setoff claim the CRA makes several submissions. It says that an automatic right to setoff does not arise simply from the existence of mutual debts: ***Gannon v. M.N.R.***, [1988] 1 C.T.C. 2422 (T.C.C.). Nor can a setoff based on a claim for damages, which is merely potential and not realized, take priority over an issued RTP: ***Wa-Bowden***. The CRA interprets ***Swagger*** to state that setoff is merely a defence to a claim for judgment, and argues that the issue of setoff is therefore irrelevant to the question of the CRA's claim to the holdback funds.

[33] The CRA further argues that once the deemed trust in Condura's property arose in favour of Her Majesty upon Condura's making payroll deductions from its

employees, that property was no longer available to Menkis to claim setoff from: **Re: Allianz Insurance Co. of Canada**, 2004 BCSC 566; **Caisse Populaire**.

[34] Finally, the CRA makes two submissions based on the language of s. 224(1.2) of the **ITA**. First, as the section states that it applies regardless of “any law”, this must include the law of setoff. Second, as the definition of a “security interest” includes a right of setoff, Menkis is merely a secured creditor of Condura, and the CRA’s claims have priority by virtue of the section: **Caisse Populaire** at para. 4.

3. *Binar Investments Inc. v. Norex Civil Contractors Inc. et al.* (S082685)

Nature of the Application

[35] In this petition, a notice of motion was filed on behalf of the CRA seeking that the holdback funds in the amount of \$21,973.29, paid into court by the petitioner Binar Investments Inc. (“Binar”) and arising from its contract with Norex, be paid to the Receiver General for Canada pursuant to an RTP served on the petitioner by the CRA under s. 317(3) of the **Excise Tax Act**, R.S.C. 1985, c. E-15 [**ETA**]. A second notice of motion was filed on behalf of a lien holder, United Lock-Block Ltd. (“Lock-Block”), seeking payment of \$12,846.76 from the \$21,973.29 paid into court.

Factual Background

[36] Binar and Norex entered into a contract on September 28, 2006, for Norex to provide construction services. The contract was initially valued at \$222,540.60, rising to \$254,800.59, not including GST, as a result of change orders. Norex

defaulted on its obligations under the contract and did no work after May 2007.

Before that time, Binar paid Norex \$219,732.85, including GST. Binar asserts that Norex was overpaid and that Norex owes it \$21,821.67. Binar later paid other sub-contractors in excess of \$72,177.44 to complete the work under the Norex contract.

[37] On September 10, 2007, a claim of lien was filed by Action Holdings Ltd. dba Custom Blacktop Co. ("Action"), a sub-subcontractor engaged by Norex, against title to the lands relating to the contract between Binar and Norex. That lien was removed upon Binar's posting cash security in trust in accordance with a trust agreement.

[38] Two additional claims of lien were filed against the lands relating to the contract between Binar and Norex on November 1, 2007, and January 14, 2008, by sub-subcontractors G&R and Lock-Block for \$3,967.64 and \$12,846.76, respectively.

[39] On December 10, 2007, an RTP was served on Binar by the CRA pertaining to Norex's GST debt, to a maximum of \$69,820.83.

[40] Binar paid \$21,973.29 into court on April 24, 2008, in order to discharge the outstanding liens under s. 23 of the *BLA*.

Position of the CRA

[41] The CRA submits that the wording of s. 317(3) of the *ETA* is virtually identical to that of s. 224(1.2) of the *ITA*, and argues that the case law relating to the latter is

equally applicable: ***Montreal Trust Co. of Canada v. Powell Lane Investments Ltd.*** (1994), 22 C.L.R. (2d) 12 (B.C.S.C.).

[42] The CRA then relies on the arguments discussed above to assert that its claim via the RTP takes priority over the claims of the lien-holders. First, because the holdback is a form of payment owing to Norex, it is therefore subject to garnishment via a RTP. Second, for the reasons discussed above, the CRA argues that any setoff claims that may be made by Binar either do not have priority over the RTP or are simply not relevant to the CRA's claim.

[43] The CRA further submits that once the RTP was delivered to Binar, the holdback funds, being the property of Norex, became the property of Her Majesty: ***South Rock Ltd. v. Canada Revenue Agency***, 2007 ABCA 115. As such they were no longer available for distribution to the lien-holders.

Position of Binar

[44] Binar has made no submissions on this application.

The Law

The Nature of the Statutory Holdback

[45] Section 4 of the ***BLA*** requires that the person who is primarily liable on a contract under which a lien may arise (in the applications before the court, this person is the general contractor, and I therefore refer to this person as the "Contractor") under the ***BLA*** retain a holdback equal to 10% of the greater of the value of the work provided under the contract and the amount actually paid under

the contract. That holdback is charged with liens in favour of every person engaged by the person from whom the holdback is retained (which I refer to as the “Sub-subcontractors” and the “Sub-contractor”, respectively). If the Sub-contractor defaults on the contract, s. 6 forbids the Contractor from applying the holdback fund against any claims it may have against the Sub-contractor until the possibility of any lien arising under the Sub-contractor is exhausted. Under s. 9, the Sub-contractor is entitled to receive the holdback fund upon completion of the project or expiration of the holdback period specified in s. 8. Section 23 allows the Contractor to discharge the liens by paying the holdback into court, in which case any liens held by the Sub-subcontractors attach to the funds paid into court. Finally, s. 34 limits the liability of the Contractor to the greater of the money owed to the Sub-contractor and the amount of the holdback.

[46] This limitation of the Contractor’s liability and the protection of the Sub-subcontractors are the underlying purposes of the holdback provisions. As stated in Jonathan Vogt, ed., *BC Builders Liens Practice Manual*, looseleaf (Vancouver: Continuing Legal Education Society of BC, 1999) at s. 7.1:

The holdback is not intended to allow an owner or contractor to hold onto funds at the end of the job and claim a setoff for delays, alleged deficiencies in the work, and other costs the owner may have incurred during the performance of the work.

As stated in s. 1.6, the holdback sections of the BLA are intended as a limitation of liability for owners, contractors, subcontractors, and sub-subcontractors to the amounts properly withheld under the Act as against claims of lien that may exceed the amount of the holdback.

See also David Coulson, *Guide to Builders’ Liens in British Columbia*, looseleaf (Toronto: Thomson Carswell, 2006) at 79.

[47] Section 5(1) of the **BLA** sets out some of the practical aspects of the holdback fund, namely that it is to be kept at a savings institution and be administered by the Contractor together with the Sub-contractor. Section 5(2) establishes the nature of that account:

(2) Subject to sections 9 and 34, all amounts deposited into a holdback account

(a) are charged with payment of all liens arising under the contractor from whom the holdback was retained,

(b) subject to paragraph (a), are held in trust for the contractor referred to in paragraph (a), and

(c) must not be paid out of the account without the agreement of all the persons who administer the account.

[48] When a trust is created under the **BLA**, the general law of trusts applies only to the extent that it is not inconsistent with the provisions of the **BLA**: *BC Builders Liens Practice Manual* at s. 8.2; and see generally *British Columbia v. Henfrey Samson Belair Ltd.*, [1989] 2 S.C.R. 24 at 35. What the legislature has created in s. 5 is not a simple trust in favour of the Sub-contractor. Rather, it is more properly characterized as a fund designed to limit the liability of the Contractor to various Sub-subcontractors and in which the Sub-contractor has a beneficial interest. However, the Sub-contractor's entitlement to the fund is conditional in that it cannot lay claim to it unless the conditions in s. 9 are met and money is owed under the contract: *TransGas, Ledcor Construction*.

Setoff

[49] The law of equitable setoff was discussed in ***Holt v. Telford***, [1987] 2 S.C.R. 193. The judgment sets out a number of points regarding the nature of both legal and equitable setoff, but relevant to this case, the Court held that equitable setoff applies when the mutual obligations in question arise out of the same contract, and setoff is available whether the claimed setoff is liquidated or not: ***Holt*** at 207. The reason for this is simple: when there is a close relationship between dealings giving rise to mutual claims, equity will not permit one of them to be insisted upon without taking the other into account: ***Holt*** at 213.

[50] In the ordinary course of business, the Sub-contractor's right to be paid is subject to the Contractor's right to setoff. As Mr. Justice Hood stated in ***Swagger***,

[9]... in modern times the parties to a construction contract, and subject to its terms, have always had the right to defend, by way of set-off, against the claims of the other; usually a claim for contract monies on the one hand, and a claim for damages for breach of that Contract, for poor workmanship or for delay, on the other.

Hood J. went on to hold that setoff could properly be claimed out of monies that had been held back by the Contractor pursuant to statutory requirements, although in that case there were no other parties claiming an interest in the holdback.

[51] In the cases of ***Allianz Insurance*** and ***Wa-Bowden***, claims to equitable setoff failed because the party claiming the setoff had not established that the alleged mutual obligations arose from dealings so closely related that it would be unjust not to take them into account: see ***Allianz Insurance*** at para. 29; ***Wa-Bowden*** at para. 19. I do not take these cases to stand for the proposition urged

upon the court by the CRA, namely that if the amount of the claimed setoff cannot yet be established with certainty then it must fail. That reading of these cases is plausible only if certain paragraphs are taken out of context, and would be incongruous with the Supreme Court of Canada's ruling in **Holt**.

[52] Neither do I understand **Swagger** to stand for the proposition that setoff is merely a defence to a contractual claim, as the CRA urges. Although it effectively operated that way in **Swagger**, and will operate that way in most cases where it is asserted, it is not a defence in the sense that it only arises after work has been completed under the contract in question. As the discussion above makes clear, setoff arises as work is done under the contract such that, conceptually at least, the net amount due under the contract at any given moment is subject to setoff.

The Holdback vis-à-vis Setoff

[53] Equitable setoff is not a complicated legal device – it is a simple mechanism for ensuring that parties to a contract only pay or get paid what is due or owing under the contract. It would be unfair if a Sub-contractor who completes work for a Contractor, but who in the process causes damage to the Contractor equal to the value of the work done, had to first be paid before the Contractor could sue for damages. When setoff is claimed, therefore, it means that the amount owed under the contract, if any, is unclear and that claim must be determined before the Sub-contractor becomes entitled to the holdback fund.

[54] This was the reasoning of our Court of Appeal in **United Metal Fabricators Ltd. v. Voth Bros. Construction (1974) Ltd.** (1987), 42 D.L.R. (4th) 193 (B.C.C.A.).

In that case, the plaintiff Sub-contractor (to use our terms) sued the defendant Contractor for amounts owing under a series of contracts and, under the version of the **BLA** in force at the time, said to be held “in trust” for the Sub-contractor. The Contractor asserted a right of setoff. Mr. Justice Taggart held that the trust only applied to monies due for “work done under the contract”, meaning work properly done, so the funds said to be held in trust are the net amount due under the contract after claims to setoff are settled.

[55] The recent Court of Appeal ruling in ***Kinetic Construction*** is to the same effect. There, the plaintiff Sub-contractor sued for the holdback fund and the defendant Contractor resisted, claiming a setoff for associated damages. Mr. Justice Hall held at para. 10 that even though the Sub-contractor had a beneficial interest in the holdback under s. 5(2) of the **BLA**, its claim to the fund was nonetheless subject to the Contractor's claim to a setoff, and therefore the claim to setoff had to be resolved before the funds could be ordered to be paid to the Sub-contractor.

[56] Of course, as previously discussed, in a situation where the Sub-contractor defaults on the contract, as is the case in the applications at bar, s. 6 of the **BLA** prohibits the Contractor from applying the holdback fund against any claimed setoff until the possibility of liens against the fund has been exhausted. The chain of priority in these circumstances is therefore clear: a Contractor is required to maintain a 10% holdback fund; Sub-subcontractors have priority to this fund through the **BLA** lien scheme; once their claims are satisfied, the holdback is payable to the Sub-contractor, subject to any claims to setoff from the Contractor.

The Deemed Trust Provisions

[57] Under s. 153 of the *ITA*, employers are required to make various deductions from employees, including payroll deductions for income tax, and to remit these deductions to the Receiver General. Under ss. 227(4) and (4.1) of the *ITA*, a deemed trust in the amount of the deductions arises in the property of the employer at the time the deductions are made: *First Vancouver Finance* at para. 29. The beneficial owner of the deemed trust is Her Majesty, whose claim to the property takes priority to the claims of any secured creditors. The sections read as follows:

227 (4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

(4.1) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from

the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

[58] The *ITA* defines “security interest” in s. 224(1.3) as:

any interest in property that secures payment or performance of an obligation and includes an interest created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for;

[59] A “secured creditor” is defined in the same section as:

a person who has a security interest in the property of another person or who acts for or on behalf of that person with respect to the security interest and includes a trustee appointed under a trust deed relating to a security interest, a receiver or receiver-manager appointed by a secured creditor or by a court on the application of a secured creditor, a sequestrator or any other person performing a similar function;

[60] Finally, “property” is defined in s. 248 as:

property of any kind whatever whether real or personal or corporeal or incorporeal and, without restricting the generality of the foregoing, includes

(a) a right of any kind whatever, a share or a chose in action,

[61] In *First Vancouver Finance*, the Supreme Court of Canada considered the nature of Her Majesty’s beneficial interest in the property of a tax debtor arising under s. 227(4.1). Mr. Justice Iacobucci explained that, in order to facilitate the collection of taxes, Parliament created a trust that is absolute in the sense that it is not subject to pre-existing security interests in the tax debtor’s property:

[28] ... the intent of Parliament when drafting ss. 227(4) and 227(4.1) was to grant priority to the deemed trust in respect of property that is also subject to a security interest regardless of when the security interest arose in relation to the time the source deductions were made or when the deemed trust takes effect.

...

[33] ... the intent of the section is to allow the trust to operate in a continuous manner, attaching to any property which comes into the hands of the debtor as long as the debtor continues to be in default, and extending back in time to the moment of the initial deduction.

The Holdback vis-à-vis the Deemed Trust

[62] The discussion above on the nature of the holdback under the **BLA** and the deemed trust under the **ITA** serves to clarify their relationship to one another. Her Majesty has a strong claim to the property of the tax debtor, irrespective of when it was acquired or what security interests it was subsequently charged with. However, the holdback fund established by the **BLA**, though it is said to be held "in trust", does not thereby create an ordinary trust in which the beneficiary has an unrestricted beneficial interest. It creates a fund to which the Sub-contractor, for whom it is held "in trust", *may* eventually become entitled. The entitlement arises when, generally speaking, the project is finished or discontinued, the subsequent holdback period in s. 8 has expired, and any claimed setoff has been resolved. In the circumstance in which the Sub-contractor has defaulted, there is the added condition that all possible lien claims must be exhausted before the Contractor is entitled to setoff against the fund. In my view, it follows that the holdback is property as that term is defined in the **ITA** in that it is "a right of any kind", a right to receive the fund in the circumstances described.

[63] However, it does not logically follow that because Her Majesty takes beneficial ownership of the Sub-contractor's right to the fund that this right automatically becomes more than it was in the Sub-contractor's hands. I agree with the CRA that it is settled law that once the Sub-contractor's entitlement to the fund arises so that the fund is only charged with the liens of the Sub-subcontractors, Her Majesty takes priority over them as secured creditors because of the explicit language of the *ITA: TransGas; Ledcor Design-Build; Ledcor Construction*. This is clear from the language of s. 227. There is, however, nothing suggesting that Her Majesty's interest becomes something more than it was in the hands of the Subcontractor. Until the entitlement arises, the Sub-contractor's interest in the fund is a conditional right, and no more than that. When the Sub-contractor's right is appropriated by Her Majesty, Her Majesty's interest is exactly the same.

[64] This reasoning is supported by the intention of Parliament in enacting ss. 227(4) and (4.1) of the *ITA*. As Iacobucci J. stated in *First Vancouver* at para. 33, quoted above, the trust applies to property in the hands of the tax debtor. If the Subcontractor would never have become entitled to the holdback fund and yet Her Majesty was allowed to claim it, the CRA would be taking money out of the hands of the Contractor, not the tax debtor. The CRA is not entitled to collect a tax on one person from the property of another: *First Vancouver* at para. 43.

[65] The CRA presented the *Ledcor Construction* case in support of its argument that any deemed trust arising in favour of Her Majesty in the holdback fund takes priority over a claim of setoff. There is one paragraph in Madam Justice

Gerow's judgment, para. 31, which does say exactly that. However, it is obiter and was not the subject of any extensive analysis, and I respectfully disagree with Gerow J. on this one point in her insightful judgment. For the reasons I have given, a claim to setoff is inextricably involved in the issue of what money, if any, the Sub-contractor is entitled to. As such, that question must first be resolved before Her Majesty can assert her interest in the holdback fund.

[66] I pause here to note that arbitrary results follow whether or not I hold that the CRA is entitled to the holdback via the deemed trust. If the CRA were able to seize the holdback fund under any circumstances, then if the Contractor manages to pay the holdback into court before the CRA lays claim to the fund, it will have discharged its liability under s. 23. The party that will be unpaid will then be the Sub-subcontractors holding *BLA* liens. However, if the CRA manages to seize the fund before it has been paid into court, the liens remain on the Contractor's property, not having been discharged under s. 23, and the Contractor must still pay the amount of the holdback to satisfy the liens. The result is arbitrary insofar as the party ultimately liable for the amount of the holdback, whether the Contractor or the Sub-subcontractor, depends on the CRA's timing in asserting its claim.

[67] If the CRA is not entitled to seize the holdback, as I have held, the outcome depends on whether the Sub-contractor is entitled to receive the holdback. Before any setoff may be claimed, the Contractor is required by s. 6 to discharge the liens, which it can do by paying the holdback fund into court. The portion of the holdback to which the Sub-contractor is entitled can then be determined by subtracting the amount of the setoff. If the setoff is larger than the holdback, the Sub-contractor has

no entitlement, and the Sub-subcontractors' lien claims will be satisfied from the fund. If the setoff is smaller than the holdback, the Sub-contractor's entitlement is equal to the amount of the holdback minus the setoff. Because the CRA's claims take priority over the lien-holders, it is then entitled to claim any funds to which the Sub-contractor would have been entitled but for the claims of the Sub-subcontractors. The Sub-subcontractors are then entitled to the remainder, i.e. the amount of the Contractor's setoff, if any. Therefore, the result is arbitrary insofar as whether the Sub-subcontractor is paid from the holdback depends on whether the Sub-contractor is entitled to the money, i.e. the precedent determining the result and the result are entirely unrelated.

[68] I also appreciate that pursuant to my ruling, in some circumstances the CRA may have to litigate on behalf of the Sub-contractor to obtain the holdback funds. However, in my view, this fact and the arbitrariness of the results that flow from either conclusion are an unfortunate reality generated by two legislative schemes from two levels of government, each designed without the other in mind. It is left to this court to rule on the consequences of their interaction in as principled a manner as possible.

The Requirement to Pay

[69] Section 224(1.2) of the *ITA* states:

(1.2) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act*, any other enactment of Canada, any enactment of a province or any law, but subject to subsections 69(1) and 69.1(1) of the *Bankruptcy and Insolvency Act* and section 11.4 of the *Companies' Creditors Arrangement Act*, where the Minister has knowledge or

suspects that a particular person is, or will become within one year, liable to make a payment

(a) to another person (in this subsection referred to as the “tax debtor”) who is liable to pay an amount assessed under subsection 227(10.1) or a similar provision, or

(b) to a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor,

the Minister may in writing require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor’s liability under subsection 227(10.1) or the similar provision, and on receipt of that requirement by the particular person, the amount of those moneys that is so required to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty to the extent of that liability as assessed by the Minister and shall be paid to the Receiver General in priority to any such security interest.

[70] An RTP served under s. 224(1.2) is a robust garnishing mechanism designed to ensure that taxes are collected. It can be used to collect deemed trust amounts that arise under ss. 227(4) and (4.1), as well as the employer portion of *EI* and *CPP* contributions along with penalties and interest. The section confirms “the overriding right of the MNR [Minister of National Revenue] to collect by garnishment the taxes collected which ought to have been remitted by the debtor company to the MNR”: *Alberta (Treasury Branches)* at para. 18.

[71] Section 224 specifies that when written notice, in these cases in the form of the RTP, is served upon a person who is, or who will become within one year, liable to pay a tax debtor or a secured creditor of a tax debtor, the funds owed are

attached by the RTP and become the property of Her Majesty. The wording of s. 224(1.2) grants priority to Her Majesty to the garnishment amount in the RTP over the interests of secured creditors. As is the case with the deemed trust, it is well-established that the CRA's claims made under an RTP have priority over lien-holders under the **BLA: TransGas**.

The Holdback vis-à-vis the RTP

[72] In the circumstances at bar, the RTP gives the CRA no greater claim to the holdback than does the s. 227 deemed trust. Her Majesty's interest under the RTP arises the moment the Contractor becomes "liable to make a payment" to the Sub-contractor. As discussed above, the Sub-contractor becomes entitled to payment of the holdback fund when the conditions set out in the **BLA** are met. If the Sub-contractor has failed to remit payroll deductions, the conditional right it has to the holdback fund already belongs to Her Majesty under s. 227. Accordingly, if the amount of the holdback due to the Sub-contractor is less than the amount of unremitted payroll deductions, the RTP is redundant.

[73] The situation is not the same if the amount of the holdback remaining after setoff and the amount subject to garnishment by the RTP are greater than the amount subject to the s. 227 deemed trust, or if no deemed trust arises under s. 227. In these situations, the Sub-contractor will at some point become entitled to the portion of the holdback remaining after any setoff claims and deemed trust amounts are deducted. The portion of the holdback that remains after setoff will be subject to the liens of the Sub-subcontractors. If the RTP is served prior to their liens being

satisfied, then the lien-holders' interest in the remaining portion of the fund, as a security interest over which the CRA has priority, is subject to the CRA's claim under the RTP: *Ledcor Construction*.

[74] It should be noted that whenever the RTP is delivered, it is subject to the Contractor's claim to setoff for the reasons given above. Support for this proposition in the specific context of an RTP can be found in *Wa-Bowden* at para. 14 and *TransGas* at 264.

[75] In closing this discussion of the applicable legal principles, I would like to deal briefly with the two submissions made by the CRA in the second application based on the language of s. 224(1.2). The CRA argues that as the section applies regardless of "any law", this must include the law of setoff. Under this interpretation, if a Sub-contractor signed a contract but never commenced the work on it, the CRA would nonetheless be entitled to override the law of contract and claim the full amount of the contract from the Contractor. One could, no doubt, devise other examples equally absurd in practical result. As I read the section, it expressly overrules any law which might otherwise divert a payment owing to the tax debtor, i.e. a condition precedent to the applicability of the section is that a payment is owed. As the discussion above on the law of equitable setoff makes clear, setoff is not a diversion of funds otherwise payable, it is a matter that must be taken into account before the amount payable can be determined.

[76] The CRA also argues, based on *Caisse Populaire*, that a setoff is a "security interest" within the meaning of the section. The item held to be security in that case

was a certificate of deposit assigned to the creditor as security for a debt under a contract titled "Security Agreement Secured by Savings". The contract gave the creditor the right to "setoff" amounts owing from the certificate of deposit. The case has nothing to do with equitable setoff and therefore has no bearing on the applications at bar.

Discussion

[77] With these principles in mind, the applications at bar can be dealt with succinctly.

1. ***PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc. et al.***
(S083736)

[78] PCL is required to maintain a holdback fund, and although there is no evidence on this specific point, I assume that it has done so. PCL has paid \$28,005.35 into court pursuant to s. 23 of the **BLA** in order to discharge the liens of the sub-subcontractors G&R and Raydon. Conceptually, if not practically, this money must have come out of the holdback fund.

[79] Based on the analysis of the legal principles above and the evidence adduced in relation to this application, Norex's, and therefore the CRA's, entitlement to that fund depends on what is due under the contract, which requires an assessment of any setoff to which PCL is entitled. PCL asserts that nothing is owed to Norex under the contract. If that is the case, Norex has no right to the holdback and neither does the CRA, and these monies belong to the lien-holders G&R and Raydon. If Norex

does have a right to the holdback, that right has been assumed by Her Majesty and takes priority over the lien-holders.

[80] Therefore if the CRA wishes to assert an interest in the holdback fund, it is required to bring a claim on behalf of Norex against PCL, in which PCL and/or the Sub-subcontractors will be entitled to rely on PCL's right to equitable setoff. If the CRA does not pursue Norex's entitlement to the holdback, the funds paid into court belong to the sub-subcontractors G&R and Raydon, which I find is presently the case.

2. *Condura Forming Ltd. v. Menkis Construction Ltd. and Condura Forming Ltd. and Roberto Farinha (Defendants by Counterclaim)* (S072815)

[81] As a preliminary matter in this application, I find that the RTPs served on Menkis which named both Menkis and its principal Leon Menkis were not defective simply because they named both the company and its principal, and any debts owing to Condura would be owed only by the company. Section 224(1.2) requires that notice be given to the particular person who is or will become liable to make a payment to the tax debtor. In this case, Menkis received notice. The fact that it named another party simply means that it is effective against either party, or both jointly. I find that Menkis' reliance on ***Ledcor Design-Build*** is misplaced; in that case, the notice named the wrong company all together.

[82] Condura and Menkis are in an almost identical situation to PCL and Norex, except that Menkis has not paid any of the holdback funds into court and Condura is actively pursuing its entitlement to the holdback. As Menkis is claiming a setoff

against Condura, the right of Condura to the holdback funds, and therefore of the CRA under the deemed trust provisions and the RTPs, remains to be determined. If Menkis should be successful in opposing Condura's claim, National is entitled to the satisfaction of its lien out of the holdback retained by Menkis and the remainder will become the unencumbered property of Menkis. If Condura is successful in its claim against Menkis, the CRA will be entitled to any funds Condura obtains up to the total amount of Condura's tax liability. Therefore, at present the CRA on behalf of Her Majesty is not entitled to any amount of the holdback.

3. *Binar Investments Inc. v. Norex Civil Contractors Inc. et al. (S082685)*

[83] The circumstances of this application differ from the previous two insofar as there is no deemed trust claim relating to unremitted deductions from employees, and the CRA's RTP was issued under the *ETA* in relation to Norex's GST debt. In the circumstances of this application, there is no significant difference between s. 224(1.2) of the *ITA* and s. 317(3) of the *ETA*, and therefore the jurisprudence cited and the comments made in this judgment in relation to s. 224(1.2) of the *ITA* apply equally to s. 317(3) of the *ETA*.

[84] The lack of a deemed trust claim makes no difference to the outcome of this application, which is identical to the previous two. Contrary to the CRA's submission, and although the word setoff does not appear in its petition, Binar has essentially asserted equitable setoff by claiming that the holdback fund is not owed to Norex under their contract. Again, because of the nature of equitable setoff, that issue must be resolved before the CRA can lay claim to the funds paid into court.

[85] If the CRA wishes to assert an interest in the holdback, it may seek to bring an action on behalf of Norex to claim Norex's entitlement under the contract. If the CRA does bring such a claim, Binar and/or the sub-subcontractors, G&R and Lock-Block, will be entitled to resist it on the basis of equitable setoff. If neither Norex nor the CRA pursues a claim, or if any claim is successfully resisted by Binar and/or the Sub-subcontractors, G&R and Lock-Block, the latter are entitled to receive their lien claims from the funds paid into court by Binar.

Conclusion

[86] I appreciate that this ruling, though it does accept the position of the Contractors and Sub-subcontractors, does not settle the issues between the parties, and it may in fact generate more litigation between them. In terms of a broader application I also appreciate that the implications of this ruling may lead to somewhat arbitrary results. Depending on the circumstances, any one of the Contractor, the Sub-subcontractors, or the CRA is liable to lose money if a Sub-contractor who owes remittances or taxes pursuant to the *ITA* or the *ETA* defaults on a construction contract. These consequences are, in my view, the inevitable result of the collision of two legislative schemes designed by two levels of government, neither mindful of the other. In the oft-quoted words of Justice Tallis in *TransGas* at 265, "it is not for this court to pass upon the propriety or wisdom of such legislation."

[87] It was submitted at the hearing that the court has wide discretion as to costs. I have given the matter of costs careful consideration and see no reason to depart from the usual rule that costs follow the event, as was recently re-considered by the

Court of Appeal in ***Catalyst Paper Corporation v. Companhia de Navegação Norsul***, 2009 BCCA 16. As the parties in these applications opposed to the position advanced on behalf of the CRA are the successful parties, I find that they are entitled to their costs at scale B, payable by the CRA on behalf of Her Majesty.

“The Honourable Madam Justice E.A. Arnold-Bailey”

TAB 3

Dias v. MacLean

Nova Scotia Judgments

Nova Scotia Supreme Court

Amherst, Nova Scotia

Bateman J.

Heard: April 15, 1993.

Judgment: June 1, 1993.

Action S.A.M. No. 2047 and S.A.M. No. 2063

[1993] N.S.J. No. 218 123 N.S.R. (2d) 231 10 C.L.R. (2d) 178 [1994] 1 C.T.C. 127 40 A.C.W.S. (3d) 1039

Between Joseph Dias, Plaintiff, and Angus Kenneth MacLean, Deborah Ann MacLean and Fundy Housing & Recreation Limited, Defendants

(10 pp.)

Case Summary

Liens — Priorities — Priority between lien claimant and Revenue Canada.

Determination of priority between lien claimants. F was hired to build a home. Liens were filed against the property before completion. The owners paid into court the balance of the contract price. Revenue Canada made a demand against F which exceeded the amount paid into court. One of the lien claimants sought to determine priority as against Revenue Canada.

HELD: Revenue Canada had priority over the lien claimants in respect of the funds paid into court.

STATUTES, REGULATIONS AND RULES CITED:

Builders' Lien Act, S.S. 1984-85-86, c. B-7.1 Constitutional Questions Act, R.S.N.S. 1989, c. 89. Income Tax Act, S.C. 1970-71-72, c. 63, ss. 13(4), 224(1), 224(1.2), 224(1.3), 224(2). Labour Standards Code, S.N.S. 1972, c. 10. Mechanics' Lien Act, R.S.N.S. 1989, c. 277, s. 15(1).

David H. Christie, Q.C., for the plaintiff. John J. Ashley, for Revenue Canada.

BATEMAN J.

Angus and Deborah MacLean hired Fundy Housing & Recreation Limited to construct a home. The contract price was \$114,000. The home was substantially

complete on December 31, 1992. The balance of the contract price, including the statutory holdback, after adding extras, was \$23,072.65.

Dias v. MacLean

Liens were filed against the MacLean property on January 12, 1993 by C.E. Harrison & Sons Limited and J.K. Electric Limited. On January 13, 1993 Joseph Dias filed a lien claim. Fundy had ceased construction on the property about January 12, 1993. Revenue Canada Taxation made a Third Party demand (Requirement to Pay) upon the MacLean's solicitors claiming an interest in monies owing by the MacLeans to Fundy. On March 10, 1993, Fundy made an Assignment in Bankruptcy. Deloitte & Touche Inc. are the Trustees.

The MacLeans have paid \$18,500.28 into Court on an Interpleader. This is the balance of the contract price, including the statutory holdback, reduced by the amount necessary to complete the home.

The amount owing by Fundy to Revenue Canada exceeds the amount of monies paid in. The funds owing were assessed by Revenue Canada on February 9, 1993, and a Notice of

Assessment issued on that date. In all respects Revenue Canada has complied with the technical requirements of section 224(1.2) of the Income Tax Act.

This is an application by lien claimant Dias to determine entitlement to the funds as between the lien claimants and Revenue Canada. At issue is the effect of the Requirement to Pay.

Section 224(1.2) of the Income Tax Act provides:

(1.2) Idem. - Notwithstanding any other provision of this Act, the Bankruptcy Act, any other enactment of Canada, any enactment of a province or any law, where the Minister has knowledge or suspects that a particular person is or will be come, within 90 days, liable to make a payment

(a) to another (in this subsection referred to as the "tax debtor") who is liable to pay an amount assessed under subsection 227(10.1) or a similar provision, or

(b) to a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor,

the Minister may, by registered letter or by a letter served personally, require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case, as and when the moneys becomes payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under subsection 227(10.1) or a similar provision, and on receipt of that letter by the particular person, the amount of those moneys that is required by that letter to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty and shall be paid to the Receiver General in priority to any such security interest.

S.224(1.3) defines 'security interest':

(1.3) In subsection (1.2),

"secured creditor" means a person who has a security interest in the property of another person or who acts for or on behalf of that person with respect to the security interest and includes a trustee appointed under a trust deed relating to a security interest, a receiver or receiver-manager appointed by a secured creditor or by a court on the application of a secured creditor, a sequestrator, or any other person performing a similar function;

"security interest" means any interest in property

that secures payment or performance of an

obligation and includes an interest created by or arising out of a debenture, mortgage, hypothec,

lien, pledge, charge deemed or actual trust,

assignment or encumbrance of any kind whatever,

however or whenever arising, created, deemed to

arise or otherwise provided for;

Dias v. MacLean

"similar provision" means a provision, similar to subsection 227(10.1) of any Act of a province that imposes a tax similar to the tax imposed under this Act, where the province has entered into an agreement with the Minister of Finance for the collection of the taxes payable to the province under that Act. (emphasis added)

If the funds are immediately due, the person receiving the notice must pay (Revenue Canada) 'forthwith'; in any other case, 'when the moneys become payable'.

The sum in dispute is a combination of statutory 'holdback funds' and monies in excess of the holdback, sometimes called 'contract funds'.

The Applicant Dias submits that the issue is the meaning of "liable to pay" and of "liable to make a payment". It is submitted on behalf of Mr. Dias that, at the time of service of the Requirement to Pay, the MacLeans were under no obligation to pay Fundy and that they never

became liable to pay Fundy the balance of the funds. He says that the lien claims, filed prior to the requirement to pay, effectively froze any further payment, not only of the holdback funds, but also of the excess funds.

Revenue Canada submits that, on the wording of s.224(1.2), it has absolute claim to the entire fund. The lien claimants, it submits are in the same position as secured creditors.

It is settled that Revenue Canada has priority over secured creditors; (see Berg and Hazell v. Parker Pacific Equipment Sales and Revenue Canada, B.C.S.C., February 1991, as yet unreported)

Revenue Canada says that the effect of the Requirement to Pay on lien claimants was determined in Transgas Ltd. v. Mid-Plains Contractors et al, (Sask.C.A., 1 March, 1993, unreported). Revenue Canada submits that Transgas stands for the proposition that the Minister has priority notwithstanding that the liens had been registered before the Requirement to Pay.

Transgas involved a dispute over 'contract funds' as distinct from 'holdback funds'. The Minister, in that case, made no claim to the holdback funds.

The applicant Dias submits that the decision in Transgas can be distinguished in that 'contract funds', under the Builders Lien Act, S.S.1984-85-86, c.B-7.1, are subject to trust provisions.

The B.L.A. creates certain trusts. All monies payable by a Crown owner under a contract constitute 'a trust fund for the benefit of the contractor'. As amounts become owing to a contractor, whether due or payable, they 'constitute a trust fund for the benefit of' subcontractors and others.

It was the submission in Transgas that the lien claimants were the beneficial owners of the funds as distinct from secured creditors.

Thus, when the contractor abandoned the contracts, the monies still in the hands of owner Transgas, but payable under the contract, were trust funds for the benefit of the subcontractor lien claimants. It was held by the court that,

but for the operation of the trust sections of the B.L.A., Transgas would have been liable to pay the funds to the contractor.

At p.31:

"We accordingly cannot give effect to the respondents' contention that the trust created under the B.L.A. is a "true trust" in contra-distinction to a "security trust"."

The court held that the definition of 'security interest' clearly applied in that factual situation. Specifically, that lien claimants are 'secured creditors' within the meaning of the Section.

The Court says at p.32:

"....The B.L.A. not only provides for the "trusts" as a statutory basis for security, but also provides for "liens" on the statutory holdbacks and the remainder of the contract price as an additional security device."

Dias v. MacLean

While the Mechanics Lien Act does not contain similar trust provisions, the lien claimants here cannot be in a stronger position than those in Transgas. One would have expected that the trust sections might place the Transgas lien claimants in the better position. The Court having rejected that submission, however, it would appear that the Transgas lien claimants were in exactly the same position as the lien claimants here.

The question as to whether the funds were 'payable' at the relevant time was not specifically argued before the Court, in Transgas. The Court says, however, at p.30:

"According to the contracts between Transgas and Mid-Plains, their abandonment or termination did not relieve Transgas from having to pay Mid-Plains for the work done to the date of the abandonment or termination."

The Applicant relies upon C.P.Masonry Ltd. et al. v. Royal Bank Realty et al., (1984), 64 N.S.R.(2d) 338 (N.S.Co.Ct.)

In that case, as in Transgas, the Minister did not pursue its claim as against the statutory holdback. The court was concerned with entitlement to 'contract funds'.

Section 15(1) of the Mechanics Lien Act provides:

15 (1) The lien shall have priority over all judgments, executions, assignments, attachments, garnishments and receiving orders recovered, issued or made after the lien arises, and over all payments or advances made on account of any conveyance or mortgage after notice in writing of the lien to the person making such payments or after registration of a claim for such lien as hereinafter provided.

While in C.P.Masonry the Minister did not pursue entitlement to the holdback funds, the Director of Labour Standards did so. In considering that claim, MacDonnell J. says at p.345:

"...Once the said mechanics' lien claims had been

filed there was no possibility whatsoever that the statutory holdback required by s.12(2) of the Mechanics' Lien Act, R.S.N.S. 1967, c.178, could have been paid by Lindsay to Geo-Rob until such time as said liens had been satisfied. The statutory holdback fund in these circumstances was not, and never had been, an asset of Geo-Rob, and thus, would not be subject to a lien, charge or mortgage under the provisions of ss.84(1) and 34(1) of the Labour Standards Code, S.N.S. 1972, c.10.

The Court's decision on this point appears to have turned on the wording of the Labour Standards Code.

MacDonnell J. went on to hold that the lien claimants had a "charge on the statutory holdback". He held that the lien claimants had priority over the Minister of Revenue.

Judge MacDonnell, however, was dealing with s.224(1) of the Income Tax Act. The wording has now changed substantially with the addition to the section of "Notwithstanding any other provision of this Act, the

Bankruptcy Act, any other enactment of Canada, any enactment of a province or any law.." and "notwithstanding any security interest in those moneys".

Section 13(4) states:

"The lien shall be a charge upon the amount directed to be retained by this Section in favour of subcontractors whose liens are derived under persons to whom such moneys so required to be retained are respectively payable." (my emphasis)

In my view the lien claimants are, as regards s.224(1.2 and 1.3) of the Income Tax Act, 'secured creditors', being holders of a security interest. That is the plain meaning of s.13(4).

The argument that the funds paid into Court would never become 'payable to' the tax debtor (Fundy), is initially attractive. Those funds are, however, under the contract, payable by the owners to Fundy and to no one else. The Mechanics Lien Act simply creates a statutory scheme to

divert those funds to the lien claimants in certain circumstances. Although diverted through the operation of the Act, the funds are nevertheless payable (to the lien claimants) on behalf of Fundy. The Act simply operates to suspend the movement of funds to ensure the security interest of the lien claimants is satisfied.

Dias v. MacLean

I share the views of Mr. Justice Robinson, as expressed in *Berg and Hazell*, supra, that one must feel some sympathy for the secured creditors, here, the lien claimants. As he notes, however, the funds over which Revenue Canada claims priority are for the benefit of the employees of Fundy, which company failed to remit to Revenue Canada moneys deducted from its employees for tax, Canada Pension and Unemployment Insurance purposes.

I see no rationale for distinguishing between the 'contract funds' and 'holdback funds' on this issue.

It is submitted on behalf of Mr. Dias that to allow interception of the funds by Revenue Canada exposes the owners to a continuing obligation for the holdback. Section 224(2) of the Income Tax Act specifically states that the payment to Revenue Canada in response to the demand is a discharge of the payor's liability. I do not, therefore, accept that submission.

The Applicant Dias has challenged, as well, the constitutionality of the s.224(1.2). As this issue was first raised in a post hearing memorandum and without notice under the Constitutional Questions Act, I am without jurisdiction to adjudicate upon it. I add, however, that the constitutional issue was raised in *Transgas* and the provision held to be valid.

In summary, I find that the Minister of Revenue is entitled to the funds paid into Court in priority to the lien claimants.

Notwithstanding the above, I am satisfied that the Applicants Joseph Dias, C.E. Harrison and Sons Limited, and J. & K. Electric Limited have proved their claims in the amounts of \$4,300.00, \$29,288.90 and \$7,469.79 respectively.

BATEMAN J.

End of Document

TAB 4

PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc.

British Columbia Judgments

British Columbia Supreme Court

Vancouver, British Columbia

E.A. Arnold-Bailey J.

Heard: September 11-12, 2008.

Judgment: February 2, 2009.

Dockets: S083736, S072815, S082685

Registry: Vancouver

[2009] B.C.J. No. 142 | 2009 BCSC 95

Between PCL Constructors Westcoast Inc., Petitioner, and Norex Civil Contractors Inc., G. & R. Singh & Son Trucking Ltd., Raydon Rentals Ltd. (D.B.A. The Cat Rental Store) and Her Majesty The Queen in Right of Canada, (Canada Revenue Agency), Respondents And between Condura Forming Ltd., Plaintiff, and Menkis Construction Ltd., Defendant, and Condura Forming Ltd. and Roberto Farinha, Defendants by Counterclaim And between Binar Investments Inc., Petitioner, and Norex Civil Contractors Inc., G. & R. Singh & Son Trucking Ltd., United Lock-Block Ltd., Action Holdings Ltd., and Her Majesty The Queen In Right Of Canada, (Canada Revenue Agency), Respondents

(87 paras.)

Counsel

In Action No. S083736: Counsel for PCL Constructors Westcoast Inc.: Donald A. Thompson.

Counsel for G. & R. Singh & Son Trucking Ltd.: Adnan Habib.

Counsel for Raydon Rentals Ltd. (D.B.A. The Cat Rental Store): Dennis Yee.

Counsel for Her Majesty the Queen in Right of Canada (Canada Revenue Agency): Amanda Lord.

In Action No. S072815: Counsel for Menkis Construction Ltd.: Anna D. Sekunova.

Counsel for National Concrete Accessories (A Division of Premetalco Inc.), a lien holder: Adnan Habib.

Counsel for Her Majesty the Queen in Right of Canada (Canada Revenue Agency): Amanda Lord.

In Action No. S082685: Counsel for G. & R. Singh & Son Trucking Ltd.: Adnan Habib.

Counsel for United Lock-Block Ltd.: Leah Sandhu.

Counsel for Action Holdings Ltd.: Eamonn Morris.

Counsel for Her Majesty the Queen in Right of Canada (Canada Revenue Agency): Amanda Lord.

Reasons for Judgment

E.A. ARNOLD-BAILEY J.

Introduction

1 The Court was advised that these applications are the first of a series to be brought to determine whether the Canada Revenue Agency ("CRA") is entitled to priority, pursuant to ss. 227(4) and (4.1) and/or s. 224(1.2) of the *Income Tax Act*, R.S.C. 1985, c. 1 [ITA], to various funds that certain general contractors held back from two sub-contractors, Condura Forming Ltd. ("Condura") and Norex Civil Contractors Inc. ("Norex"), who defaulted on a number of contracts and also owed the CRA monies.

2 The funds at issue represent the 10% holdbacks made under s. 4 of the *Builders' Lien Act*, S.B.C. 1997, c. 45 [BLA]. The position of the general contractors who held back the monies is that the funds are not due and owing to Condura and Norex by virtue of right of setoff. As no money is or ever was owed by them to Condura or Norex, the CRA is unable to claim any interest in the holdback funds. Several sub-subcontractors who in turn were working for Norex and/or Condura and filed liens in relation to their work are also resisting the CRA being granted priority over their claims to the holdback monies.

3 The facts underlying these applications are not disputed.

The Applications

1. *PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc. et al.* (S083736)

Nature of the Application

4 The notice of motion in this action was filed on behalf of the CRA, which seeks that the funds paid into court in this proceeding by the petitioner, PCL Constructors Westcoast Inc. ("PCL"), plus any accrued interest, be paid to the Receiver General for Canada pursuant to the Requirement to Pay ("RTP") served on the petitioner by the CRA under s. 224(1.2) of the ITA; or alternatively, that the funds paid into court in this proceeding by the petitioner, plus any accrued interest, be paid to the Receiver General for Canada pursuant to a deemed trust arising by virtue of ss. 227(4) and (4.1) of the ITA; and costs.

Factual Background

5 PCL and Norex entered into a contract under which Norex was to provide construction services and PCL was to pay Norex \$1,093,000.00 plus GST, later adjusted to \$1,134,593.72 plus GST. The contract specified that monthly payments would be for 90% of the value of the work completed, with 10% being held back and becoming due when the project was completed. PCL made payments to Norex between August 11, 2006, and February 2, 2007, totalling \$1,017,291.71. Norex defaulted on its obligations under the contract and PCL terminated the contract on October 17, 2007. PCL hired another sub-contractor to complete the work left undone by Norex, paying it a total of \$290,674.21 plus GST. The first invoice from the new sub-contractor was received on December 6, 2007. PCL claims that the amounts paid to Norex exceed the value of the work it did under the contract and that Norex owes it more than \$100,000.00.

PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc.

6 Over the course of its work for PCL, multiple Notices of Assessment were issued to Norex by the CRA. These assessments included amounts deducted by Norex from employee paycheques for federal and provincial income tax and the employee portion of the **Employment Insurance Act**, S.C. 1996, c. 23 [EI] and **Canada Pension Plan Act**, R.S.C. 1985, c. C-8 [CPP] remittances, as well as Norex's corresponding portion of the EI and CPP contributions, and penalties and interest. The assessments were issued as follows:

Date of Assessment	Payroll Deductions	Total Assessment
July 12, 2007	\$590,749.66	\$822,753.71
September 12, 2007	\$554,749.39	\$835,623.81
October 17, 2007	\$624,525.29	\$937,461.12
February 12, 2008	\$653,433.94	\$1,019,537.86

7 On November 26, 2007, the CRA served PCL with an RTP, pursuant to s. 224(1.2) of the **ITA**, to garnish any amount owing from PCL to Norex up to \$908,315.88.

8 Norex hired sub-subcontractors to assist it in completing work under its contract with PCL. Two of those sub-subcontractors, Raydon Rentals Ltd. ("Raydon") and G. & R. Singh & Son Trucking Ltd. ("G&R"), filed claims of lien in relation to their work. G&R filed liens against two pieces of property in relation to the same debt of \$22,388.42, the first on November 5, 2007, and the second on May 13, 2008. The first of these liens was discharged by a trust agreement made between PCL and G&R. Raydon filed its lien on December 12, 2007, in the amount of \$5,616.93. On May 29, 2008, PCL paid \$28,005.35 into court pursuant to s. 23 of the **BLA** in order to discharge the two outstanding liens. In this proceeding, the CRA claims a right to the monies paid into court by PCL to satisfy the liens of G&R and Raydon.

Position of the CRA

9 The CRA submits that under ss. 227(4) and (4.1) of the **ITA**, a deemed trust in the property of an employer arises in favour of Her Majesty for any payroll deductions withheld by an employer at the time the deduction is made, and despite any other security interest in or other priority to the employer's assets provided by law. This deemed trust is similar in principle to a floating charge over the assets of a tax debtor in the amount of the default: **First Vancouver Finance v. Canada (M.N.R.)**, 2002 SCC 49 at paras. 40-41. The deemed trust in favour of Her Majesty in the property of Norex is said to have been \$590,749.66 on July 12, 2007, rising to \$653,433.94 by February 12, 2008,

these amounts being the cumulative total of the payroll deductions Norex withheld from its employees and did not remit to the CRA.

10 In the alternative, the CRA submits that it is entitled to any monies owed to Norex by PCL up to a total of \$908,315.88 by virtue of the CRA's delivery to PCL of the RTP of November 26, 2007. Under s. 224(1.2) of the *ITA*, the RTP gives Her Majesty a beneficial interest in any monies owed to a tax debtor by a third party, up to the amount of the RTP. This ownership interest has priority over subsequently arising debts, including liens: *TransGas Ltd. v. Mid-Plains Contractors Ltd.* (1993), 101 D.L.R. (4th) 238 (Sask. C.A.), aff'd [1994] 3 S.C.R. 753.

11 The CRA claims that as of February 2, 2007, PCL's holdback under the contract with Norex totalled \$101,729.17 and that this money was either beneficially owned by Norex, or owed to Norex under the contract. Beneficial ownership is said to come via s. 5(2) of the *BLA*, which provides that the money is held in trust by PCL in favour of Norex, and charged with any liens filed by sub-subcontractors hired by Norex.

12 The debt is said to come via the contract, under which the 10% holdback was a debt in favour of Norex for which PCL was liable. Although PCL might have used this debt to setoff obligations of Norex arising from Norex's default, there is no evidence of any such obligation arising prior to December 6, 2007, when the new contractor submitted its first invoice. Even if a setoff claim could be said to have arisen prior to the issuing of the RTP, which the CRA does not concede, it would have remained merely a "potential" debt, and as such would not have priority over the RTP: *Wa-Bowden Real Estate Reports v. Canada*, [1997] G.S.T.C. 49 (T.C.C.), aff'd [1998] G.S.T.C. 46 (F.C.A.). Furthermore, even if the claim to setoff could be established with certainty, it would still be subject to any deemed trust arising in favour of Her Majesty: *Ledcor Construction Limited v. 544033 BC Ltd.* [2006] B.C.J. No. 3637, (5 June 2006), Vancouver L041814 (S.C.); *Canada (M.N.R.) v. Caisse Populaire du Bon Conseil*, 2006 FCA 366 at para. 4, leave to appeal to S.C.C. granted, 31787 (29 February 2008) [2007] S.C.C.A. No. 6.

13 Whether the holdback funds were beneficially owned by Norex under the *BLA* or a debt owing to Norex under the contract, because it remained due to Norex until at least the time the RTP was delivered to PCL, the CRA claims it became subject to the deemed trust in favour of Her Majesty, arising in the property of Norex because of the unremitted payroll deductions and/or the operation of the RTP.

14 The CRA submits that the funds paid into court in this proceeding, having been deposited to discharge the sub-subcontractors' liens, must have formed part of the holdback fund that PCL was required to maintain under the *BLA*. As such, the CRA claims that Her Majesty is the beneficial owner of the funds for the reasons given above.

15 With respect to the claims of the lien-holders, G&R and Raydon, the CRA submits that it is settled law that the deemed trust claims of the CRA have priority over lien claims under the *BLA*, relying on *Ledcor Construction and Ledcor Design-Build (B.C.) Inc. v. Smithers Constructors Inc.*, 2000 BCSC 1120.

Position of the Petitioner

16 For its part, PCL submits that at no time, whether at the time the RTP was served or earlier, has it owed Norex any money that Norex was not paid. In fact, at the time PCL terminated its contract with Norex on October 17, 2007, Norex had been overpaid, and owed PCL money.

17 With regards to the deemed trust, which the CRA claims arises in Norex's property because of the unremitted payroll deductions, PCL submits that because such a trust could only attach to the property belonging to Norex at the time it arose, and because Norex had no right to the holdback funds at any time, the trust could not have attached to those funds: *First Vancouver Finance* at paras. 40-43.

18 With regards to the RTP, PCL submits that as it is not and was not "liable to make a payment" to Norex within the meaning of s. 224(1.2) of the *ITA*, the section does not apply and PCL is not liable to the CRA for any amount. PCL asserts that the *BLA*, which authorizes the holdback in the first place, makes PCL a guarantor of the claims of any sub-subcontractors hired by Norex, and that PCL's liability to them is a direct one, not an indirect one via

money PCL owes to Norex. As PCL's liability to Norex's sub-subcontractors is direct, there are no payments from PCL to Norex which the CRA could "intercept" via the RTP: **Alberta (Treasury Branches) v. M.N.R.**, [1996] 1 S.C.R. 963 at para. 5. Put another way, PCL submits that Norex has no statutory entitlement to the holdback funds; its only entitlement to payment from PCL arises as a result of the contract between them. As Norex could not, at any point, have claimed any more money under the contract other than what it received, it has no right to any money in the hands of PCL, including the holdback funds.

Position of the Sub-subcontractors/Lien-holders

19 Submissions have been made on behalf of the lien-holders in all three of these matters. As they are essentially the same, I will summarize the position here and not repeat it below.

20 The lien-holders join with the general contractors in asserting that because nothing is owed to the sub-contractors, there is no debt or property available for the CRA to claim a beneficial interest in. They argue that their lien claims under the **BLA** entitle them to be paid out of the holdback, and that the CRA has no legal basis for interfering with this entitlement: **Kamloops Indian Band v. 314162 B.C. Ltd. et al**, 2000 BCSC 1187.

2. **Condura Forming Ltd. v. Menkis Construction Ltd. and Condura Forming Ltd. and Roberto Farinha (Defendants by Counterclaim) (S072815)**

Nature of the Application

21 The first notice of motion in this action was filed on behalf of Menkis Construction Ltd. ("Menkis"), and seeks directions from the court with regards to holdback funds in the amount of \$77,772.11, representing 10% of the amounts paid by Menkis to Condura pursuant to the contract between them.

22 The second notice of motion was filed on behalf of the CRA. It seeks that the holdback funds being held by the defendant Menkis be paid to the Receiver General for Canada pursuant to the RTP served on Menkis by the CRA. As with the first application described above, the CRA claims that Her Majesty is entitled to receive the holdback funds due to the operation of ss. 227(4) and (4.1) and/or s. 224(1.2) of the **ITA**.

Factual Background

23 Menkis and Condura entered into a contract on June 7, 2006, for Condura to provide construction services and under which Menkis was to pay Condura \$1,487,666.00. Condura defaulted on its obligations and Menkis terminated the contract on January 31, 2007. Prior to the termination of the contract, Menkis paid Condura \$766,822.11 plus GST, and paid \$162,710.21 including GST to sub-subcontractors hired by Condura. Menkis withheld \$77,772.11 from those payments as required under s. 4 of the **BLA** and continues to hold those funds. Menkis later paid other contractors \$1,565,240.09 to complete the work that otherwise would have been performed under the Condura contract and to correct deficiencies in the work performed by Condura.

24 In February, March, and April 2007, Condura and various sub-subcontractors filed liens in relation to their work under Condura's contract with Menkis. Only one of the sub-subcontractors, National Concrete Associates ("National"), started an action to enforce its lien claim of \$19,688.81 within the required time frame set out in the **BLA**, and as such, is the only outstanding lien claim to the holdback funds.

25 The CRA conducted an audit of Condura and found that it had unremitted payroll deductions of \$86,401.17 for 2006 and \$17,946.51 for the month of January 2007. On March 29, 2007, the CRA issued an RTP to Menkis for \$117,483.30, that being the total of the unremitted deductions along with penalties and interest. The RTP bore the

names of both Menkis and its principal, Leon Menkis. A second RTP was served on Menkis on April 2, 2008, which Menkis returned to the CRA advising that "no monies were due and owing to Condura".

26 In April 2007, Condura began an action to enforce a claim under the contract against Menkis. Menkis has filed a statement of defence and counterclaim alleging that Condura was overpaid, or if they were not, a setoff is claimed for the cost of completing and correcting Condura's work.

Position of the CRA

27 The CRA makes essentially the same submissions as it does in the first application. It asserts that a deemed trust in Condura's property in the amount of the unremitted payroll deductions, \$80,656.67, arises in favour of Her Majesty by virtue of ss. 227(4) and (4.1) of the *ITA*.

28 In the alternative, the CRA submits that Her Majesty obtained beneficial ownership of the holdback funds when the RTP was delivered to Menkis on March 29, 2007. In addition to the arguments developed above, the CRA submits that the holdback funds are subject to the RTP because they are "payable" to Condura, payment simply being suspended temporarily by the *BLA: Dias v. MacLean et al.* (1993), 123 N.S.R. (2d) 231 (S.C.).

Position of Menkis

29 Menkis argues that s. 227(4.1) does not apply in the circumstances at bar. First, because Condura has no greater right to the holdback funds than it has to any other monies advanced under the contract, and because it has no rights under the contract because of its default, Condura has no right to the holdback funds. It follows that the holdback funds are not the "property of the [tax debtor]" as referred to in s. 227(4.1). Second, the holdback funds cannot be characterized as "property held by any secured creditor of the [tax debtor]" because Menkis is not a secured creditor of Condura. As the holdback funds are not caught by the wording of s. 227(4.1), the section does not apply.

30 Menkis further argues that because it is not liable to Condura for any monies in respect of the contract, there is no debt that the RTP could garnish: *Alberta (Treasury Branches)*. On the contrary, Menkis submits that it became entitled to a setoff from the holdback funds because of overpayment to Condura, and on account of costs incurred to complete work left undone or poorly done by Condura. This setoff arose at the moment of Condura's default. An RTP does not attach to funds affected by a setoff claim: *Wa-Bowden*. Menkis asserts that setoff is always available to a party to a contract unless the contract explicitly prohibits it: *Swagger Construction Ltd. v. University of British Columbia*, 2000 BCSC 1839 at paras. 20, 25; *Kinetic Construction Ltd. v. Tuscany Village Holdings Ltd.*, 2008 BCSC 67 (now affirmed in the result but modified in part by 2008 BCCA 417).

31 Lastly, Menkis argues that because the RTPs purported to attach to funds owed jointly by Menkis and its principal Leon Menkis, and because any debt owed to Condura is not owed jointly by Menkis and its principal, but by Menkis only, the RTP is defective and unenforceable: *Ledcor Design-Build*.

CRA's Response to the Claim of Setoff

32 In response to Menkis' asserted setoff claim the CRA makes several submissions. It says that an automatic right to setoff does not arise simply from the existence of mutual debts: *Gannon v. M.N.R.*, [1988] 1 C.T.C. 2422 (T.C.C.). Nor can a setoff based on a claim for damages, which is merely potential and not realized, take priority over an issued RTP: *Wa-Bowden*. The CRA interprets *Swagger* to state that setoff is merely a defence to a claim for judgment, and argues that the issue of setoff is therefore irrelevant to the question of the CRA's claim to the holdback funds.

33 The CRA further argues that once the deemed trust in Condura's property arose in favour of Her Majesty upon Condura's making payroll deductions from its employees, that property was no longer available to Menkis to claim setoff from: *Re: Allianz Insurance Co. of Canada*, 2004 BCSC 566; *Caisse Populaire*.

34 Finally, the CRA makes two submissions based on the language of s. 224(1.2) of the *ITA*. First, as the section states that it applies regardless of "any law", this must include the law of setoff. Second, as the definition of a "security interest" includes a right of setoff, Menkis is merely a secured creditor of Condura, and the CRA's claims have priority by virtue of the section: *Caisse Populaire* at para. 4.

3. ***Binar Investments Inc. v. Norex Civil Contractors Inc. et al. (S082685)***

Nature of the Application

35 In this petition, a notice of motion was filed on behalf of the CRA seeking that the holdback funds in the amount of \$21,973.29, paid into court by the petitioner Binar Investments Inc. ("Binar") and arising from its contract with Norex, be paid to the Receiver General for Canada pursuant to an RTP served on the petitioner by the CRA under s. 317(3) of the *Excise Tax Act*, R.S.C. 1985, c. E-15 [*ETA*]. A second notice of motion was filed on behalf of a lien holder, United Lock-Block Ltd. ("Lock-Block"), seeking payment of \$12,846.76 from the \$21,973.29 paid into court.

Factual Background

36 Binar and Norex entered into a contract on September 28, 2006, for Norex to provide construction services. The contract was initially valued at \$222,540.60, rising to \$254,800.59, not including GST, as a result of change orders. Norex defaulted on its obligations under the contract and did no work after May 2007. Before that time, Binar paid Norex \$219,732.85, including GST. Binar asserts that Norex was overpaid and that Norex owes it \$21,821.67. Binar later paid other sub-contractors in excess of \$72,177.44 to complete the work under the Norex contract.

37 On September 10, 2007, a claim of lien was filed by Action Holdings Ltd. dba Custom Blacktop Co. ("Action"), a sub-subcontractor engaged by Norex, against title to the lands relating to the contract between Binar and Norex. That lien was removed upon Binar's posting cash security in trust in accordance with a trust agreement.

38 Two additional claims of lien were filed against the lands relating to the contract between Binar and Norex on November 1, 2007, and January 14, 2008, by sub-subcontractors G&R and Lock-Block for \$3,967.64 and \$12,846.76, respectively.

39 On December 10, 2007, an RTP was served on Binar by the CRA pertaining to Norex's GST debt, to a maximum of \$69,820.83.

40 Binar paid \$21,973.29 into court on April 24, 2008, in order to discharge the outstanding liens under s. 23 of the *BLA*.

Position of the CRA

41 The CRA submits that the wording of s. 317(3) of the *ETA* is virtually identical to that of s. 224(1.2) of the *ITA*, and argues that the case law relating to the latter is equally applicable: *Montreal Trust Co. of Canada v. Powell Lane Investments Ltd.* (1994), 22 C.L.R. (2d) 12 (B.C.S.C.).

42 The CRA then relies on the arguments discussed above to assert that its claim via the RTP takes priority over the claims of the lien-holders. First, because the holdback is a form of payment owing to Norex, it is therefore subject to garnishment via a RTP. Second, for the reasons discussed above, the CRA argues that any setoff claims that may be made by Binar either do not have priority over the RTP or are simply not relevant to the CRA's claim.

43 The CRA further submits that once the RTP was delivered to Binar, the holdback funds, being the property of Norex, became the property of Her Majesty: **South Rock Ltd. v. Canada Revenue Agency**, 2007 ABCA 115. As such they were no longer available for distribution to the lien-holders.

Position of Binar

44 Binar has made no submissions on this application.

The Law

The Nature of the Statutory Holdback

45 Section 4 of the **BLA** requires that the person who is primarily liable on a contract under which a lien may arise (in the applications before the court, this person is the general contractor, and I therefore refer to this person as the "Contractor") under the **BLA** retain a holdback equal to 10% of the greater of the value of the work provided under the contract and the amount actually paid under the contract. That holdback is charged with liens in favour of every person engaged by the person from whom the holdback is retained (which I refer to as the "Sub-subcontractors" and the "Sub-contractor", respectively). If the Sub-contractor defaults on the contract, s. 6 forbids the Contractor from applying the holdback fund against any claims it may have against the Sub-contractor until the possibility of any lien arising under the Sub-contractor is exhausted. Under s. 9, the Sub-contractor is entitled to receive the holdback fund upon completion of the project or expiration of the holdback period specified in s. 8. Section 23 allows the Contractor to discharge the liens by paying the holdback into court, in which case any liens held by the Sub-subcontractors attach to the funds paid into court. Finally, s. 34 limits the liability of the Contractor to the greater of the money owed to the Sub-contractor and the amount of the holdback.

46 This limitation of the Contractor's liability and the protection of the Sub-subcontractors are the underlying purposes of the holdback provisions. As stated in Jonathan Vogt, ed., *BC Builders Liens Practice Manual*, looseleaf (Vancouver: Continuing Legal Education Society of BC, 1999) at s. 7.1:

The holdback is not intended to allow an owner or contractor to hold onto funds at the end of the job and claim a setoff for delays, alleged deficiencies in the work, and other costs the owner may have incurred during the performance of the work.

As stated in s. 1.6, the holdback sections of the BLA are intended as a limitation of liability for owners, contractors, subcontractors, and sub-subcontractors to the amounts properly withheld under the Act as against claims of lien that may exceed the amount of the holdback.

See also David Coulson, *Guide to Builders' Liens in British Columbia*, looseleaf (Toronto: Thomson Carswell, 2006) at 79.

47 Section 5(1) of the **BLA** sets out some of the practical aspects of the holdback fund, namely that it is to be kept at a savings institution and be administered by the Contractor together with the Sub-contractor. Section 5(2) establishes the nature of that account:

- (2) Subject to sections 9 and 34, all amounts deposited into a holdback account
 - (a) are charged with payment of all liens arising under the contractor from whom the holdback was retained,
 - (b) subject to paragraph (a), are held in trust for the contractor referred to in paragraph (a), and
 - (c) must not be paid out of the account without the agreement of all the persons who administer the account.

48 When a trust is created under the **BLA**, the general law of trusts applies only to the extent that it is not inconsistent with the provisions of the **BLA**: *BC Builders Liens Practice Manual* at s. 8.2; and see generally **British**

Columbia v. Henfrey Samson Belair Ltd., [1989] 2 S.C.R. 24 at 35. What the legislature has created in s. 5 is not a simple trust in favour of the Sub-contractor. Rather, it is more properly characterized as a fund designed to limit the liability of the Contractor to various Sub-subcontractors and in which the Sub-contractor has a beneficial interest. However, the Sub-contractor's entitlement to the fund is conditional in that it cannot lay claim to it unless the conditions in s. 9 are met and money is owed under the contract: **TransGas, Ledcor Construction**.

Setoff

49 The law of equitable setoff was discussed in **Holt v. Telford**, [1987] 2 S.C.R. 193. The judgment sets out a number of points regarding the nature of both legal and equitable setoff, but relevant to this case, the Court held that equitable setoff applies when the mutual obligations in question arise out of the same contract, and setoff is available whether the claimed setoff is liquidated or not: **Holt** at 207. The reason for this is simple: when there is a close relationship between dealings giving rise to mutual claims, equity will not permit one of them to be insisted upon without taking the other into account: **Holt** at 213.

50 In the ordinary course of business, the Sub-contractor's right to be paid is subject to the Contractor's right to setoff. As Mr. Justice Hood stated in **Swagger**,

[9] ... in modern times the parties to a construction contract, and subject to its terms, have always had the right to defend, by way of set-off, against the claims of the other; usually a claim for contract monies on the one hand, and a claim for damages for breach of that Contract, for poor workmanship or for delay, on the other.

Hood J. went on to hold that setoff could properly be claimed out of monies that had been held back by the Contractor pursuant to statutory requirements, although in that case there were no other parties claiming an interest in the holdback.

51 In the cases of **Allianz Insurance** and **Wa-Bowden**, claims to equitable setoff failed because the party claiming the setoff had not established that the alleged mutual obligations arose from dealings so closely related that it would be unjust not to take them into account: see **Allianz Insurance** at para. 29; **Wa-Bowden** at para. 19. I do not take these cases to stand for the proposition urged upon the court by the CRA, namely that if the amount of the claimed setoff cannot yet be established with certainty then it must fail. That reading of these cases is plausible only if certain paragraphs are taken out of context, and would be incongruous with the Supreme Court of Canada's ruling in **Holt**.

52 Neither do I understand **Swagger** to stand for the proposition that setoff is merely a defence to a contractual claim, as the CRA urges. Although it effectively operated that way in **Swagger**, and will operate that way in most cases where it is asserted, it is not a defence in the sense that it only arises after work has been completed under the contract in question. As the discussion above makes clear, setoff arises as work is done under the contract such that, conceptually at least, the net amount due under the contract at any given moment is subject to setoff.

The Holdback vis-à-vis Setoff

53 Equitable setoff is not a complicated legal device - it is a simple mechanism for ensuring that parties to a contract only pay or get paid what is due or owing under the contract. It would be unfair if a Sub-contractor who completes work for a Contractor, but who in the process causes damage to the Contractor equal to the value of the work done, had to first be paid before the Contractor could sue for damages. When setoff is claimed, therefore, it means that the amount owed under the contract, if any, is unclear and that claim must be determined before the Sub-contractor becomes entitled to the holdback fund.

54 This was the reasoning of our Court of Appeal in **United Metal Fabricators Ltd. v. Voth Bros. Construction (1974) Ltd.** (1987), 42 D.L.R. (4th) 193 (B.C.C.A.). In that case, the plaintiff Sub-contractor (to use our terms) sued the defendant Contractor for amounts owing under a series of contracts and, under the version of the **BLA** in force at the time, said to be held "in trust" for the Sub-contractor. The Contractor asserted a right of setoff. Mr. Justice

Taggart held that the trust only applied to monies due for "work done under the contract", meaning work properly done, so the funds said to be held in trust are the net amount due under the contract after claims to setoff are settled.

55 The recent Court of Appeal ruling in *Kinetic Construction* is to the same effect. There, the plaintiff Sub-contractor sued for the holdback fund and the defendant Contractor resisted, claiming a setoff for associated damages. Mr. Justice Hall held at para. 10 that even though the Sub-contractor had a beneficial interest in the holdback under s. 5(2) of the *BLA*, its claim to the fund was nonetheless subject to the Contractor's claim to a setoff, and therefore the claim to setoff had to be resolved before the funds could be ordered to be paid to the Sub-contractor.

56 Of course, as previously discussed, in a situation where the Sub-contractor defaults on the contract, as is the case in the applications at bar, s. 6 of the *BLA* prohibits the Contractor from applying the holdback fund against any claimed setoff until the possibility of liens against the fund has been exhausted. The chain of priority in these circumstances is therefore clear: a Contractor is required to maintain a 10% holdback fund; Sub-subcontractors have priority to this fund through the *BLA* lien scheme; once their claims are satisfied, the holdback is payable to the Sub-contractor, subject to any claims to setoff from the Contractor.

The Deemed Trust Provisions

57 Under s. 153 of the *ITA*, employers are required to make various deductions from employees, including payroll deductions for income tax, and to remit these deductions to the Receiver General. Under ss. 227(4) and (4.1) of the *ITA*, a deemed trust in the amount of the deductions arises in the property of the employer at the time the deductions are made: *First Vancouver Finance* at para. 29. The beneficial owner of the deemed trust is Her Majesty, whose claim to the property takes priority to the claims of any secured creditors. The sections read as follows:

227(4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

(4.1) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

58 The *ITA* defines "security interest" in s. 224(1.3) as:

any interest in property that secures payment or performance of an obligation and includes an interest created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for;

59 A "secured creditor" is defined in the same section as:

a person who has a security interest in the property of another person or who acts for or on behalf of that person with respect to the security interest and includes a trustee appointed under a trust deed relating to a security interest, a receiver or receiver-manager appointed by a secured creditor or by a court on the application of a secured creditor, a sequestrator or any other person performing a similar function;

60 Finally, "property" is defined in s. 248 as:

property of any kind whatever whether real or personal or corporeal or incorporeal and, without restricting the generality of the foregoing, includes

(a) a right of any kind whatever, a share or a chose in action,

61 In *First Vancouver Finance*, the Supreme Court of Canada considered the nature of Her Majesty's beneficial interest in the property of a tax debtor arising under s. 227(4.1). Mr. Justice Iacobucci explained that, in order to facilitate the collection of taxes, Parliament created a trust that is absolute in the sense that it is not subject to pre-existing security interests in the tax debtor's property:

[28] ... the intent of Parliament when drafting ss. 227(4) and 227(4.1) was to grant priority to the deemed trust in respect of property that is also subject to a security interest regardless of when the security interest arose in relation to the time the source deductions were made or when the deemed trust takes effect.

...

[33] ... the intent of the section is to allow the trust to operate in a continuous manner, attaching to any property which comes into the hands of the debtor as long as the debtor continues to be in default, and extending back in time to the moment of the initial deduction.

The Holdback vis-à-vis the Deemed Trust

62 The discussion above on the nature of the holdback under the *BLA* and the deemed trust under the *ITA* serves to clarify their relationship to one another. Her Majesty has a strong claim to the property of the tax debtor, irrespective of when it was acquired or what security interests it was subsequently charged with. However, the holdback fund established by the *BLA*, though it is said to be held "in trust", does not thereby create an ordinary trust in which the beneficiary has an unrestricted beneficial interest. It creates a fund to which the Sub-contractor, for whom it is held "in trust", may eventually become entitled. The entitlement arises when, generally speaking, the project is finished or discontinued, the subsequent holdback period in s. 8 has expired, and any claimed setoff has been resolved. In the circumstance in which the Sub-contractor has defaulted, there is the added condition that all possible lien claims must be exhausted before the Contractor is entitled to setoff against the fund. In my view, it follows that the holdback is property as that term is defined in the *ITA* in that it is "a right of any kind", a right to receive the fund in the circumstances described.

63 However, it does not logically follow that because Her Majesty takes beneficial ownership of the Sub-contractor's right to the fund that this right automatically becomes more than it was in the Sub-contractor's hands. I agree with the CRA that it is settled law that once the Sub-contractor's entitlement to the fund arises so that the fund is only charged with the liens of the Sub-subcontractors, Her Majesty takes priority over them as secured creditors because of the explicit language of the *ITA*: *TransGas* ; *Ledcor Design-Build*; *Ledcor Construction*. This is clear from the language of s. 227. There is, however, nothing suggesting that Her Majesty's interest becomes something more than it was in the hands of the Subcontractor. Until the entitlement arises, the Sub-contractor's interest in the fund is a conditional right, and no more than that. When the Sub-contractor's right is appropriated by Her Majesty, Her Majesty's interest is exactly the same.

64 This reasoning is supported by the intention of Parliament in enacting ss. 227(4) and (4.1) of the *ITA*. As Iacobucci J. stated in *First Vancouver* at para. 33, quoted above, the trust applies to property in the hands of the tax debtor. If the Subcontractor would never have become entitled to the holdback fund and yet Her Majesty was allowed to claim it, the CRA would be taking money out of the hands of the Contractor, not the tax debtor. The CRA is not entitled to collect a tax on one person from the property of another: *First Vancouver* at para. 43.

65 The CRA presented the *Ledcor Construction* case in support of its argument that any deemed trust arising in favour of Her Majesty in the holdback fund takes priority over a claim of setoff. There is one paragraph in Madam Justice Gerow's judgment, para. 31, which does say exactly that. However, it is obiter and was not the subject of any extensive analysis, and I respectfully disagree with Gerow J. on this one point in her insightful judgment. For the reasons I have given, a claim to setoff is inextricably involved in the issue of what money, if any, the Sub-contractor is entitled to. As such, that question must first be resolved before Her Majesty can assert her interest in the holdback fund.

66 I pause here to note that arbitrary results follow whether or not I hold that the CRA is entitled to the holdback via the deemed trust. If the CRA were able to seize the holdback fund under any circumstances, then if the Contractor manages to pay the holdback into court before the CRA lays claim to the fund, it will have discharged its liability under s. 23. The party that will be unpaid will then be the Sub-subcontractors holding *BLA* liens. However, if the CRA manages to seize the fund before it has been paid into court, the liens remain on the Contractor's property, not having been discharged under s. 23, and the Contractor must still pay the amount of the holdback to satisfy the liens. The result is arbitrary insofar as the party ultimately liable for the amount of the holdback, whether the Contractor or the Sub-subcontractor, depends on the CRA's timing in asserting its claim.

67 If the CRA is not entitled to seize the holdback, as I have held, the outcome depends on whether the Sub-contractor is entitled to receive the holdback. Before any setoff may be claimed, the Contractor is required by s. 6 to discharge the liens, which it can do by paying the holdback fund into court. The portion of the holdback to which the Sub-contractor is entitled can then be determined by subtracting the amount of the setoff. If the setoff is larger than the holdback, the Sub-contractor has no entitlement, and the Sub-subcontractors' lien claims will be satisfied from the fund. If the setoff is smaller than the holdback, the Sub-contractor's entitlement is equal to the amount of the holdback minus the setoff. Because the CRA's claims take priority over the lien-holders, it is then entitled to claim any funds to which the Sub-contractor would have been entitled but for the claims of the Sub-subcontractors. The Sub-subcontractors are then entitled to the remainder, i.e. the amount of the Contractor's setoff, if any. Therefore, the result is arbitrary insofar as whether the Sub-subcontractor is paid from the holdback depends on whether the Sub-contractor is entitled to the money, i.e. the precedent determining the result and the result are entirely unrelated.

68 I also appreciate that pursuant to my ruling, in some circumstances the CRA may have to litigate on behalf of the Sub-contractor to obtain the holdback funds. However, in my view, this fact and the arbitrariness of the results that flow from either conclusion are an unfortunate reality generated by two legislative schemes from two levels of government, each designed without the other in mind. It is left to this court to rule on the consequences of their interaction in as principled a manner as possible.

The Requirement to Pay

69 Section 224(1.2) of the *ITA* states:

- (1.2) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act*, any other enactment of Canada, any enactment of a province or any law, but subject to subsections 69(1) and 69.1(1) of the *Bankruptcy and Insolvency Act* and section 11.4 of the *Companies' Creditors Arrangement Act*, where the Minister has knowledge or suspects that a particular person is, or will become within one year, liable to make a payment

(a) to another person (in this subsection referred to as the "tax debtor") who is liable to pay an amount assessed under subsection 227(10.1) or a similar provision, or

(b) to a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor,

the Minister may in writing require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under subsection 227(10.1) or the similar provision, and on receipt of that requirement by the particular person, the amount of those moneys that is so required to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty to the extent of that liability as assessed by the Minister and shall be paid to the Receiver General in priority to any such security interest.

70 An RTP served under s. 224(1.2) is a robust garnishing mechanism designed to ensure that taxes are collected. It can be used to collect deemed trust amounts that arise under ss. 227(4) and (4.1), as well as the employer portion of **EI** and **CPP** contributions along with penalties and interest. The section confirms "the overriding right of the MNR [Minister of National Revenue] to collect by garnishment the taxes collected which ought to have been remitted by the debtor company to the MNR": **Alberta (Treasury Branches)** at para. 18.

71 Section 224 specifies that when written notice, in these cases in the form of the RTP, is served upon a person who is, or who will become within one year, liable to pay a tax debtor or a secured creditor of a tax debtor, the funds owed are attached by the RTP and become the property of Her Majesty. The wording of s. 224(1.2) grants priority to Her Majesty to the garnishment amount in the RTP over the interests of secured creditors. As is the case with the deemed trust, it is well-established that the CRA's claims made under an RTP have priority over lien-holders under the **BLA: TransGas**.

The Holdback vis-à-vis the RTP

72 In the circumstances at bar, the RTP gives the CRA no greater claim to the holdback than does the s. 227 deemed trust. Her Majesty's interest under the RTP arises the moment the Contractor becomes "liable to make a payment" to the Sub-contractor. As discussed above, the Sub-contractor becomes entitled to payment of the holdback fund when the conditions set out in the **BLA** are met. If the Sub-contractor has failed to remit payroll deductions, the conditional right it has to the holdback fund already belongs to Her Majesty under s. 227. Accordingly, if the amount of the holdback due to the Sub-contractor is less than the amount of unremitted payroll deductions, the RTP is redundant.

73 The situation is not the same if the amount of the holdback remaining after setoff and the amount subject to garnishment by the RTP are greater than the amount subject to the s. 227 deemed trust, or if no deemed trust arises under s. 227. In these situations, the Sub-contractor will at some point become entitled to the portion of the holdback remaining after any setoff claims and deemed trust amounts are deducted. The portion of the holdback that remains after setoff will be subject to the liens of the Sub-subcontractors. If the RTP is served prior to their liens being satisfied, then the lien-holders' interest in the remaining portion of the fund, as a security interest over which the CRA has priority, is subject to the CRA's claim under the RTP: **Ledcor Construction**.

74 It should be noted that whenever the RTP is delivered, it is subject to the Contractor's claim to setoff for the reasons given above. Support for this proposition in the specific context of an RTP can be found in **Wa-Bowden** at para. 14 and **TransGas** at 264.

75 In closing this discussion of the applicable legal principles, I would like to deal briefly with the two submissions made by the CRA in the second application based on the language of s. 224(1.2). The CRA argues that as the section applies regardless of "any law", this must include the law of setoff. Under this interpretation, if a Sub-contractor signed a contract but never commenced the work on it, the CRA would nonetheless be entitled to

override the law of contract and claim the full amount of the contract from the Contractor. One could, no doubt, devise other examples equally absurd in practical result. As I read the section, it expressly overrules any law which might otherwise divert a payment owing to the tax debtor, i.e. a condition precedent to the applicability of the section is that a payment is owed. As the discussion above on the law of equitable setoff makes clear, setoff is not a diversion of funds otherwise payable, it is a matter that must be taken into account before the amount payable can be determined.

76 The CRA also argues, based on *Caisse Populaire*, that a setoff is a "security interest" within the meaning of the section. The item held to be security in that case was a certificate of deposit assigned to the creditor as security for a debt under a contract titled "Security Agreement Secured by Savings". The contract gave the creditor the right to "setoff" amounts owing from the certificate of deposit. The case has nothing to do with equitable setoff and therefore has no bearing on the applications at bar.

Discussion

77 With these principles in mind, the applications at bar can be dealt with succinctly.

1. *PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc. et al. (S083736)*

78 PCL is required to maintain a holdback fund, and although there is no evidence on this specific point, I assume that it has done so. PCL has paid \$28,005.35 into court pursuant to s. 23 of the *BLA* in order to discharge the liens of the sub-subcontractors G&R and Raydon. Conceptually, if not practically, this money must have come out of the holdback fund.

79 Based on the analysis of the legal principles above and the evidence adduced in relation to this application, Norex's, and therefore the CRA's, entitlement to that fund depends on what is due under the contract, which requires an assessment of any setoff to which PCL is entitled. PCL asserts that nothing is owed to Norex under the contract. If that is the case, Norex has no right to the holdback and neither does the CRA, and these monies belong to the lien-holders G&R and Raydon. If Norex does have a right to the holdback, that right has been assumed by Her Majesty and takes priority over the lien-holders.

80 Therefore if the CRA wishes to assert an interest in the holdback fund, it is required to bring a claim on behalf of Norex against PCL, in which PCL and/or the Sub-subcontractors will be entitled to rely on PCL's right to equitable setoff. If the CRA does not pursue Norex's entitlement to the holdback, the funds paid into court belong to the sub-subcontractors G&R and Raydon, which I find is presently the case.

2. *Condura Forming Ltd. v. Menkis Construction Ltd. and Condura Forming Ltd. and Roberto Farinha (Defendants by Counterclaim) (S072815)*

81 As a preliminary matter in this application, I find that the RTPs served on Menkis which named both Menkis and its principal Leon Menkis were not defective simply because they named both the company and its principal, and any debts owing to Condura would be owed only by the company. Section 224(1.2) requires that notice be given to the particular person who is or will become liable to make a payment to the tax debtor. In this case, Menkis received notice. The fact that it named another party simply means that it is effective against either party, or both jointly. I find that Menkis' reliance on *Ledcor Design-Build* is misplaced; in that case, the notice named the wrong company all together.

82 Condura and Menkis are in an almost identical situation to PCL and Norex, except that Menkis has not paid any of the holdback funds into court and Condura is actively pursuing its entitlement to the holdback. As Menkis is claiming a setoff against Condura, the right of Condura to the holdback funds, and therefore of the CRA under the deemed trust provisions and the RTPs, remains to be determined. If Menkis should be successful in opposing Condura's claim, National is entitled to the satisfaction of its lien out of the holdback retained by Menkis and the remainder will become the unencumbered property of Menkis. If Condura is successful in its claim against Menkis, the CRA will be entitled to any funds Condura obtains up to the total amount of Condura's tax liability. Therefore, at present the CRA on behalf of Her Majesty is not entitled to any amount of the holdback.

3. ***Binar Investments Inc. v. Norex Civil Contractors Inc. et al. (S082685)***

83 The circumstances of this application differ from the previous two insofar as there is no deemed trust claim relating to unremitted deductions from employees, and the CRA's RTP was issued under the **ETA** in relation to Norex's GST debt. In the circumstances of this application, there is no significant difference between s. 224(1.2) of the **ITA** and s. 317(3) of the **ETA**, and therefore the jurisprudence cited and the comments made in this judgment in relation to s. 224(1.2) of the **ITA** apply equally to s. 317(3) of the **ETA**.

84 The lack of a deemed trust claim makes no difference to the outcome of this application, which is identical to the previous two. Contrary to the CRA's submission, and although the word setoff does not appear in its petition, Binar has essentially asserted equitable setoff by claiming that the holdback fund is not owed to Norex under their contract. Again, because of the nature of equitable setoff, that issue must be resolved before the CRA can lay claim to the funds paid into court.

85 If the CRA wishes to assert an interest in the holdback, it may seek to bring an action on behalf of Norex to claim Norex's entitlement under the contract. If the CRA does bring such a claim, Binar and/or the sub-subcontractors, G&R and Lock-Block, will be entitled to resist it on the basis of equitable setoff. If neither Norex nor the CRA pursues a claim, or if any claim is successfully resisted by Binar and/or the Sub-subcontractors, G&R and Lock-Block, the latter are entitled to receive their lien claims from the funds paid into court by Binar.

Conclusion

86 I appreciate that this ruling, though it does accept the position of the Contractors and Sub-subcontractors, does not settle the issues between the parties, and it may in fact generate more litigation between them. In terms of a broader application I also appreciate that the implications of this ruling may lead to somewhat arbitrary results. Depending on the circumstances, any one of the Contractor, the Sub-subcontractors, or the CRA is liable to lose money if a Sub-contractor who owes remittances or taxes pursuant to the **ITA** or the **ETA** defaults on a construction contract. These consequences are, in my view, the inevitable result of the collision of two legislative schemes designed by two levels of government, neither mindful of the other. In the oft-quoted words of Justice Tallis in **TransGas** at 265, "it is not for this court to pass upon the propriety or wisdom of such legislation."

87 It was submitted at the hearing that the court has wide discretion as to costs. I have given the matter of costs careful consideration and see no reason to depart from the usual rule that costs follow the event, as was recently re-considered by the Court of Appeal in **Catalyst Paper Corporation v. Companhia de Navegação Norsul**, 2009 BCCA 16. As the parties in these applications opposed to the position advanced on behalf of the CRA are the successful parties, I find that they are entitled to their costs at scale B, payable by the CRA on behalf of Her Majesty.

E.A. ARNOLD-BAILEY J.

End of Document

TAB 5

Brook Construction (2007) Inc. v. Blackwood Contractors Ltd.

Newfoundland and Labrador Judgments

Newfoundland and Labrador Supreme Court - Court of Appeal

J.D. Green C.J.N.L., B.G. Welsh and C.W. White J.J.A.

Heard: February 5 and 24, 2014.

Judgment: April 13, 2015.

Docket: 13/14

[2015] N.J. No. 116 | 2015 NLCA 18 | 2015 CarswellNfld 100 | 251 A.C.W.S. (3d) 389 | 385 D.L.R. (4th) 270 | 365 Nfld. & P.E.I.R. 82 | 47 C.L.R. (4th) 1

Between Brook Construction (2007) Inc., Appellant, and Blackwood Contractors Limited, First Respondent, and Emco Corporation, Second Respondent, and Her Majesty the Queen in Right of Newfoundland and Labrador, Intervenor

(109 paras.)

Case Summary

Construction law — Liens — Lienable interests — Crown property — Provincial and territorial — Obtaining a lien — Claim — Defects and formalities — Holdback — Vacating, loss or discharge of lien — Appeal by Brook Construction from refusal to vacate mechanics' lien claim allowed — Appellant contracted with Crown to construct new school — Appellant subcontracted with first respondent for supply and installation of heating, plumbing and ventilation, who sub-subcontracted with second respondent for portion of supply of materials — Both respondents filed lien claims and first respondent brought action to enforce lien, but did not name Crown as party — Lien on holdback was not stand-alone remedy — As holdback was in Crown's possession, subcontractor require to sue Crown — Mechanics' Lien Act did not apply to Crown.

Appeal by Brook Construction from the refusal to vacate a mechanics' lien claim. Brook allegedly contracted with the Crown to construct a new school. It subcontracted the supply and installation of heating, plumbing and ventilation work to the respondent Blackwood Contractors Limited. Blackwood further subcontracted a portion of the supply of materials to the respondent EMCO Corporation. Blackwood ceased work on the project and registered a claim for lien in November 2012 in the amount of \$604,513. Its lien claim also purported to claim a charge against funds held back under the main contract. EMCO also filed a lien claim in the amount of \$104,172. Subsequently, Blackwood filed a statement of claim against Brook for breach of contract. It did not seek to enforce the lien by sale of the land and did not name the Crown as a party, but asserted that the action was brought to enforce the lien. There was no specific claim to, or for a share of, the holdback funds. Brook applied to vacate Blackwood's claim for lien on the grounds that Blackwood failed to commence an action naming the Crown as the owner of the property and, in any event, it could not claim a lien against Crown land. Alternatively, Brook offered to post security to vacate the lien. The applications judge refused to vacate the lien on the primary grounds, but made an order that the lien be vacated upon Brook posting a bond. In refusing to vacate the lien, the judge concluded that even if Blackwood was not entitled to a lien against Crown land, it could register a lien against the holdback. She further reasoned that if Blackwood had no right to a lien against Crown land, it was not obliged to name the Crown as a party. Brook appealed the decision of the applications judge arguing that the judge erred in refusing to vacate the lien because

Brook Construction (2007) Inc. v. Blackwood Contractors Ltd.

the lien claim was made against Crown land, which was not lienable, and that in deciding Blackwood was capable of maintaining a lien claim because it held a lien against the holdback, the judge effectively created a new right -- a trust of the holdback monies.

HELD: Appeal allowed.

The judge erred in refusing to vacate the lien. The Mechanics' Lien Act did not contain trust provisions. As a result, the New Brunswick cases that the applications relied on in her analysis had no application, as the New Brunswick legislation did have trust provisions. Consequently, the judge erred in concluding on an interpretation of the Mechanics' Lien Act that the lien on the holdback was a stand-alone remedy that was not dependent on the claimant being able to establish the existence of a lien on the benefitted land. Furthermore, Blackwood was required to sue the Crown in order to maintain its claim. The Crown was the body who, if the Act applied, was statutorily required to retain the holdback funds, and as it was the Crown, as the body who had possession and control over the holdback funds, it would have been the Crown who was subject to an order to release the money to Blackwood. Failure to sue the Crown was fatal to Blackwood's claim under the Mechanics' Lien Act. As the Mechanics' Lien Act did not contain a provision which subjected the Crown to its provisions, the Act did not apply to the Crown. Therefore, the estate or interest of the Crown could not be subjected to a lien and the Crown would not be subject to the holdback provisions. Section 14 of the Proceedings Against the Crown Act could not be said to have incidentally made the statutory lien scheme of the Mechanics' Lien Act, including the holdback provisions, applicable to the Crown.

Statutes, Regulations and Rules Cited:

Construction Lien Act, RSO 1990, c. C.30, s. 16

Interpretation Act, RSNL 1990, c. I-19, s. 12

Mechanics' Lien Act, RSNL 1990, c. M-3, s. 5, s. 5(1), s. 6, s. 6(1), s. 12, s. 12(1), s. 12(5), s. 22(5), s. 24(1), s. 38, s. 40

Proceedings Against the Crown Act, 1973, SN 1973, c. 59,

Proceedings Against the Crown Act, RSNL 1990, c. P-26, s. 3, s. 4, s. 5, s. 6, ss. 7-13, s. 14, s. 15, s. 16, s. 17, s. 18, s. 19, s. 20, s. 22, s. 24, s. 24(2), s. 25, s. 28

Proceedings Against the Crown Act, RSS 1965, c. 87, s. 14, s. 17

Rules of the Supreme Court, 1986, Rule 57.02(1)(a), Rule 57.02(4)(a), Rule 57.02(4)(c), Rule 57.02(4)(e)

Appeal From:

On appeal from a judgment of the Supreme Court of Newfoundland and Labrador Trial Division (G) 201201G5961.

Counsel

Counsel for Appellant: Adam J. Crocker.

Counsel for First Respondent: Paul D. Dicks Q.C.

Counsel for Second Respondent: William S. Kennedy.

Counsel for Intervenor: Peter E. Ralph Q.C.

Brook Construction (2007) Inc. v. Blackwood Contractors Ltd.

Reasons for judgment were delivered by J.D. Green C.J.N.L., concurred in by C.W. White J.A. Separate dissenting reasons were delivered by B.G. Welsh J.A.

J.D. GREEN C.J.N.L.

1 This appeal challenges a decision of an applications judge who refused to vacate a mechanics' lien claim on the grounds that the lien claim was made against Crown land, which, it was alleged, is not lienable, and that the lien claimant failed to commence an action against the owner of the property.

Leave to Appeal

2 As the order made in the Trial Division did not resolve the substantive issues between the parties, it is to be characterized as an interlocutory decision (see *United Food and Commercial Workers, Local 1252 Fishermen's Union v. Cashin* (1994), 124 Nfld. & P.E.I.R. 201 (Nfld. C.A.) at paragraph 30; *Newfoundland Government Fund Ltd. v. Hickman*, 2008 NLCA 76, 287 Nfld. & P.E.I.R. 7 at paragraphs 7-8). It therefore requires leave to appeal pursuant to rule 57.02(1)(a) of the *Rules of the Supreme Court, 1986*.

3 The fact that there is a separate provision relating to appeals contained in the *Mechanics' Lien Act*, RSNL 1990, c. M-3, section 40 relating to mechanics' lien matters does not change this: *Pennecon Energy Ltd. v. Metal World Inc.*, 2013 NLCA 67, 344 Nfld. & P.E.I.R. 32.

4 In this case, the issues raised and the arguments presented are novel. This Court's discussion of them may clarify the scope and operation of the *Mechanics' Lien Act* and may provide guidance for future cases. Accordingly, I would grant leave to appeal on the basis of the application of rule 57.02(4)(c) as the appeal "involves matters of such importance that leave to appeal should be granted." Additionally, rule 57.02(4)(a) is also applicable, as there is a decision of this Court, *Kitchen Cabinets Ltd. v. Pinsent Construction Co. Ltd. and Harmon Corp.* (1974), 6 Nfld. & P.E.I.R. 426 (NFSC, On Appeal), which is arguably conflicting with the decision of the applications judge.

Background

5 The applicant in the court below and the appellant in this appeal, Brook Construction (2007) Inc., allegedly contracted with the Crown to construct a new school in St. Anthony. Brook subcontracted the supply and installation of heating, plumbing and ventilation work to Blackwood Contractors Limited. Blackwood further subcontracted a portion of the supply of materials to EMCO Corporation.

6 Blackwood ceased work on the project and on November 2, 2012 registered a claim for lien in the amount of \$604,513.84, describing the land on which the work was done as Crown land. EMCO followed suit with a lien claim of \$104,172.66.

7 Blackwood's lien claim also purported to claim a charge against funds held back under the main contract (the "holdback funds") even though there is no provision in the *Mechanics' Lien Act* for registration of a claim to a holdback.

8 On November 26, 2012, Blackwood filed a statement of claim in the Supreme Court against Brook alleging a breach of contract. It did not claim enforcement of the lien by sale of the property on which the school was being constructed. Furthermore, it did not name the Crown as a party to the proceeding. It did, however, assert that it brought the action "to enforce the lien as provided for in the *Mechanics' Lien Act*..." without specifying its nature, but in its claim for relief it simply asked that "proper directions be given, inquiries made and accounts taken" and that judgment be entered in the amount of the contract claim plus interest, consequential damages and costs. There was no specific claim to, or for a share of, the holdback funds.

9 Brook applied under section 26 of the *Mechanics' Lien Act* to vacate Blackwood's claim for lien on the grounds that (i) Blackwood failed to commence an action naming the Crown as the owner of the property; and (ii) one

cannot, in any event, claim a lien against Crown land. Alternatively, Brook also offered to post security in the Court so as to obtain the vacating of the lien in that manner if its other grounds were not successful.

The Decision of the Applications Judge

10 The applications judge refused to vacate the lien on the primary grounds asserted by Brook. Instead, she made an order that the lien be vacated upon Brook posting a bond with the Court for the amount of Blackwood's claim.

11 In rejecting Brook's primary arguments, the applications judge concluded that even if Blackwood could not be said to be entitled to a lien against the property because of Crown immunity, there was a distinction recognized by the legislation between a lien against the property and a lien against the holdback. In her oral judgment, she concluded:

... I accept the Plaintiff's submission that the *Mechanics' Lien Act* contemplates not only a lien against land but also a lien against the holdback. The fact that a claimant may not be able to claim a lien against Crown lands does not prevent a claim for a lien against the holdback under the provisions of the *Mechanics' Lien Act*.

12 It followed from this, she reasoned, that if a lien claimant had no right to claim a lien against the property because of Crown immunity, there was no obligation to name the Crown as a defendant in the resulting statement of claim. It further followed that the lien claimed by Blackwood could continue to exist as a claim against the holdback and therefore should not be vacated, because "an action can be taken under the *Mechanics' Lien Act* even where the work was undertaken on Crown lands." She relied on section 12(5) of the *Mechanics' Lien Act*:

The language of section 12(5) of our *Mechanics' Lien Act*, and specifically the reference to there being a charge upon the holdback, is even more so than a trust [which does not exist under the Newfoundland and Labrador legislation], the equivalent of a lien on monies. I agree that the charge against the holdback is separate and distinct from the charge against the land. Both are potential claims under the *Mechanics' Lien Act*, except that for actions against the Crown there is an issue as to whether there is a right to claim a lien against Crown lands.

As a result, the second ground set forth in the Applicant's application does not suffice so as to require the action be vacated. The Plaintiff has a legitimate *Mechanics' Lien Act* [claim] as it has the right to advance a claim under section 12(5) against the Applicant, that there exists a charge against the holdback.

Interventions

13 EMCO had applied for and was granted intervenor status in Brook's application to vacate the lien in the Trial Division on the basis that EMCO's lien claim as a sub-sub-contractor might be affected if Blackwood lost its lien. (EMCO had not filed a certificate of action as required by the *Act* and accordingly had to shelter under Blackwood's claim if it were to succeed in its own claim). In this Court, EMCO, having been served with the notice of appeal, appeared and was made a party to the appeal.

14 Although it did not participate substantively in the original application in the Trial Division, the Crown in right of the province applied for and was granted leave to intervene in the appeal.

Issues

15 The essence of Brook's argument on appeal is that the applications judge erred in law in not vacating the lien on the basis that Blackwood had no lien right because the work was performed on Crown land, which is not lienable. In deciding that Blackwood was capable of maintaining a lien claim because it held a lien against the holdback, the judge effectively created a new right -- a trust of the holdback monies -- that was not recognized in the *Mechanics' Lien Act*. Accordingly, Brook argues, the judge should not have made it a condition of vacating the lien that Brook deposit a lien bond with the Court.

16 In response, Blackwood argues that when the relevant provisions of the *Mechanics' Lien Act* are read in harmony with the *Interpretation Act*, RSNL 1990, c. I-19, and the *Proceedings Against the Crown Act*, RSNL 1990, c. P-26, the judge was right in concluding that the holdback is subject to a lien separate and apart from any lien against the land. Blackwood argues that it is entitled to maintain that claim and to sue for its enforcement notwithstanding that it is not seeking to enforce the lien against the land and that it is not suing the Crown with respect to that enforcement.

17 Having considered the matter, I have concluded that Blackwood's argument, though creative, is not sustainable and that the applications judge did err in law in refusing to vacate the lien. My reasons follow.

Considerations

(a) Nature and Extent of the Holdback Provisions

18 Section 12 of the *Mechanics' Lien Act* provides in pertinent part:

12(1) In all cases, the person primarily liable upon a contract under and by virtue of which a lien may arise shall, as the work is done or the materials are provided under the contract, retain for a period of 30 days after the completion or abandonment of the work done or to be done under the contract 10% of the value of the work and materials actually done, placed or provided, as referred to in section 6 ...

...

(5) Where there is a lien under section 6, the lien is a charge upon the amount directed to be retained by this section in favour of lien claimants whose liens are derived under persons to whom the money required to be retained are respectively payable and where there is no lien on the land by virtue of section 5, a claim for work done or materials placed or furnished is a charge upon the amount directed to be retained by this section.

(Emphasis added.)

19 The holdback required to be maintained by section 12 enables claimants who are not parties to the main contract (and hence with no claim under that contract because of lack of privity) nevertheless to maintain their claims (to the extent of the amount in the holdback fund) as beneficiaries of the holdback fund by creating a lien in their favour on the fund. Without the imposition of subsection (5), the subcontractor would be treated as a third party beneficiary under the main contract with limited rights to access the holdback.

20 It is clear from section 12 that the statutory holdback is only required to be maintained in respect of contracts "under and by virtue of which a lien may arise" and "[w]here there is a lien under section 6." Section 6 is the provision that creates the statutory lien. Without its operation, there would be no claim on the land benefitted by the work. The right to the lien on the holdback is parasitic upon the existence of a lien on the benefitted land. The only exception to this requirement is in respect of work done on a public street, road or highway under section 5. In that circumstance, the land comprising the street, road or highway is not subject to a lien "[e]xcept for the purpose of section 12." In other words, the land comprising the street, road or highway is notionally made subject to a lien (without the right to claim for its enforcement against the land) but only so that the claimant can assert its lien against the holdback within subsection 12(5) as being a situation "[w]here there is a lien under section 6." This is the only circumstance recognized by the *Act* where the lien on the holdback is not parasitic on the existence of a lien on the benefitted land.

21 By contrast, the applications judge held, as quoted above, that "the charge against the holdback is separate and distinct from the charge against the land" and that "[t]he fact that a claimant may not be able to claim a lien against Crown lands does not prevent a claim for a lien against the holdback ..." In concluding that the lien against the holdback is a stand-alone remedy not parasitic upon a lien against the land, she erred in her interpretation of the *Act*.

22 In coming to her conclusion, the applications judge relied on two New Brunswick trial decisions, *T.J.'s Electric Limited v. SAR Petroleum Inc.*, 2003 NBQB 461, 270 N.B.R. (2d) 317 and *Fowler Brothers Limited v. Morrison*, 2008 NBQB 64, 332 N.B.R. (2d) 386. In *T.J.'s Electric*, the liens claimed against the benefitted property were invalid because the land belonged to the federal Crown, which constitutionally could not be affected by provincial legislation; nevertheless the court held that the trust provisions of the New Brunswick mechanics' lien legislation were "stand-alone" provisions which could be invoked and enforced even though there was no lien to be enforced against the land. The right to the lien on the trust monies was "completely independent" of the lien on the land (citing Macklem & Bristow, *Mechanics' Liens in Canada*, 4th ed., (Carswell), section 1, page 2 and 3; and *Canadian Bank of Commerce v. T. McAvity & Sons Ltd.*, [1959] S.C.R. 478, per Rand J. at p. 483). Similar statements were made by Glennie J. in *obiter* in the *Fowler* decision at paragraphs 23-42.

23 Unlike New Brunswick, Newfoundland and Labrador does not have trust provisions in its legislation. The New Brunswick trust provisions impress with a trust all sums received by a builder, contractor or sub-contractor under any contract in the construction pyramid for the benefit of those contractors, subcontractors, workers and materials suppliers who have worked on or supplied materials to the project. As such, it is a separate security for payment that exists independently of any lien security on the land of the owner. It is not made subject to the existence of a lien on the land as is the case in this province with respect to the lien on the holdback. It was precisely because of a perceived injustice caused by the parasitic nature of the holdback-lien provisions that the trust amendments in New Brunswick and some other provinces, such as Ontario, were enacted (see the comments of Rand J. in *Canadian Bank of Commerce*, p. 482). In this province, the Newfoundland Law Reform Commission addressed this issue and, while concluding that "[t]he current Newfoundland statute contains no trust provisions," recommended that the remedies of the lien against the land and the holdback "be reinforced by inclusion of trust provisions" along the lines of the Ontario legislation: Newfoundland Law Reform Commission, *Report on The Mechanics' Lien Act: Certain Substantive Issues* (St. John's, NL: NLRC-R3, 1990), Chapter 5 at pages 84-87). No such amending legislation was ever enacted.

24 Accordingly, I conclude that the New Brunswick cases previously referred to have no application, and the applications judge erred in relying on them for the purposes of her analysis. It follows that she further erred in concluding on an interpretation of the *Mechanics' Lien Act* that the lien on the holdback was a stand-alone remedy that was not dependent on the claimant being able to establish the existence of a lien on the benefitted land. Inasmuch as all parties -- in particular, Blackwood -- conceded that Blackwood could not claim a lien against the Crown's property, the application judge's errors undermine the basis for her decision to reject the primary arguments of Brook that Blackwood's claim should be vacated on the grounds that Crown land is not lienable and that Blackwood failed to commence an action against the Crown.

25 It is therefore necessary to consider these issues in detail and to address Blackwood's submissions that the interplay between the *Mechanics' Lien Act*, the *Interpretation Act* and the *Proceedings Against the Crown Act* nevertheless means that Blackwood can assert a claim against the holdback funds.

(b) Failure to Sue the Crown

26 Following the registration of a lien claim, the claimant is required to commence an action, within a limited time, "to realize the claim": *Act*, subsection 24(1). One cannot make a claim to "realize" a claim unless it is made against the person from whom relief can be obtained. Thus, if a lien is claimed against land, the claim must include the owner of the land as a party. If the claim is against a fund of money, the claim must include as a defendant the person in whose hands the money is being held.

27 The ownership of the money is not the determining factor; it is the person who is in custody of or has control over the money, i.e. the person who is obligated to retain the holdback, that is key. Thus, Blackwood's argument that because Brook is due the contract money, including the 10% held back, the holdback is owned by Brook and not the Crown and that it is therefore sufficient to sue Brook, cannot succeed. The Crown is the body who, if the *Act* applies, is statutorily required to "retain" the holdback funds, and it is the Crown, as the body who has possession

and control over the money by virtue of holding it back, that would have to be made subject to an order to release the money to Blackwood and not to Brook pursuant to the contract. This view is inferentially supported by subsection 22(5) of the *Mechanics' Lien Act* which sets out the persons to whom notice of a claim to the holdback under subsection 12(5) must be made where there is no lien on the land by virtue of section 5 (the streets, roads and highways exception): the owner, the municipality and "every person in whose hands sums are retained under section 12" (emphasis added). The reason why it is the retainer of the funds who must be given notice is because that is the actor who has control over the money and must be given the opportunity to honor the lien claim. In like manner, it is the same person who must be sued if litigation results.

28 In its claim for lien, Blackwood claimed a lien against the benefitted land, which it claimed was Crown land. It also claimed a charge against the holdback funds. The holdback funds were monies held back by the Crown pursuant to the main contract with Brook. If they were not held back by the Crown and were instead paid to the payee (Brook) under the contract, they would no longer be holdback funds. Any money held back by Brook in relation to its contract with Blackwood for the benefit of subcontractors, workers or material men of Blackwood would be irrelevant to Blackwood as its claim is in contract against Brook (with whom it is in privity) directly for the total amount claimed, not just the holdback amount, as due and owing under the subcontract. On the other hand, even if the Crown is wrongfully retaining the money as holdback, the Crown in such circumstances is the party who must be subjected to an order for payment.

29 Thus, even though Blackwood subsequently conceded that it has no lien claim against the land, it must continue to assert, as it does, that it has a claim to holdback money in the hands of the Crown. Either way, it must seek relief from the Crown. Accordingly, even on Blackwood's theory of the case, it must sue the Crown in order to maintain its claim.

30 Failure to do so, in my view, is fatal to Blackwood's claim as a statement of claim asserting a claim or cause of action under the *Mechanics' Lien Act* against persons from whom the statutory remedies conferred by the *Act* are being sought. Of course, Blackwood may continue to proceed with its claim for breach of contract against Brook, as that is not dependent on the *Act*. See section 38 of the *Act*.

(c) Crown Immunity in the Mechanics' Lien Context

31 Section 12 of the *Interpretation Act* provides that no provision in a statute binds or affects the Crown or the Crown's rights or prerogatives "unless it is expressly stated in it that the Crown is bound by it." The *Mechanics' Lien Act* does not contain any provision which either expressly or even by implication subjects the provincial Crown to its provisions. Many other provincial statutes do contain such a provision. It follows that none of the provisions of the *Mechanics' Lien Act* apply to the Crown. Without more, therefore, the estate or interest of the Crown could not be subjected to a lien and, as well, the Crown would not be subject to the holdback provisions.

32 On the above analysis, the position that Crown land is not lienable has been accepted in the case law and by text writers and law reform agencies: *Halsbury's Laws of Canada -- Construction*, 1st ed. (Markham, Ontario: LexisNexis, 2013), pages 294-296; David I. Bristow et. al., *Construction Builders' and Mechanics' Liens in Canada*, 7th ed., loose-leaf (Toronto: Carswell, 2005), p. 2-50; Newfoundland Law Reform Commission, *Report*, pp. 73-76. (As well, section 20 of the *Proceedings Against The Crown Act* -- which provides that nothing in that Act authorizes proceedings in respect of a claim against Crown property or the seizure, attachment or sale of Crown property -- while not dealing with mechanics' liens specifically, could also be said to confirm the non-lienability of Crown property.)

33 This position of non-lienability of Crown property was essentially affirmed by Furlong C.J. in *Kitchen Cabinets Ltd. v. Pinsent Construction Co. Ltd. and Harmon Corp.* He stated:

[2] ... there is no provision in the *Mechanics' Lien Act* for its application to the Crown and that consequently by common law, as well as by The *Interpretation Act* ... Her Majesty is not affected in any way by the *Act*.

...

Brook Construction (2007) Inc. v. Blackwood Contractors Ltd.

[6] ... the Harmon Corporation enjoys the same position as the Crown itself and that no act of the legislature unless it is expressly directed to apply to the Corporation affects its operations. Though I do not think it necessary for the determination of the question before us I am of the opinion that the vesting of the title to the land at Harmon in the Corporation as the agent for the Crown does not create an interest in land which is subject to the operation of the Mechanics' Lien Act.

(Emphasis added.)

See also to the same effect, *Eastern Home Products Ltd. v. Parsons Construction (St. John's) Ltd. Newfoundland and Labrador Housing Corp.* (1980), 112 D.L.R. (3d) 756 (NFSC, TD), paragraphs 15-19, where Goodridge J., relying on what is now section 12 of the *Interpretation Act*, cryptically observed:

[17] There is no provision in the *Mechanics' Lien Act* which expressly states that Her Majesty is bound thereby. Therefore, Her Majesty is not bound thereby.

34 The Crown immunity rule also applies to other provisions of the *Mechanics' Lien Act*. Thus, the Crown, as the person primarily liable under a construction contract, would not be bound by the requirement under subsection 12(1) to hold back 10% of the value of the work and materials actually done, placed or provided for 30 days after completion or abandonment of the work. See Newfoundland Law Reform Commission, *Report*, pp.75-81; *Eastern Home Products Ltd.*, paragraph 21. While as a practical matter, the Crown may agree as a term of a construction contract to maintain a holdback, its obligation to do so would, under this analysis, arise out of the contract and not from the *Act* (*Eastern Home Products Ltd.*, paragraph 21) unless the Crown voluntarily submitted to the application of the *Act's* provisions: *Re Hillsboro Construction Ltd. (Bankrupt)* (1987), 64 Nfld. & P.E.I.R. 152 (PEISC, TD).

35 The right of a third party lien claimant to assert a claim on the holdback in those circumstances would have to be made on a basis that does not involve invocation of the *Act*, such as, possibly, on the basis of the assertion and establishment of a constructive trust (*Re Hillsboro* and *Re Crown Construction Co.*, 1979 CarswellNfld 170 [SC], per Goodridge J. at paragraphs 108-113; affirmed on appeal without reference to this point: [1980] N.J. No. 48 (CA [QL])). Neither the existence of a constructive trust nor a voluntary submission by the Crown to the application of the *Act* has been pleaded or otherwise asserted in this case.

36 The point that the Crown is not bound by the holdback provisions of the *Act* is reinforced indirectly by the developments in the law in other jurisdictions. In Ontario, for example, the *Construction Lien Act* was amended specifically to provide, while reaffirming that a lien does not attach to Crown "premises," that it nevertheless constitutes a charge against the holdback fund in the hands of the Crown, thereby assimilating the process involving liens against public streets, road and highways to Crown land generally: RSO 1990, c. C.30, section 16. The law in this province is in the same state as it existed in Ontario before the amendments there. The Newfoundland Law Reform Commission, in Chapter 4 of its *Report*, recognized this distinction and recommended that the *Act* be amended along the lines of the Ontario provisions to make what is now the present subsection 12(5) "applicable to the Crown generally" (p. 81). These recommended amendments were never enacted.

37 It was also suggested that because the public streets, roads and highways exception under section 5 of the *Mechanics' Lien Act* is not expressly limited to municipalities (as it is in the legislation of some other jurisdictions), it in principle applies to Crown-owned streets, roads and highways, thereby indicating an intention on the part of the legislature to subject Crown land to the *Act*. This argument cannot succeed because first, it assumes the point in issue. It contradicts the Crown immunity principle in section 12 of the *Interpretation Act*, which applies unless the Crown is expressly named; thus, regardless of whether Crown-owned streets, roads and highways are excluded or included by the wording of section 5, they would nevertheless be excluded by the Crown immunity principle. Secondly, even if the intent of section 5 was to apply to Crown-owned streets, roads and highways, the very fact that the legislature only dealt with such matters, and not Crown land generally, strongly suggests, applying the maxim *expressio unius est exclusio alterius*, the *Act* was not intended to apply to other types of Crown land.

38 Accordingly, were it not for the argument that this position is affected by the *Proceedings Against the Crown*

Act, the foregoing analysis would result in allowance of the appeal. The potential impact of that Act must now be considered.

(d) Potential Impact of the *Proceedings Against the Crown Act*

39 The *Proceedings Against the Crown Act* (PAC Act) was enacted in 1973 and brought into force on May 1 of that year. As such, it ante-dates the *Mechanics' Lien Act* and the *Interpretation Act*. As a subsequently-enacted statute, it enjoys the presumption that where two statutes are inconsistent, the latter can be said to have implicitly amended the former. This is confirmed by section 28. Furthermore, to the extent that conflicting legislative provisions can be read in harmony, the court should attempt to give both statutory provisions a compatible interpretation so as to avoid treating one statute as implicitly amended by another and so as to permit all provisions to operate without contradicting one another.

40 The PAC Act substantially assimilated the Crown to that of other litigants in respect of certain proceedings alleging liability of the Crown. It removed the procedural impediments of being required to use the petition of right to sue the Crown (section 4), and it removed the immunity of the Crown from suit in tort (section 5). It also made certain other substantive legal and equitable rules, such as contribution and indemnity, and the obligation to pay interest on judgment debts applicable to the Crown (sections 6 and 22). Much of the rest of the PAC Act eliminated some differences in procedure affecting suits involving the Crown (sections 7-13 and 25) but preserved or imposed other differences (sections 17, 18, 19 and 27) and also substantially insulated the Crown from certain types of remedial orders that could be made against other litigants, such as injunctions (section 15), recovery of property (section 16) and execution against Crown property (sections 20 and 24).

41 Section 14 is more general. It provides:

14 In proceedings against the Crown the rights of the parties are as nearly as possible the same as in an action between person and person, and the court

(a) may make an order, including an order as to costs, that it may make in proceedings between persons; and

(b) may otherwise give the relief that the case requires.

42 It was suggested on this appeal that the effect of section 14 is to modify the operation of section 12 of the *Interpretation Act* and to subject the Crown to a lien on holdback funds under the *Mechanics' Lien Act*. It was further submitted that because the PAC Act was not considered by the Court in *Kitchen Cabinets Ltd.*, that case does not settle the question on this appeal.

43 As a starting point, it must be said that these submissions are inconsistent with the implications of the current jurisprudence. In *Eastern Home Products Ltd.*, for example, it was held that the Crown "has no statutory obligation in respect of ... lien claimants and no statutory right to hold back funds for their benefit" (paragraph 21). Goodridge J. referred to the PAC Act and, while not discussing it in detail, certainly indicated he was alive to its potential relevance but declined to hold that it applied to make the holdback provisions applicable to the Crown.

44 As well, in *Re Crown Construction Ltd.*, this Court upheld a decision of Goodridge J. denying claims by subcontractors to holdback funds in the hands of Memorial University, the project owner. Mifflin C.J.N. wrote:

... For essentially the reasons given by Goodridge, J. we agree with his finding that Memorial University has no estate or interest in the lands occupied by the Marine Sciences Laboratory within the meaning of the *Mechanics' Lien Act* ... and we also agree with his finding that the funds withheld from the contractor were not impressed with a trust in favour of the sub-contractors.

45 While there was no extensive discussion of the impact of the PAC Act in either *Eastern Home Products Ltd.* or *Re Crown Construction Ltd.*, the cases are still *sub silentio* authority for the proposition that there cannot be a charge on the holdback funds under the *Mechanics' Lien Act* where there is no lien available on the land of the owner (except, of course, in the case of work performed on a public street, road or highway).

46 The question to still be addressed is whether, on a careful analysis of the *PAC Act* in relation to the *Mechanics' Lien Act*, it can be said that the *PAC Act* effectively modifies the law that has clearly been recognized in a plain reading of the holdback provisions of the *Mechanics' Lien Act* and in the cases that have considered the issue.

47 The *PAC Act* does not explicitly purport to amend the *Mechanics' Lien Act* or the *Interpretation Act*. One would have thought that if the legislature had intended to make the Crown subject to the provisions of the *Mechanics' Lien Act*, either for all purposes or with some restrictions, it would have expressly said so either by a general provision or by enacting specific amendments, such as what Ontario did with respect to trust provisions, and creating a charge on the holdback, as discussed above. In like manner, if the legislature intended that section 12 of the *Interpretation Act* was no longer to have general application such that the Crown could be bound by statutes even though it is not expressly mentioned in the legislation, it could have passed an amendment to section 12 as a consequential provision in the *PAC Act*.

48 Can it be said nevertheless that the language of the *PAC Act* implicitly amends them because there is an inconsistency with their provisions? I think not.

49 In *Canadian Industrial Gas and Oil Ltd. v. Saskatchewan*, [1979] 1 S.C.R. 37 (hereinafter, *CIGOL*) it was held that the Saskatchewan equivalent of this province's *Interpretation Act*, section 12 must be read in light of section 17 of the Saskatchewan *Proceedings Against the Crown Act*, RSS 1965, c. 87, the equivalent of section 14 of our *PAC Act*, with the result that interest was payable on a judgment against the Crown in the same way as interest would be payable by a private litigant, notwithstanding that the statutory provision authorizing interest did not expressly state that it bound the Crown. To that extent, the proceedings against the Crown legislation can be said to modify previous legislation that, by virtue of the *Interpretation Act* considered alone, would not have bound the Crown and thereby subject the Crown to liability. The Court also expressed the view that section 17 of the Saskatchewan *Proceedings Against the Crown Act* was not necessarily limited to procedural rights.

50 In *CIGOL*, a judgment interest statute which by its general language could apply to the Crown but for the presumption of Crown immunity was held nevertheless to apply as a result of the Saskatchewan equivalent of our section 14. The application was relatively straightforward in that case. "Proceedings" against the Crown had been started and judgment obtained. The *PAC* section specifically provided that in such proceedings the court could make an order in the same manner as it could between person and person. Hence, where interest was applicable to a judgment in "proceedings" between private persons, it was also applicable where one of the parties was the Crown.

51 The situation in the current case does not fit this mould. First, what is being argued here is that the *PAC Act* makes statutory provisions in the *Mechanics' Lien Act* applicable to the Crown regardless of whether "proceedings" have been commenced or might ever be commenced. The respondent is saying that the holdback provisions apply to the Crown and regulate its relationship with others in the construction pyramid from the moment the Crown enters into a construction contract ("the person primarily liable upon a contract" within the meaning of subsection 12(1)). "Proceedings" may or may not ultimately result.

52 Secondly, the argument also requires a conclusion that the *PAC Act* effectively amends the language of subsections 12(1) and (5) to remove the requirement that the holdback obligation is (except in the case of public streets, roads and highways) parasitic on the existence of a lien on the benefitted land (i.e. to excise from the subsections the words "under and by virtue of which a lien may arise" and "where there is a lien under section 6", as they apply to the Crown). This would effectively accomplish something much more than merely making an existing provision applicable to the Crown.

53 Thirdly, it would require a conclusion that, notwithstanding the language of the section 5 exception, it can now effectively be applied to Crown land that does not comprise a public street, road or highway. This also would effectively amount to a statutory amendment rather than a mere application of a provision to the Crown. That would involve a change to the scheme contemplated by the *Mechanics' Lien Act*.

54 Fourthly, if the *PAC Act* were to make the holdback provisions applicable to the Crown, it should in principle make all of the *Mechanics' Lien Act* applicable; yet, everyone concedes that section 6 of the *Act* does not, by virtue of Crown immunity, operate to impose a lien on the Crown's land.

55 If the intent of the *PAC Act* was to make the Crown subject to all provisions on the statute books (except those specially exempted by section 3) in the same way a private citizen is, all that would have to be done would be to repeal section 12 of the *Interpretation Act*. It is far too much of a stretch to conclude that section 14 of the *PAC Act* was intended to achieve that result, no matter how complex, interrelated and self-contained particular statutory provisions may be.

56 I conclude, therefore, that section 14 of the *PAC Act* on a true construction cannot be said to have incidentally made the statutory lien scheme of the *Mechanics' Lien Act*, including the holdback provisions, applicable to the Crown.

57 Counsel for Blackwood also submitted that subsection 24(2) of the *PAC Act* makes the holdback retained by the Crown subject to claims by Blackwood. Section 24 reads as follows:

- (1) No enforcement proceeding, execution, attachment proceeding or similar process shall be issued against the Crown
- (2) Notwithstanding subsection (1), a garnishment, attachment, or similar process that is otherwise lawful may issue against the Crown for the payment of money owing or accruing as remuneration payable by the Crown for goods or services.

...

Blackwood submits that subsection 24(2) qualifies section 12 of the *Interpretation Act* to allow the holdback provisions to bind the Crown. I see no merit in this suggestion.

58 By its terms, subsection 24(2) only applies to a situation where Blackwood sued Brook to judgment and, in execution, sought to attach the money (i.e. the holdback) still owing by the Crown to Brook under the main contract. It is well-known that this provision was intended to make the wages of Crown employees subject to garnishment by a judgment creditor. While it by its terms could theoretically apply to situations other than civil service wage garnishment, it is not possible to extend it to render enforceable a statutory lien on a holdback in a legislative scheme like the *Mechanics' Lien Act*, which, by its terms (in particular subsections 12(1) and 12(5)), which make a charge on a holdback parasitic on the existence of a lien on the benefitted land) cannot apply to the Crown. The claim of a lien on holdback funds cannot be said on any reasonable interpretation to be a "garnishment, attachment or similar process" within subsection 24(2).

Conclusion and Disposition

59 Accordingly, I reject the argument that the *PAC Act* in some manner qualifies the Crown immunity rule as it applies to the *Mechanics' Lien Act*. The appellant's arguments that the applications judge erred in her interpretation and application of the *Act* have merit.

60 I would allow the appeal and make an order vacating Blackwood's claim for lien and order that the security posted by Brook, as ordered by the applications judge, be released and returned to Brook.

61 At the hearing, counsel for Blackwood submitted that if the security were released at this point, Blackwood would be prejudiced. Clearly, Blackwood will now be in a less secure position than it was in with the bond in place. However, that is the inevitable result of my conclusion that the applications judge should have vacated the lien claim and not required the posting of a bond in the first place. Counsel did not elaborate on how any prejudice may have resulted to Blackwood in reliance on the existence of the security. I would, nevertheless, stay enforcement of my decision for a period of 90 days to enable Blackwood to take such other steps as it may consider possible and

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advisable, by way of amendment of pleadings or pre-judgment attachment or other proceedings, to ameliorate any prejudice resulting from having its security removed at this point rather than at the time of the original hearing.

62 I would award costs on a party and party basis to Brook against Blackwood in this Court and in the court below. Emco and the Crown should bear their own costs.

J.D. GREEN C.J.N.L.

C.W. WHITE J.A.:— I concur.

Dissenting Reasons by Welsh J.A.:

B.G. WELSH J.A. (dissenting)

63 This appeal involves a question of law regarding the Crown's immunity from the application of the *Mechanics' Lien Act*. A subcontractor submits that, while a lien could not be enforced as against the property of the Crown, this does not preclude access to holdback funds mandated by the *Act*.

64 The issue arises from the applications judge's decision dismissing the main contractor's application to vacate the lien that was registered by the subcontractor. The contractor seeks leave to appeal and, if granted, appeals that decision.

Background

65 Brook Construction (2007) Inc. was the main contractor for the construction of a school in St. Anthony, NL. On February 7, 2011, Brook entered into a subcontract with Blackwood Contractors Limited for the supply and installation of heating, plumbing and ventilation equipment and materials. Blackwood, in turn, entered into a subcontract with EMCO Corporation for the supply of plumbing materials.

66 As of October 31, 2012, Blackwood ceased providing services under the subcontract and demanded payment of \$604,513.84, the amount claimed as owing from Brook. On November 2, 2012, Blackwood registered a claim for lien in that amount against the property on which the school was being built. The lien claim included a charge against funds that had been held back, as would be required under the *Mechanics' Lien Act*, RSNL 1990, c. M-3 (the "holdback funds"). On November 22, 2012, Blackwood filed a statement of claim alleging breach of contract by Brook.

67 On February 7, 2013, Brook applied to have the lien vacated. On February 27, 2013, in an oral decision, the applications judge concluded that a charge against the holdback funds existed under the *Mechanics' Lien Act*:

... I agree that the charge against the holdback is separate and distinct from the charge against the land.

Both are potential claims under the *Mechanics' Lien Act*, except that for actions against the Crown there is an issue as to whether there is a right to claim a lien against Crown lands.

The applications judge went on to order, upon the request and consent of the parties, that the lien be vacated upon Brook posting with the Court a satisfactory bond for the amount claimed by Blackwood.

68 The claim of lien registered by Blackwood refers to the holdback funds as well as the property and work at issue:

1. Blackwood Contractors Limited, a body corporate incorporated under the laws of Newfoundland and Labrador, claims a Lien upon the Estate and interest of *Her Majesty the Queen in Right of Newfoundland and Labrador* in the under mentioned land, in respect of the following work, that is to say:

The provision of labour, equipment and materials for heating, plumbing and ventilation to construct a school at Elementary Road, in the Town of St. Anthony ... which was provided to and for the benefit of *Her Majesty the Queen in Right of Newfoundland and Labrador*.

...

9. In addition, this lien shall be a charge on holdback funds held with respect to the said land and premises pursuant to the provisions of the *Mechanics' Lien Act*.

69 The operation of the *Act* where the property is Crown-owned engages issues relating to Crown immunity. In this case, ownership of the property, by the Crown or the School Board, and the effect of ownership by one or the other, have not been argued and determined. In the Trial Division, Blackwood took the position that a lien which could be enforced against the property was not necessary, but rather, as found by the applications judge, there was an independent charge against the holdback funds. On March 8, 2013, Brook applied for leave to appeal the applications judge's decision.

70 During a preliminary application in this Court, Her Majesty the Queen in Right of Newfoundland and Labrador ("the Crown"), having not participated in the Trial Division proceeding, applied for and was granted leave to intervene in the appeal. In addition, in the Trial Division, EMCO participated as an intervenor. It was determined at the hearing in this Court, and so ordered, that EMCO should be a party to the proceeding.

Issues

71 The first issue is whether leave to appeal should be granted. The issue raised by the appeal is whether a charge on holdback funds under the *Mechanics' Lien Act* applies in respect of work done on Crown property.

Analysis

Leave to Appeal

72 This is an interlocutory appeal for which leave to appeal pursuant to rule 57.02 of the *Rules of the Supreme Court, 1986* is required (*Pennecon Energy Ltd. v. Metal World Inc.*, 2013 NLCA 67, 344 Nfld. & P.E.I.R. 32, at paragraphs 5 to 11). Factors to be considered in determining whether leave should be granted are set out in rule 57.02(4), the relevant provisions in this case being clauses (c) and (e):

- (c) the Court considers that the appeal involves matters of such importance that leave to appeal should be granted,

...

- (e) the Court is of the view that the interests of justice require that leave be granted.

73 Consideration of the issues raised in this appeal will provide guidance as to the operation and effect of the *Mechanics' Lien Act*, as well as relevant provisions of the *Interpretation Act*, RSNL 1990, c. I-19, and the *Proceedings Against the Crown Act*, RSNL 1990, c. P-26. Accordingly, I would grant leave to appeal.

The Appeal

Foundation for the Appeal

74 The parties did not argue and the applications judge did not determine the question of whether Crown immunity applies in this case, depending on whether the property is owned by the School Board or the Crown, and, if by the Board, whether Crown immunity would be engaged. As a result, there is an absence of a factual foundation which ordinarily would be required.

75 At the instance of the parties, that requirement was waived, and the Court agreed to proceed on the basis that Crown immunity would apply. Assessing whether Crown immunity may be claimed in the context of the *Mechanics' Lien Act* and the extent of such immunity is a question of law involving analysis of the *Interpretation Act* and the *Proceedings Against the Crown Act*, as well as the *Mechanics' Lien Act*. That analysis may be undertaken in the

absence of a determination regarding the preliminary issue, though it would have been preferable to have had the foundation laid at the outset with a determination regarding the application of Crown immunity.

Crown Immunity - Relationship between the Interpretation Act and the Proceedings Against the Crown Act

76 I begin with section 12 of the *Interpretation Act* which provides that the Crown is bound by legislation only where the statute so specifies:

No provision in an Act is binding on the Crown or affects the Crown or the Crown's rights or prerogatives unless it is expressly stated in it that the Crown is bound by it.

77 This section must be interpreted in light of the *Proceedings Against the Crown Act* which deals with causes of action that may be brought against the Crown. Section 3 specifies that the Act "does not affect and is subject to" certain enumerated statutes. Those statutes deal with the subjects of taxation, royalties, expropriation, Crown lands, minerals, income support, emergency services and workers' compensation. Causes of action arising under those statutes would be governed by the relevant statute. The *Mechanics' Lien Act* is not mentioned. There is, therefore, room for the possible application of the provisions of the *Proceedings Against the Crown Act*.

78 Turning next to the *Mechanics' Lien Act*, the analysis begins with Blackwood's proposition that the Act has two components, a lien against real property and a charge against the holdback funds mandated by the Act. Regarding the former, with respect to Crown-owned property, section 16 of the *Proceedings Against the Crown Act* limits the court to granting declaratory relief:

In proceedings against the Crown in which the recovery of real or personal property is claimed, the court shall not make an order for its recovery or delivery, but instead may make an order declaring that the claimant is entitled as against the Crown to the property claimed or to the possession of it.

Section 20 also imposes limits regarding Crown-owned property:

Nothing in this Act authorizes proceedings in respect of a claim against the property of the Crown or the seizure, attachment, arrest, detention or sale of property of the Crown.

79 With respect to the holdback funds' component of the *Mechanics' Lien Act*, section 24 of the *Proceedings Against the Crown Act* limits legal proceedings that may be taken against the Crown, with certain exceptions:

- (1) No enforcement proceeding, execution, attachment proceeding or similar process shall be issued against the Crown.
- (2) Notwithstanding subsection (1), a garnishment, attachment, or similar process that is otherwise lawful may issue against the Crown for the payment of money owing or accruing as remuneration payable by the Crown for goods or services.
- (3) Notwithstanding subsection (1), a garnishment order may issue against the Crown according to section 4 of the *Public Officials Garnishee Act*.

80 Blackwood submits that the holdback funds would fall within the exception set out in subsection (2). It is not disputed that, in this case, the Crown, while submitting that it is not bound by the *Mechanics' Lien Act*, in fact, held back funds which were subsequently paid out.

81 There are many statutes, at least eighty, both historical and recent, that include a provision such as, "This Act binds the Crown". Such provisions are consistent with the requirement set out in section 12 of the *Interpretation Act*, which presumes that the Crown is not bound by legislation unless the statute so provides. It would have been a simple matter for the legislature to include a similar statement binding the Crown to the provisions of the *Mechanics' Lien Act*. This was not done. It is necessary, then, to consider whether, nonetheless, relying on other considerations, there is a basis for concluding that the Crown is bound by the *Mechanics' Lien Act*, including the requirement regarding holdback funds.

82 It is a fundamental principle of statutory interpretation that conflict among statutes is to be avoided based on the

presumption that the legislature did not intend to enact contradictory legislation. In the result, when there is uncertainty, statutory provisions will be interpreted in a manner that permits all to operate. This principle was referenced by Lamer C.J.C. in *Pointe-Claire (City) v. Quebec (Labour Court)*, [1997] 1 S.C.R. 1015:

[61] ... There is no doubt that the principle that statutes dealing with similar subjects must be presumed to be coherent means that interpretations favouring harmony among those statutes should prevail over discordant ones: P.-A. Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991). ...

See also: *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, at page 38.

83 Accordingly, in the case of section 12 of the *Interpretation Act* and the *Proceedings Against the Crown Act*, an interpretation, consistent with law, that allows both to operate harmoniously will be adopted.

84 As noted above, section 3 of the *Proceedings Against the Crown Act* makes clear that the enumerated statutes have an overriding effect, displacing the operation of that Act. Similarly, there is clarity where the statute specifies that the Crown is bound. However, in circumstances where such clarity is not achieved, it is necessary to consider whether the bar to the application of a statute to the Crown, set out in section 12 of the *Interpretation Act*, may be qualified by the operation of the *Proceedings Against the Crown Act*.

85 This issue is discussed in *Canadian Industrial Gas & Oil Ltd. v. The Government of Saskatchewan*, [1979] 1 S.C.R. 37. In that case, the Court determined that the *Proceedings Against the Crown Act* operated so as to impose an obligation on the Crown regardless of the absence of a provision in the relevant statute binding the Crown and in light of a provision using the same language as section 12 of the *Interpretation Act*. The question arose when the Court ordered that Canadian Industrial Gas & Oil was entitled to recover from the Crown monies it had paid pursuant to a mineral tax that was declared to be *ultra vires*. At issue was whether the Crown could be ordered to pay statutorily-mandated interest on the monies that had been collected under the tax.

86 The Supreme Court of Canada answered that question in the affirmative. In reaching that conclusion, the provision of the *Interpretation Act* stating that the Crown is not bound by legislation unless the statute expressly so provides was read in conjunction with the *Proceedings Against the Crown Act*. Ritchie J., for the Court concluded, at page 39:

...

[Section 7 of the *Interpretation Act*, requiring that a statute must expressly state that the Crown is bound] must, however, be read in light of the following express provisions of s. 17(1) of the Saskatchewan *Proceedings Against the Crown Act*, R.S.S. 1965, c. 87, which read as follows:

17(1) Subject to this Act, in proceedings against the Crown the rights of the parties are as nearly as possible the same as in a suit between person and person; and the court may:

- (a) make any order, including an order as to costs, that it may make in proceedings between persons; and
- (b) otherwise give such appropriate relief as the case may require.

The Saskatchewan *Queen's Bench Act* provided for the payment of interest. Ritchie J. concluded, at page 40:

As s. 17(1) of *The Proceedings Against the Crown Act* provides that where the Crown is a party to the proceedings its rights "are as nearly as possible the same as in a suit between person and person", it follows that it is incumbent upon the Court to require that the Crown make compensation by payment of interest on moneys improperly withheld from the respondent as any other party would be required to do.

87 The same language as in section 17 is found in section 14 of the *Proceedings Against the Crown Act* in this Province. Prior to the 1979 decision of the Supreme Court of Canada in the *Canadian Industrial Gas & Oil* case, Furlong C.J.N., sitting as a single judge, discussed the *Mechanics' Lien Act* in *Kitchen Cabinets Ltd. v. Pinsent Construction Co. Ltd. and Harmon Corp.* (1974), 6 Nfld. & P.E.I.R. 426:

[4] It is undoubtedly true that Section 14 surrenders certain of the attributes of the Crown as to its liability in the Courts. This can only apply to "actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the corporation". The proceedings under *The Mechanics' Lien Act* are purely of a statutory nature and in effect confer a right to security upon any land upon which a workman has performed labour and is wholly incidental to the possession of an interest in land upon which the work is bestowed.

[5] ... The position of the [Harmon] Corporation is that for the convenience of management the land is vested in its name but in dealing with the land it operates wholly as an agent and not as an owner.

[6] I reached the conclusion then that the Harmon Corporation enjoys the same position as the Crown itself and that no act of the legislature unless it is expressly directed to apply to the Corporation affects its operations. Though I do not think it was necessary for the determination of the question before us I am of the opinion that the vesting of the title of the land at Harmon in the Corporation as the agent for the Crown does not create an interest in land which is subject to the operation of *The Mechanics' Lien Act*.

88 The *Proceedings Against the Crown Act*, 1973, SN 1973, c. 59, came into force on May 1, 1973. Although the Act was in force at the time when *Kitchen Cabinets Ltd.* was heard in the Trial Division on April 3, 1974, the interaction between that statute, the *Interpretation Act* and the *Mechanics' Lien Act* was not analyzed on the appeal. Given this omission and the later consideration of the same legislative provision by the Supreme Court of Canada in the *Canadian Industrial Gas & Oil* case, I accept the latter as the correct statement of the law. In that case, the Court read the *Interpretation Act* and the *Proceedings Against the Crown Act* together to harmonize the legislation, effectively qualifying the express bar set out in the *Interpretation Act*.

89 As applied in this case to the *Mechanics' Lien Act*, sections 16 and 20 of the *Proceedings Against the Crown Act* restrict the actions that may be taken in respect of Crown property. As noted above, section 16 provides that the court may not make an order for the recovery or delivery of property by the Crown, though a declaratory order may be made. Section 20 states that nothing in the *Proceedings Against the Crown Act* "authorizes proceedings in respect of a claim against the property of the Crown or ... sale of property of the Crown". The result is that the *Proceedings Against the Crown Act* would preclude interference with or the sale of Crown property under the *Mechanics' Lien Act*. Such relief is, in fact, not sought by Blackwood.

Operation of the Mechanics' Lien Act

90 Rather, the question is whether the *Proceedings Against the Crown Act* qualifies section 12 of the *Interpretation Act* such that Blackwood may, relying on the *Mechanics' Lien Act*, access holdback funds retained by the Crown. This question requires an assessment of the purpose and operation of the *Mechanics' Lien Act*, including whether, in the absence of an enforcement option in respect of Crown property, the Act nonetheless may be engaged, with the limited enforcement option of a charge on the holdback funds.

91 In *Pennecon Energy Ltd. v. Metal World Inc.*, *supra*, reference is made to one of the purposes of the *Mechanics' Lien Act*:

[35] ... In *Northern Electric Company Limited v. The Manufacturers Life Insurance Company*, [1977] 2 S.C.R. 762, at page 773, Laskin C.J.C., for the majority, noted parenthetically that the object of mechanics' lien legislation is "to offer protection to persons doing work or providing services or furnishing materials in respect of any building or improvement". ...

92 The holdback fund is intended to assist in that purpose by ensuring that funds will be available to at least partially satisfy liens that may arise. In Bristow, Glaholt, Reynolds & Wise, *Construction Builders' and Mechanics' Liens in Canada*, 7th edition (Toronto, ON: Carswell, 2009), the rationale underlying the retention of holdback funds is discussed, at pages 4-3 to 4-4:

Construction projects tend to be pyramidal in structure, with an owner at the apex and contractors, subcontractors, and those claiming under them in descending degree of privity of contract forming the base of the pyramid. ...

Brook Construction (2007) Inc. v. Blackwood Contractors Ltd.

Using the Newfoundland and Labrador *Mechanics' Lien Act* as an example, section 12(1) provides that "the person primarily liable" under any type of contract under which liens may arise must, as the work progresses, retain for a period of 30 days after the completion or abandonment of such work, 10 per cent of the value of the work, service, or materials actually done, placed, or furnished. Therefore, the holdback must be retained by the person primarily liable on each contract, whether that person is an owner, contractor, or subcontractor, for the benefit of those below that person on the pyramid.

93 In this case, the Crown concedes that holdback funds were retained in a manner consistent with the requirements of the *Mechanics' Lien Act*. While counsel for the Crown submits that the holdback was the result of a contractual rather than a statutory obligation, the fact of the holdback is consistent with the public policy purpose underlying the *Mechanics' Lien Act*.

94 In assessing whether the Crown has a statutory obligation regarding the holdback funds, two questions must be considered; that is, (1) what effect, if any, flows from section 24(2) of the *Proceedings Against the Crown Act*, and (2) does the charge against the holdback funds permit an enforcement option separate from enforcement by means of a charge against the lands?

95 For convenience, I repeat the relevant parts of section 24 of the *Proceedings Against the Crown Act*:

- (1) No enforcement proceeding, execution, attachment proceeding or similar process shall be issued against the Crown.
- (2) Notwithstanding subsection (1), a garnishment, attachment, or similar process that is otherwise lawful may issue against the Crown for the payment of money owing or accruing as remuneration payable by the Crown for goods or services.

96 The legislative intention is that this provision will apply generally to claims against the Crown, binding the Crown in any setting in which it arises. In this case the holdback funds constitute money owing or accruing as remuneration payable by the Crown for goods or services as referenced in subsection (2). As discussed in *Canadian Industrial Gas & Oil Ltd.*, section 12 of the *Interpretation Act*, specifying that a statute must expressly state that the Crown is bound, must be read subject to the operation of section 24(2) of the *Proceedings Against the Crown Act*. The holdback funds mandated by the *Mechanics' Lien Act* and intended for the payment of money owing by the Crown, would fall within the scope of section 24(2).

97 This leads to the final question which is whether the *Mechanics' Lien Act* contemplates a charge on the holdback funds in the absence of a lien that would be enforceable against the property. The relevant provisions of the *Act* are sections 6(1), 12(1), 12(5) and 5(1). The general right to register a lien is set out in section 6(1):

Unless a person signs an express agreement to the contrary, where he or she does work upon or in respect of, or places or provides materials to be used in, the making, construction, erecting, fitting, altering, improving or repairing of land, a building, structure or works or the appurtenances to that land, building, structure or works for an owner, contractor or subcontractor, that person has, by doing that work or placing or providing those materials, a lien for the price of the work or materials upon the estate or interest of the owner in the land, building, structure or works and appurtenances and the land occupied or enjoyed, or upon or in respect of which the work is done, or upon which the materials are placed or provided to be used, limited, however, in amount to the sum due to the person entitled to the lien and to the sum owing, except as provided here, by the owner.

(Emphasis added.)

98 Section 12(1) specifies the requirement for holdback funds:

In all cases, the person primarily liable upon a contract under and by virtue of which a lien may arise shall, as the work is done or the materials are provided under the contract, retain for a period of 30 days after the completion or abandonment of the work done or to be done under the contract 10% of the value of the work and materials actually done, placed or provided, as referred to in section 6, irrespective of whether the contract or subcontract provides for partial payment or payment on completion of the work, and the value

shall be calculated, upon evidence given in that regard, on the basis of the contract price or, where there is no specific contract price, on the basis of the actual value of the work or materials.

(Emphasis added.)

99 Section 12(5) of the *Act* provides for a charge upon the holdback funds:

Where there is a lien under section 6, the lien is a charge upon the amount directed to be retained by this section in favour of lien claimants whose liens are derived under persons to whom the money required to be retained are respectively payable and where there is no lien on the land by virtue of section 5, a claim for work done or materials placed or furnished is a charge upon the amount directed to be retained by this section.

(Emphasis added.)

100 Section 5(1) of the *Act* provides for an exception to the attachment of a lien:

Except for the purpose of section 12, the lien given by subsection 6(1) does not attach to a public street, road or highway or to a work or improvement done on, in or to a public street, road or highway.

101 I begin with section 5(1) of the *Mechanics' Lien Act* which specifies a particular circumstance involving Crown property, when a lien will not attach. It may be that this exception for public streets, roads and highways results from the difficulty in describing the property for purposes of attaching a lien to this type of work. I note that the provision applies to works undertaken by the Province, that is, the Crown, as well as those that may be undertaken by municipalities. If the provision was intended to be limited to the latter, specific language would have been used to achieve that purpose. (See, for example, *P.T. Construction Ltd., Re* (1995), 123 Nfld. & P.E.I.R. 300 (NLTD).)

102 It is also noteworthy that the section 5(1) exception, while precluding a lien attaching to the property, nonetheless permits a charge upon the holdback funds. That is, work on public streets, roads and highways undertaken by the Provincial Crown would be subject to the section 12(5) charge upon the holdback funds. This exception has implications for the interpretation of the *Mechanics' Lien Act* in respect of other Crown-owned property.

103 As discussed above, statutes will be interpreted so as to permit them to operate harmoniously. A second relevant principle of statutory interpretation is discussed in Sullivan, *Sullivan on the Construction of Statutes*, fifth edition (Markham, ON: LexisNexis, 2008), at page 244:

... As explained by Noel, J.A. in *Canada (Canadian Private Copying Collective) v. Canadian Storage Media Alliance*, [2005] F.C.J. No. 2115 dealing with a series of express exceptions, "if a statute specifies one exception (or more) to a general rule, other exceptions are not to be read in. The rationale is that the legislator has turned its mind to the issue and provided for the exemptions which were intended."

104 In this case, section 5(1) of the *Mechanics' Lien Act* deals with a specific exception for a particular type of work on Crown property; that is, the legislation provides for the situation when a lien against Crown property under section 6(1) is precluded, but a charge upon the holdback funds is permitted. If the Crown were not bound in any way by the *Mechanics' Lien Act*, there would be no need for this exception. It follows, by inference, that a lien may attach in respect of works on Crown property other than roads and highways. However, the manner in which a lien may be enforced in respect of work done on Crown property is limited by the *Proceedings Against the Crown Act*.

105 Applying sections 16 and 20 of the *Proceedings Against the Crown Act*, a lien under the *Mechanics' Lien Act* could not be enforced as against the property. Encumbering or sale of the property is not an option. To enforce the lien, it would be necessary to look to section 12(5) which provides that "[w]here there is a lien under section 6, the lien is a charge upon the amount directed to be retained by this section in favour of lien claimants". The net effect is that the person having done work or provided materials in respect of erecting a building on Crown-owned lands has a lien for the price of the work and materials, but the sole enforcement process available under the *Mechanics' Lien Act* would be a charge upon the holdback funds. This interpretation allows the *Mechanics' Lien Act*, the *Proceedings Against the Crown Act* and the *Interpretation Act* to operate fully and harmoniously.

106 In this case, Blackwood registered a claim for lien specifying the materials and work claimed, identifying the property where the work was done, and claiming that the lien is a charge upon the holdback funds with respect to the work on that property. Assuming that the work was undertaken on Crown property and that the lien was compliant with the provisions of the *Mechanics Lien Act*, Blackwood, while precluded from enforcing the lien by action affecting the property, would have a charge upon the holdback funds.

Summary

107 I would grant leave to appeal. While it would have been preferable to have a proper factual foundation, the interpretation of the *Mechanics Lien Act* in respect of work done on Crown property for purposes of this appeal is a question of law which it is appropriate to address here.

108 Based on the interpretation of the *Mechanics Lien Act*, the *Proceedings Against the Crown Act* and the *Interpretation Act*, a lien in respect of work done on Crown property, while not enforceable as against the property, is a charge upon the holdback funds mandated by the *Mechanics Lien Act*.

109 Accordingly, I would dismiss Brook's appeal. I would remit the matter to the Trial Division for adjudication on the facts. I would award costs on a party-and-party basis to Blackwood as against Brook. EMCO and the Crown should bear their own costs.

B.G. WELSH J.A.

TAB 6

Nicolson v. Trozzo

Saskatchewan Judgments

Saskatchewan Court of Queen's Bench

Judicial Centre of Swift Current

L.M. Schwann J.

June 19, 2014.

Docket: Q.B. 1 of 2014

[2014] S.J. No. 347 | 2014 SKQB 182 | [2014] 9 W.W.R. 604 | 2014 CarswellSask 375 | 241 A.C.W.S. (3d) 981 | 448 Sask. R. 296

Between Steven Boyd Nicolson, Laurie, Marie Richardson, Bradley Thomas Richardson and Kimberley Marie Nicolson, Applicants, and Loretta Trozzo, Respondent

(48 paras.)

Case Summary

Real property law — Registration of documents — Setting aside — Application by four family members for order discharging respondent's registered interest allowed — Patriarch passed away intestate in 2012, owning six parcels of land with surface rights leased to oil and gas companies — Respondent was his common law spouse of 24 years — Applicants were his children and grandchildren — Parties agreed applicants would own parcels with respondent receiving compensation from surface right leases for her lifetime — Respondent's registration of her interest against titles was discharged — Respondent's interest was not reservation or assignment of rents and thus did not constitute registrable interest in lands.

Application by Steven, Laurie, Bradley, and Kimberley, for an order discharging the interest registered in favour of Loretta discharged from their respective titles. Boyd owned six parcels of land at the time of his passing in 2012. He was survived by his children, Steven and Laurie and his granddaughter Kimberley. The respondent, Loretta, was Boyd's common-law spouse of 24 years. The lands at issue were located in an oil and gas producing territory. Boyd entered several surface lease or rights of way agreements in relation to well sites located on the lands. Boyd died intestate. Loretta, Steve, Laurie and Kimberley were entitled to share in the estate residue. They agreed to an administration and distribution agreement, and an ancillary surface lease agreement, that transferred lands to Steven, Laurie and Kimberley, with Loretta entitled to receive the lease compensation from the lands during her lifetime, subject to transfer and assignment restrictions. Loretta registered a miscellaneous interest against all of the surface parcels. The applicants sought discharge on the basis that Loretta's interest in the compensation was not a registrable interest in land.

HELD: Application allowed.

Loretta's interest could not be appropriately classified as an assignment or reservation of rents. Loretta did not reserve rent unto herself, as she was not an owner or successor in title. Any equitable interest Loretta had was resolved by the parties' agreement. The parties' agreement did not create an express or implicit assignment. Therefore, Loretta's interest in the compensation payable under the administration and distribution agreement derived from the various surface rights and lease agreements, and was not an interest in land that supported the

registration of a miscellaneous interest against the applicants' surface parcels. An order was issued directing the discharge of Loretta's interests from the applicants' respective titles.

Statutes, Regulations and Rules Cited:

Family Property Act, S.S. 1997, c. F-6.3, s. 31, s. 43

Intestate Succession Act, 1996, S.S. 1996, c. I-13.1,

Land Titles Act, R.S.S. 1978, c. L-5,

Land Titles Act, 2000, S.S. 2000, c. L-5.1, s. 2(1)(c), s. 2(1) (s), s. 2(1)(u), s. 50, s. 50(1)(c)

Land Titles Regulations, 2001, R.R.S.C. 1985, c. L-5.1, Reg 1, s. 36(2)(h)

Counsel

Andrea Argue, for the applicants.

Murray Walter, Q.C., for the respondent.

JUDGMENT

L.M. SCHWANN J.

1 This application concerns the propriety of an interest registered in favour of Loretta Trozzo ("Loretta") against several sections of land currently owned by Steven Boyd Nicolson ("Steven"), Laurie Marie Richardson ("Laurie") and Kimberley Marie Nicolson ("Kimberley") (collectively "the applicants"). Essentially, the applicants seek to have interest register No. 119479089 discharged from their respective titles. Loretta opposes their application.

BACKGROUND

2 Boyd Nicolson was the registered owner of the following lands located in southwest Saskatchewan:

NE 14-10-19-W3, Extension 0, Surface Parcel #141079114

NE 23-10-19-W3, Extension 0, Surface Parcel #141074748

SE 23-10-19-W3, Extension 0, Surface Parcel #141079361

SW 24-10-19-W3, Extension 0, Surface Parcel #141079406

NW 24-10-19-W3, Extension 0, Surface Parcel #141079417

SW 25-10-19-W3, Extension 0, Surface Parcel #141079439.
(the "lands")

3 Boyd died on March 22, 2012. He was survived by his children, Steven and Laurie, and his granddaughter, Kimberley. He was also survived by Loretta, his common law spouse of 24 years.

4 The land in question is located in oil and gas producing territory of Saskatchewan. Over the course of his lifetime, Boyd had entered into a number of surface lease or rights of way agreements in relation to the petroleum and

natural gas wellsites located on his lands which had generated a source of compensation for Boyd as lessor. The surface lease holders had all registered surface lease interests against the lands prior to Boyd's passing.

5 Boyd died intestate in 2012. Loretta, Steve, Laurie and Kimberley are the only beneficiaries entitled to share in the residue of his estate. For purposes of proceeding with the administration of his estate and distributing estate assets, the beneficiaries agreed to an arrangement documented in an Administration and Distribution Agreement dated November 21, 2012 (the "A&D Agreement").

6 Pursuant to its terms, the parties agreed as follows:

- * Steven would apply to be administrator of the estate;
- * Upon receiving letters of administration for the estate, Steven would transfer and distribute the estate assets. With regard to the lands:
 - > Steven was to receive the NE 11-10-19-W3; Section 14-10-19-W3; E 1/2 23-10-19-W3; SW 24-10-19-W3;
 - > Laurie was to receive the W 24-10-19-W3; and
 - > Kimberley was to receive the SW 25-10-19-W3;
- * For as long as she should live, Loretta was to receive all compensation payable pursuant to the surface leases in relation to the lands;
- * On Loretta's death, the land owner upon whose land the surface lease or any portion thereof was situated would become entitled to the annual surface lease compensation.
- * Loretta was prohibited from assigning, gifting, transferring or conveying her interest in the surface lease compensation.

7 Provisions of the A&D Agreement pertinent to the within application are the following:

3.01 Lands

- (a) "Steve's Land" shall be transferred into the name of Steve and/or his nominee. "Laurie's Land" shall be transferred into the name of Laurie and/or her nominee. "Kimberley's Land" shall be transferred into the name of Kimberley and/or her nominee;
- (b) Notwithstanding 3.01(a) above, for so long as Loretta is living, she shall be entitled to all compensation within the area of the Surface Leases. Loretta shall claim all compensation she receives as from the Surface Leases as her personal income. Any compensation received that is not pursuant to the Surface Leases, including but not limited to, payment for damage or crop loss to the Landowner(s)' Lands outside of the Surface Leases shall be payable to the Landowner(s). The Landowner(s) is responsible for [sic] report such income as his/her personal income;
- (c) The parties agree that upon the death of Loretta, the Landowner upon whose Land the Surface Leases, or any portion thereof are situated, shall receive the annual compensation for those Surface Leases. Loretta is at all times prohibited from assigning, gifting, devising or in any other way transferring any interest, or part thereof, that she has in the Surface Leases to a third party;

...

[emphasis added]

8 The beneficiaries also entered into a separate Surface Lease Agreement dated November 21, 2012. This agreement was attached to and forms part of the A&D Agreement. The purpose of this agreement, as expressed in the recital clause, was to establish "who is rightfully entitled to compensation under the Leases". Of significance, none of the surface lessees were made a party to this agreement and there are no provisions therein binding upon

those companies. However, for reasons not fully explained, two of the surface lessees consented to the terms of the Surface Lease Agreement under signature of their "landman" on the last page of the agreement.

9 In many respects, the Surface Lease Agreement parallels the broader A&D Agreement. For instance, clauses 1.01 and 1.02 provide:

1.01 Compensation during Loretta's life

1.01 Notwithstanding that titles to the aforementioned lands will be or are in the names of the Landowner, and that the Landowner is or will become the registered owners thereof, it is understood and agreed between the parties hereto that for so long as Loretta is alive and the Leases remain in force and effect, Loretta shall be entitled to all payments paid or payable under the Leases in regard to compensation within the area of the Leases.

1.02 During her lifetime, payments in regard to compensation made pursuant to 1.01 above shall be payable to Loretta and Loretta shall claim same as her personal income for so long as she receives such payment;

...

1.04 Loretta is prohibited from assigning, devising or any other way transferring her interest in the compensation from the Leases as described in 1.01 above, to any third party. Upon Loretta's death or upon waiving such interest, any interest she holds to compensation in the Leases shall revert to the Landowner;

10 Clause 3.01 of this agreement appears to make Loretta responsible for renegotiating compensation payable under the surface leases.

3.01 Steve shall co-operate with Loretta in renegotiation of the annual compensation under the Leases including under any applicable legislation and Loretta shall be entitled to any annual compensation obtained until her death.

11 The affidavit of Steven Nicolson sworn April 1, 2014 attaches what he refers to as the current compensation schedule for fifteen out of the seventeen surface leases or rights of way agreements. Six of the fifteen schedules consist of letters dated in 2011. They all pre-date Boyd's death and all are directed to Boyd as the owner of the surface parcel.

12 Out of the remaining nine schedules, one is addressed to Loretta alone and the other eight are addressed to Loretta in combination with either Steven, Laurie or Kimberley. All eight letters or schedules are dated May 27, 2013 and all contain the following paragraph:

KNOWN ALL MEN BY THESE PRESENTS THAT I/(We) (each of Steven, Laurie, Kimberley), in the province of Saskatchewan having an interest in and to certain *Saskatchewan Surface Leases* in which HUSKY OIL OPERATIONS LIMITED is named Lessee with respect to certain lands in the province of Saskatchewan, namely those leases list [sic] above.

Hereby direct **Husky Oil Operations Limited** to pay ALL compensation as follows:

100% to:

Loretta Trozzo, Box 49, Simmie, SK S0N 2N0

13 Transfer of title to the lands into the names of Steven, Laurie and Kimberley in accordance with the terms of the A&D Agreement occurred on June 13, 2013. On September 26, 2013 Loretta registered a miscellaneous interest described as interest register #119479089 against all of the surface parcels owned by either Steven, Laurie or Kimberley. The stated interest is as follows: "right to receive surface lease compensation during L. Trozzo's lifetime as per agreement dated November 21, 2012 between Loretta Trozzo and S. Nicolson, and L. Richardson and K. Nicolson."

14 The applicants apply to have Loretta's interest discharged from title. They had initially advanced the proposition that Loretta had improperly registered her interest against the surface parcels instead of the surface lease interests.

The applicants subsequently modified their application by arguing that Loretta does not have a registrable interest in land capable of supporting the miscellaneous interest registered against the surface parcels.

ISSUE

15 Is Loretta's interest in the compensation payable under the A&D Agreement derived from the various surface rights and lease agreements an interest in land that can support the registration of a miscellaneous interest against the surface parcel?

POSITION OF THE PARTIES

16 The applicants assert that Loretta's interest is not an interest in land. They argue that Loretta's interest is neither a reservation of rents or an assignment of rents but is merely a personal covenant ensuring Loretta receives the rentals accruing due to the owner of the lands pursuant to the various surface lease or rights of way agreements during her lifetime.

17 Loretta contends that she had an equitable interest in the lands at the time of Boyd's death arising from her rights at law as his common law spouse. These rights, Loretta argues, were subsequently reflected in the A&D Agreement wherein she reserved unto herself an interest in the accruing rent. Furthermore, it is Loretta's position that the language of the two agreements clearly evinces an intention on the part of the parties to formally assign the surface lease rentals to her. In any event, Loretta contends the fact the oil companies gave their written consent to the terms of the Surface Lease Agreement combined with the language of the subsequent rent compensation documents is sufficient indicia of an intended assignment of rent.

ANALYSIS

18 The provisions of *The Land Titles Act, 2000*, S.S. 2000, c. L-5.1 which bear upon this application are as follows:

2(1) In this Act:

- (s) "interest" means any right, interest or estate, whether legal or equitable, in, over or under land recognized at law that is less than title

...

(u) "land" means:

- (i) the surface;
- (ii) mines and minerals; and
- (iii) unless the context requires otherwise, the condominium units and common property included in a condominium plan;

...

50(1) An application for registration of an interest may be submitted only if the interest, at the time of registration, is:

- (a) recognized at law as an interest in land;
- (b) registrable pursuant to any other Act or any Act of the Parliament of Canada; or
- (c) designated as a registrable interest in the regulations.

(2) An interest is registrable against a title or a registered interest on which the interest is based.

(3) Subject to subsection (3.1), an interest in another interest may be registered only against that other interest and not against a title.

- (3.1) If an interest that supports another interest has not been registered, the interest in the supporting interest may be registered against the title.
- (4) Where an interest that supports another interest is exhausted or when the registration of that interest expires, lapses or is otherwise discharged from the land titles registry in accordance with this Act, any interest registered against the supporting interest is to be removed from the land titles registry.
- (5) No transfer may be registered as an interest.

19 For purposes of ss. 50(1)(c), an assignment of rents has been designated as registrable interest pursuant to *The Land Titles Regulations, 2001*, R.R.S., c. L-5.1, Reg 1, s. 36(2)(h):

36 (2) For the purposes of clause 50(1)(c) of the Act, the following are designated as registrable interests:

.....

(h) an assignment of rents;

20 It is settled law that a surface lease is in itself a registrable interest in land (*Garland v. Jones*, (1993) 111 Sask. R. 134, [1993] 7 W.W.R. 102 (Sask. Q.B.)). It is also clear that in some instances, a person's interest in compensation payable under a surface lease constitutes a registrable interest in land. (*Garland*, at para. 19; *Kerr v. PanCanadian Petroleum Ltd.*, 2004 SKQB 404, 253 Sask. R. 262 at para. 33 and *Swenson v. Swenson*, 2006 SKQB 438, 287 Sask. R. 179)

21 Generally speaking, circumstances when accruing rent constitutes a registrable interest in land stems from two broad bases: a reservation of rentals or an assignment of rent. Dawson J. in *Swenson* described these bases in this way:

40 The Alberta Court of Appeal in *Mychaluk*, *supra*, indicates it is arguable that there is a difference between an assignment of rents (as in the case before me and as in *Canada Trustco Mortgage Co. v. Skortez*, *supra*, [1983] A.J. No. 1023; *Northland Bank v. Van de Geer et al.*, *supra*; *Pegg v. Pegg*, [1992] A.J. No. 34, *supra* and *Webster v. Brown Estate*, [2004] A.J. No. 477, *supra*) and a reservation of rents (as in *Garland v. Jones*, *supra*; *Kerr v. PanCanadian*, *supra*; and *Canadian Crude Separators Inc. v. Mychaluk*, *supra*). That distinction may be relevant having regard to the 1995 amendment to the Saskatchewan *Land Titles Act*.

22 This conceptual distinction was similarly highlighted in *Canadian Crude Separators Inc. v. Mychaluk*, 1998 ABCA 62, 212 A.R. 126 where (on leave to appeal) the Court of Appeal said:

11 As I have already noted, McBain, J. relied upon the decision of this Court in the *Northland Bank* case, which specifically approved the notion that a general assignment of rents does not create an interest in land. What we are dealing with in this case, at least in the first instance, is not an assignment of rents but rather a reservation of rents by Mychaluk when he sold the land to the Applicants. Any interest that the Applicants may have acquired can be no greater than the interest that Mychaluk reserved when he sold to them. It is that interest, if any, that was acquired by his wife and later by his sons, the Applicants.

23 Based on the construct set out above, Loretta may sustain the registration of her interest so long as the interest claimed can be appropriately classified as either a reservation of rents or an assignment of rents. If it is neither, she does not have an interest in land. The question in this instance is whether Loretta's claim falls into one of these two categories.

a) Was there a reservation of rents?

24 While it is unclear whether a reservation of rents creates an interest in land in Alberta (*Canadian Crude Separators Inc.*, *supra*), Saskatchewan law supports the opposite result. *Garland*, *supra*, has established that, at least in the context of the repealed *Land Titles Act*, R.S.S. 1978, c. L-5, a reservation of rents is sufficient to create a legal interest in land. Gunn J., for this Court, stated at paras. 14-19:

[14] Pursuant to s. 150 of the Act a caveat can only protect an interest in land. Contractual obligations and personal rights are not interests capable of being protected by caveat. See *Bensette and Campbell v. Reece*, [1973] 2 W.W.R. 497 (Sask. C.A.) and *Elfenbaum v. Elfenbaum*, [1984] 3 W.W.R. 412 (Sask Q.B.)

[15] What is "an interest in land"? Mathers C.J.K.B., in *Thompson v. Yockney* (1912), 3 W.W.R. 591 (Man. K.B.); affd. (1913) 23 Man. R. 571; affd. (1915) 50 S.C.R. 1 at p. 593 said:

According to the principles of the Torrens system, any right conferred by contract relating to land against the registered proprietor is a sufficient "interest" to support a caveat: Hogg, 1037.

[16] Williams C.J.K.B. in *Rystepheniuk v. Prosken* (1951), 3 W.W.R. (N.S.) 76 (Man. K.B.) at p. 83 held that "... the word 'interest' as used in sec. 136, must be given its widest interpretation".

[17] Section 136 of *The Real Property Act*, R.S.M. 1940, c. 178 is comparable to s. 150 of our Act.

[18] Petroleum and natural gas leases have received protection by caveat in a number of cases. See *Pan American Petroleum Corp. v. Potapchuk* (1964), 46 W.W.R. 237 (Alta. S.C.); *Canadian Superior Oil of California Limited v. Cugnet* (1954), 12 W.W.R. (N.S.) 174 (Sask. Q.B.); and *Imperial Oil Limited v. Conroy and Berthiaume* (1954), 12 W.W.R. (N.S.) 569 (Alta. S.C.)

[19] Additionally, rent accruing due is an incorporeal hereditament. See *Kennedy v. MacDonell* (1901), 1 O.L.R. 250 (C.A.); *Re Edmonton Law Stationers, Ltd. and Canadian Bank of Commerce*, [1919] 3 W.W.R. 406, affirming [1919] 2 W.W.R. 869 (C.A.). This falls squarely within the definition of land in the Act.

25 Similarly, in *Kerr, supra*, at para. 33 thereof, Chicoine J. said:

33 Firstly, the reservation of surface lease rentals to the lessor does create an interest in land. In *The Land Titles Act*, 2000, S.S. 2000, c. L-5.1, "interest" is defined as any right, interest or estate, whether legal or equitable, in, over or under land recognized at law that is less than title. In this jurisdiction, it is well settled that rent accruing due is an interest which can be protected by caveat. See *Garland v. Jones*, [1993] 7 W.W.R. 102; (1993), 111 Sask.R. 134 (Sask. Q.B.).

(See also: *Swenson, supra*, at paras. 42 and 52).

26 It is also clear that as a matter of law, and as noted in *Garland, supra*, rentals payable constitute incorporeal hereditaments which are considered to be rights in the land. (Victor Di Castri, *Registration of Title to Land*, looseleaf, vol. 2 (Toronto: Carswell, 1987) at p. 14-39).

27 Thus, while a reservation of rent is a registrable interest in land as a matter of law, the issue in this case boils down to whether, as a matter of fact, Loretta reserved rent unto herself.

28 When one examines Loretta's interest on the facts and documents, it is evident that it does not amount to a reservation *per se*. Simply put, Loretta was not the owner of any of the lands at the time the A&D Agreement or Surface Lease Agreements were executed on November 21, 2012. She was not, and never has been, the lessor in relation to the surface rights interests or any of the rights of way agreements. Nor, finally, is she the successor in title to the previous owner who reserved the surface leases unto himself. As such, it cannot be said that she reserved the proceeds of the surface lease unto herself.

29 Loretta posits that she 1) had an equitable interest in the lands as Boyd's common law spouse by virtue of her rights under legislation, and 2) the A&D Agreement did in fact reserve the rentals unto herself. Loretta provided no case authority in support of her primary position.

30 While it is true to say that at the time of Boyd's death Loretta had a right to pursue an action or claim under *The Intestate Succession Act*, 1996, S.S. 1996, c. I-13.1 or *The Family Property Act*, S.S. 1997, c. F-6.3, there is nothing in either statute to suggest that this amounts to anything more than a right at law to advance a claim grounded in statute. In the case of *The Intestate Succession Act*, Loretta has an entitlement or at best a charge over the value of the estate. Under *The Family Property Act*, the property of a deceased spouse, whether or not it has vested in the personal representative, is deemed to be family property that is subject to *The Family Property Act*.

There is nothing in *The Family Property Act* which conveys or vests title to family property into one spouse on the death of the other spouse. (ss. 31 and 43) In any event, even if Loretta had an equitable interest in land which may have positioned her to reserve rentals unto herself, she executed the A&D Agreement for purposes of resolving her interests in the lands and rentals and her rights are defined by the terms of that agreement. Those rights are discussed more fully below.

b) Was there an assignment of rent?

31 At common law, an assignment of rents does not create an interest in land. (*Northland Bank v. Van de Geer*, (1986) 75 A.R. 201, 34 D.L.R. (4th) 156 (Alta. C.A.); *Swenson, supra*). The common law has, however, been supplanted by ss. 36(2)(h) of *The Land Titles Act, 2000* which expressly provides that for purposes of ss. 50(1)(c) of *The Land Titles Act, 2000*, an assignment of rents is deemed and designated to be a registrable interest in land.

32 The word "assignment" is defined in ss. 2(1)(c) of *The Land Titles Act, 2000* as a "conveyance of an interest, whether for value or otherwise". In turn "interest" is defined to mean "any right, interest, or estate, whether legal or equitable, in, over or under land recognized at law that is less than title". (ss. 2(1)(s))

33 The intention of the parties, as reflected by the wording of the A&D Agreement, is therefore relevant in determining whether the parties created an express assignment of rents or an interest in the land. With regard to equitable assignments of choses in action, no particular form is required to constitute a valid equitable assignment. An agreement amounting to an equitable assignment may be express and written, or it may be made out from a course of dealing between the parties. All that is required is the clear intention of the assignor that the contractual right shall become the property of the assignee. (*Re Pantages Estate v. Bank of Nova Scotia*, [1977] 1 W.W.R. 282, [1976] B.C.J. No. 1129 (QL) (B.C.S.C.), at p. 284)

34 As a preliminary observation, it should be noted that at the time the A&D Agreement was signed, none of the applicants were owners of the lands, or more to the point, none were successors to Boyd as lessor under the various surface leases. In this critical respect, they were incapable of granting an assignment at the point in time when they signed the agreement.

35 Turning to the language employed in the agreements, I do not find that it demonstrates an intention or future intention to assign the accruing rentals to Loretta or to create an interest on her part in the lands. Neither agreement employs the sort of explicit language one would expect to find in an assignment. Noticeably absent, for instance, are the words "assign" or "assignment". In contrast, while clause 3.01(a) contemplates the "transfer" of title to the lands to the applicants, the language of clause 3.01(c) does not contain parallel wording as it speaks to more of an entitlement to compensation rather than a transfer or assignment of interest.

36 Neither can it be said that the agreements, read as a whole, constitute an implicit assignment of surface lease rentals. If anything, the balance of both agreements support the opposite view, i.e. that the parties simply intended to create a personal covenant amongst the signatories conferring on Loretta a life interest in the accruing surface lease rentals. This conclusion is buttressed by the following provisions in relation to Loretta's rights:

- * clause 3.01(b) - Loretta's right is a limited life interest;
- * clause 3.01(c) - upon Loretta's death the land owner upon whose land the surface lease is situate becomes entitled to receive the surface lease compensation;
- * clause 3.01(c) - Loretta is expressly prohibited from assigning, gifting, devising or in any other way transferring her interest in the surface rights compensation to a third party.

Viewed as a whole, the chosen wording and conceptual basis upon which her rights were formulated falls well short of conferring an explicit or even implicit assignment of the surface lease rentals.

37 The parties' respective intention on each of these key points was largely repeated in the Surface Lease Agreement. If the parties intended to spell out an assignment or reservation arrangement, one would have thought

this more specific agreement pertaining to the leases would have done so. It did not. Rather, it echoes and reinforces the legal arrangement established in the broader A&D Agreement.

38 Having regard to the wording chosen by the parties, I am left with the inescapable conclusion that Loretta's right to the accruing rentals from the surface leases does not amount to an assignment of rents at law, and furthermore that the parties did not intend her rights under the agreement to be an interest in the lands. At best, Loretta has a chose action, enforceable in contract against the signatories of the agreement as a personal covenant. (*Registration of Title to Land, supra*, p. 14-42)

39 The only remaining issue is whether the rent increase or compensation schedules signed by the oil companies constitutes an assignment of accruing rentals, or if it amounts to a mere direction to pay.

40 As previously noted, all but two of the 17 surface leases or rights of way agreements have a corresponding document or schedule which speaks to the amount of compensation payable in relation to that particular lease or right of way agreement. Six of the 15 are dated in 2011. They pre-date Boyd's death and are directed to Boyd as the owner of the surface parcel. The remaining nine documents are either addressed to Loretta alone, or Loretta and in combination with either Steven, Laurie or Kimberley.

41 Absent clear wording to the contrary, a direction to pay does not constitute an assignment. (*Colonial Bank v. Butech International Chemical Corp.*, (1986) 7 B.C.L.R. (2d) 381, [1986] B.C.J. No. 882 (QL) (B.C.S.C.); *Re Pantages, supra*). In certain circumstances, a direction to pay has been held to constitute an equitable assignment (*Colonial Bank*, para. 23). However, the words in the direction to pay must be clear and unambiguous in recording the fact of the assignment and "the construction of that document in the light of all the surrounding circumstances." (*Pantages*, paras. 9 and 16) This threshold is not met if the words of the document leave in doubt whether there has been an assignment, or if the words are capable of a construction other than that there has been an assignment. (*Colonial Bank*, paras. 23-25)

42 To begin with, and on a concrete note, the documents specifically addressed to Boyd in 2011 all pre-date his death. They do not constitute an assignment of rentals. Nor can it be said that they amount to some form of assignment by one of the applicants as assignor since at that point in time (i.e. 2011) title to the lands was registered in Boyd's name, not the applicants.

43 Neither can the document addressed to Loretta alone constitute an assignment. None of the applicants are mentioned and none of their signatures are affixed.

44 Of the remaining eight documents addressed to Loretta together with one of the applicants, it is of significance that all bear the date May 27, 2013. While the final paragraph specifically refers to Steven, Laurie or Kimberley (as the case may be) as "having an interest in and to certain Saskatchewan Surface Leases", it is difficult to see how this is so since title to the land in question was not registered into their respective names until several weeks later on June 13, 2013. In other words, on May 27, 2013 when the documents were issued, neither Steven, Laurie or Kimberley had a legal interest in the land in question. In these circumstances, it's hard to fathom how any of the applicants were in a position to legally assign the accruing rents to Loretta since they were neither title holders nor the successor to Boyd as lessor under the surface rights arrangements.

45 Even if I am wrong in my assessment of the facts and the rights which flow from them, the wording of the documents does not clearly and unambiguously create an assignment. To the contrary, the wording chosen (i.e. "direct Husky Oil to pay all compensation... to Loretta") suggests the parties intended the document to serve as a direction to pay, not an assignment of rent. There is nothing in the document to suggest the direction is irrevocable or for that matter that the document was intended to be anything more than a notice of rent increase with a direction to pay Loretta.

46 In summary, the wording of the compensation documents is not an express assignment of the rent, and in any

event, as noted above, the words are capable of a construction other than an assignment particularly when considered in light of the wording of the two agreements.

CONCLUSION

47 It follows from the foregoing that Loretta's right is not an interest in land which is capable of being registered against the surface titles. The application is therefore granted and an order will issue directing the Registrar of Titles to discharge the miscellaneous interest registered as interest register No. 119479089 against the titles to the land described in para. 2 above.

48 The applicants shall have a single set of costs from the respondent fixed at \$1,000.00.

L.M. SCHWANN J.

TAB 7

Colonial Bank v. Butec International Chemical Corp.

British Columbia Judgments

British Columbia Supreme Court

Vancouver, British Columbia

(In Chambers)

Macdonald J.

Heard: Oct 16 & 20, 1986

Judgment: Oct. 24, 1986

Vancouver Registry No. C855457

[1986] B.C.J. No. 882 | 7 B.C.L.R. (2d) 381 | 1 A.C.W.S. (3d) 367

Between The Colonial Bank, Plaintiff, and Butec International Chemical Corporation and Midland Energy Company, Inc., Defendants

(11 pp.)

T.A. Kowalchuk, Esq., counsel for the Plaintiff. R.R.E. DeFilippi, Esq., counsel for the Defendant, Butec International Chemical Corporation.

MACDONALD J.

1 Before the court are two Rule 18A motions for summary judgment on the issues in this litigation between the parties represented on this hearing, one brought by each of those parties. The defendant Midland Energy Company, Inc. (Midland) took no part in these proceedings.

2 In 1983, Midland agreed to sell certain coal leases in the State of Kentucky, U.S.A. to Butec (then known as Tay River Petroleum Ltd.). Butec was and is a junior resource company trading on the Vancouver Stock Exchange. As consideration for the leases, Butec agreed, subject to certain conditions precedent which were fulfilled, to (inter alia) pay \$45,000.00 (U.S.) and allot 125,000 of its shares to Midland.

3 On September 7, 1983, Midland, a U.S. corporation with its head office in the State of Missouri, borrowed \$100,000.00 (U.S.) from the plaintiff Bank. Midland signed the following documents at the request of the plaintiff on that day:

- a) a Collateral Demand Note payable 90 days after demand, or failing demand, on December 6th, 1983;
- b) a Collateral Pledge Agreement purporting to assign 125,000 shares of Butec to the plaintiff Bank;
- c) a blank stock transfer (or power of attorney to transfer) form; and

Colonial Bank v. Butec International Chemical Corp.

- d) a letter addressed to Butec's president requesting it to "please forward" the funds and the shares to the plaintiff Bank.

4 On that same day, the Bank wrote to Butec's president enclosing Midland's letter of request, referring to it as "a letter of instructions ... directing remittance of \$50,000.00 in U.S. Funds and 125,000 shares ... to our bank." The Bank requested that a copy of its letter be signed and returned as evidence of receipt of "the instructions". There was an additional \$5,000.00 (U.S.) to be paid under the agreement between Midland and Butec to Midland Investment Partners IV, another signatory to that document.

5 No mention was made in either Midland's letter of instructions or the Bank's letter enclosing same to the Collateral Pledge Agreement which Midland had executed in favour of the Bank. Nowhere in those letters does the word "assignment" appear. Butec never returned a signed copy of the Bank's letter as requested. Butec's then president no longer holds that office and could not be located in advance of this hearing. Butec's records are alleged to be in a state of disarray. None of its present officers and directors, including those associated with it in September, 1983 were aware of the Bank's letter.

6 The \$45,000.00 (U.S.) due to Midland under the agreement was paid to it on September 9, 1983. The Bank concedes that its letter of September 7, 1983 would not have reached Butec until after September 9th and it has abandoned its claim (originally for the whole \$50,000.00 (U.S.)) for those monies. However, the 125,000 shares were allotted to Midland on September 28, 1983 and the certificate (or certificates) representing the same delivered up by Butec's transfer agent, presumably to an authorized agent of Midland, on the following day.

Receipt of Notice:

7 The first issue on these applications is whether or not Butec received the Bank's letter of September 7, 1983 and enclosure. The Bank concedes that it must prove delivery of that notice prior to September 29, 1983 if it is to succeed in its claim against Butec for damages for non-delivery of the 125,000 shares to it. The Bank relies upon evidence that its letter was mailed, with a return address, and not returned. It also relies on a presumption of receipt in the ordinary course of the mail (see *Watts v. Vickers* (1917) 86 K.B.D. 177 (C. of A.) at pp.181 and 183).

8 While that presumption can be rebutted by effective evidence, the absence of a denial of receipt from Butec's former president, to whom the Bank's letter was addressed, makes it difficult for Butec to respond effectively. The authorities suggest that caution should be exercised in respect of a simple denial of receipt (see *In re Imperial Land Company of Marseilles* (1872) XV L. R. Equity Cases 18; and *Case Credit Corporation v. Stagman* [1972] 2 W.W.R. 508 (Sask. Dist. Ct.) at p.512.).

9 This is not England in 1916. We must consider the application of the presumption to international mail originating in a country other than Canada. Is the same presumption applied in the United States? If it should be applied in this situation, what is "the ordinary course of the mail" between Des Peres, Missouri where the Bank is located and Butec's office in Vancouver; is the 21-day interval sufficient? I advised counsel during the course of the hearing that I was not prepared to grant summary judgment on the issue of the receipt of notice by Butec. Argument proceeded on the remaining issues on the assumption that the Bank's letter of September 7, 1983 with its enclosure had been received by Butec before September 28, 1983.

Legal Effect of the Documents:

10 The second issue can best be stated by paraphrasing the first question on which Butec seeks summary judgment. Do the Collateral Pledge Agreement and "blank" stock transfer form constitute a valid assignment of Midland's right to be allotted and receive the 125,000 shares in Butec? I am against the defendant Butec on this issue.

11 The formal agreement between Midland and Butec was not executed by the latter until September 8, 1983, the day after Midland executed the Collateral Pledge Agreement and the blank stock transfer form. Clause 6 of that

Colonial Bank v. Butec International Chemical Corp.

agreement obliged Butec to pay the stipulated amount and the shares "on execution of this agreement". Thus Butec argues that on September 7, 1983 Midland had no contractual right to receive anything; the shares had not been issued; there was nothing to assign or pledge. Butec argues that the documents delivered to the Bank by Midland on September 7, 1983 are nothing more than a contract to grant a security interest in the shares when issued; that the Bank had an agreement with Midland which equity would enforce, but nothing that could bind Butec, even with proper notice.

12 Butec characterizes the Bank as acting in the capacity of Midland's agent to receive the share certificates issued in Midland's name, the receipt of which by the Bank would perfect its equitable mortgage thereon. It relies upon an analogy to the reasoning in *Bell v. London And North-Western Railway Company* (1852) 15 Beav. 548 at p. 653, where the following passage appears:

"If a creditor employ a person to collect the debts due to him, and inform the debtor that such person has authority to receive the debt due, this would not be an assignment of the debt to the agent, even though the agent should be a creditor of his principal; but the debtor might, with propriety and without risk, afterwards pay the debt to the creditor, or to any fresh agent he might appoint to receive it. If this were not so, the result would be that when once any person had authorised an agent to receive a debt, the debtor could never safely pay another agent, or even the creditor himself, without receiving proof that the creditor did not owe any money to the person whom he first had constituted his agent to receive it."

13 The Bank anticipated that argument and submitted that there was a clear intention on the face of the documents to give the Bank some interest in the shares by way of security, and at the very least, the right to receive possession of the certificates representing those shares directly from the issuer. Halsbury's, *Laws of England*, 4th. ed., Vol. 6, notes at p. 18 that a document directing payment to a third party may, having regard to the circumstances, constitute an equitable charge. Snell's *Principles of Equity*, 28th. ed., p. 77, states that "No particular form is required for a valid equitable assignment ... all that is needed is a sufficient expression of intention to assign ... the language is immaterial if the meaning is plain."

14 I have no doubt as to the intention of both Midland (at least at the time it executed the documents in question) and the Bank on September 7, 1983. The court is entitled to consider the "commercial context" in which the documents were executed and delivered as an aid to determining whether there was "a sufficient expression of intention to assign." (See *Re Kent and Sussex Sawmills Ltd.* [1946] 2 Ch. D. 638 at p. 640; *O'Neil & Co. v. Galbraith & Sons* (1914) VII W.W.R. 155 (B.C.S.C.) at p. 157; and *Re Pantages and Bank of Nova Scotia* [1977] 1 W.W.R. 282 (B.C.S.C.) at p. 286). Here, Midland intended to secure its loan from the Bank with, inter alia, a pledge of the shares to which it was entitled under its agreement with Butec.

15 The force of Butec's arguments that no "right to receive the shares existed on September 7, 1983" is weakened considerably by the fact that its agreement with Midland was dated as of May 3, 1983 and by strong evidence that there was a binding agreement between Midland and Butec long before the formal agreement was executed by Butec on September 8, 1983 (see the exhibits to the affidavit of T.A. Kowalchuk filed October 17, 1986). Finally, Midland had a right to have the shares issued to it. That right was an equitable chose in action enforceable by specific performance if necessary. That right was capable of transfer for valuable consideration. Being an equitable chose in action, no particular language need be used, nor any particular form employed. (See *Letts v. Inland Revenue Commissioners* [1956] 3 All E.R. 588 (Ch. Div.) at p. 591).

Adequacy of Notice:

16 The final issue, and the one which is determinative of these Rule 18A motions, is whether the two letters of September 7, 1983 mailed by the Bank to Butec's president (assuming timely receipt thereof) constitute proper notice of an "assignment" of the shares, or at least of the interest of the Bank therein.

17 I must confess that my initial reaction to the wording of those letters was that they were nothing more than a request, or to use the Bank's word, "instructions", as to where the money was to be paid and the shares delivered. They are equivalent, in my view, to a simple direction to pay. There is no suggestion that those instructions are

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irrevocable. There is no mention of any pledge, assignment or mortgage of the shares in favour of the Bank or of the loan transaction between Midland and the Bank. Only by inference from the fact that the Bank has forwarded Midland's "letter of instructions" rather than relying upon Midland to do so, can the September 7, 1983 letters be interpreted as notice to Butec of the Bank's "interest" in the shares.

18 Somewhat to my surprise, the Bank convinced me in the course of argument that, in England at least, a simple direction to pay without words of qualification may constitute sufficient notice of an assignee's interest to put the debtor on enquiry. Even in *Bell v. London And North-Western Railway* (supra), the view was expressed that the words, "You will oblige by passing the cheques that may become due on my contract ... to the National Provincial Bank", would have been an effective assignment and notice thereof.

19 Even in this jurisdiction (see *Re Pantages and Bank of Nova Scotia*, supra) a direction to pay has been held, on examination of all the surrounding circumstances, to constitute an equitable assignment. However, the defendant Butec relies on a decision of the Court of Appeal in England (*James Talcott, Ltd. v. John Lewis & Co. Ltd. et al* [1940] 3 All E.R. 592) which is cited in the most recent edition of Cheshire & Fifoot, *The Law of Contract* (10th ed., 1981, p. 465) as authority for the proposition that, while the form of notice depends upon the nature of the right assigned:

"the one essential in all cases is that the notice should be clear and unambiguous. It must expressly or implicitly record the fact of assignment, and must plainly indicate to the debtor that by virtue of the assignment the assignee is entitled to receive the money. If it merely indicates that on grounds of convenience payment should be made to a third party as agent of the creditor, the debtor is not liable if he pays the creditor direct."

20 The statements in the majority judgments in *James Talcott, Ltd. v. John Lewis & Co. Ltd. et al.* are even more pertinent to this case. At p. 595, MacKinnon, L.J. says:

"... Plainness of meaning is necessary in order that the debtor who has received a notice to pay a third party shall be rendered liable to pay the money over again if he disregards the notice. The language is immaterial if the meaning is plain, but that plain meaning must be that the debt and right to receive it have been transferred to the third party. It is not merely that I have made some arrangement by which I request another to pay this money to a third party as my agent."

Then at p. 599, DuParcq, L.J. sets out a test which I am prepared, in the absence of binding authority to the contrary, to adopt:

"As has been said - indeed it is obvious - the notice to pay the plaintiffs a debt is not necessarily a notice that the debt has been assigned to the plaintiffs. A notice to pay a debt to a third person may be given in words which show that there has been an assignment of the debt. It may be given in words which show that there has not been an assignment of the debt. It may be given in words which leave it in doubt whether or not there has been an assignment of the debt. If those words are in the first category, the plaintiffs succeed. If the words are in either of the other categories, the plaintiffs fail. I say either of the other categories, because it is not enough that the notice should be capable of being understood to mean that the debt is assigned. It must be plain and unambiguous, and not reasonably capable, when read by an intelligent business man, of a contrary construction."

21 I consider the September 7th, 1983 letters from Midland and the Bank to Butec's president to be ambiguous on their face, even in the context of a banker and customer relationship. They are capable of a construction other than that Butec's obligation to deliver the shares to Midland has been assigned to the Bank. In my view, they are not sufficient to cause Butec to pay twice.

The Proper Order:

22 The Bank submitted that even if one or both of the second or final issues was decided against it, the result of these applications should not be a dismissal of its action against Butec. It maintains that it should retain the right to

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go to trial, where it may be able to prove verbal dealings between Midland and Butec between September 7th and September 28th, 1986 which would alter the legal effect of the letters in question. I disagree.

23 The Bank chose to advance its application for summary judgment on the evidence now available to it. Butec merely responded with a like motion despite its inability to locate its former president who might be in a position to provide "effective evidence" to counter the presumption of receipt which has been assumed, for the purposes of these motions, to apply. Rule 18A motions are not designed merely to provide a plaintiff with an opportunity to test its case with impunity. The plaintiff elected to avail itself of the summary trial procedure and the defendant Butec responded in kind. Both parties elected to have their rights determined on the basis of the evidence now available.

24 The plaintiff's action against the defendant Butec is dismissed, with costs.

Macdonald J.

End of Document

TAB 8

Mr. Justice J.S. Fregeau

ENDORSEMENT

INTRODUCTION

[1] The applicant (“NWA 33” or the “First Nation”) seeks an interpleader order pursuant to r. 43.02(1) of the *Rules of Civil Procedure* ordering the First Nation to pay the amount of \$1,204,516.55 (the “Fund”) into Court.

[2] The First Nation further seeks an order pursuant to r. 43.04(1) establishing a procedure for the orderly distribution of the Fund among the respondents in accordance with their entitlements, as may be found by the Court.

[3] The Fund is held by the First Nation in relation to a construction project that is ongoing on lands reserved to the First Nation. The respondent, Razar Contracting Services Ltd. (“Razar”), was the original general contractor on the construction project. The First Nation seeks to pay the Fund into Court and for a claims process to be established to ensure the orderly and equitable distribution of the Fund.

[4] The request for an interpleader order is opposed by the respondents Pro-Gen (Thunder Bay) Inc. (“Pro-Gen”) and Canada Revenue Agency (“CRA”), two creditors of the Razar. Pro-Gen and CRA have asserted priority claims to the Fund and seek orders directing payment of their claims from the Fund prior to it being paid into Court.

[5] As a result of the positions taken by Pro-Gen and CRA, the First Nation also seeks an order determining its obligation to disburse from the Fund, prior to the Funds being paid into Court, the sums of:

-
1. \$207,637.68 to Pro-Gen in response to the Pro-Gen Notice of Garnishment naming Razar as debtor and the First Nation as garnishee; and
 2. \$247,180.35, plus penalties and interest to the date of payment, claimed as owing by Razar to CRA in relation to unremitted payroll source deductions, in response to a Requirement to Pay (“RTP”) issued by CRA.

[6] The remaining respondents, comprised of various suppliers and subcontractors of Razar, all of whom claim amounts they submit remain unpaid and owing to them by Razar, oppose the priority claims of Pro-Gen and CRA. These respondents endorse the request for the payment of the Fund into Court and support an order for a reasonable claims process to be established by the Court with respect to the distribution of the Fund.

BACKGROUND

[7] On February 5, 2020, the First Nation contracted with Razar for the construction of the Angle Inlet Water System (the “Contract”) to provide safe drinking water to the residents of NWA 33 (the “Project”). Pursuant to the Contract, the First Nation was required to retain a 10% “statutory holdback” and a 2% “maintenance holdback” from progress payments owing to Razar.

[8] On May 18, 2022, the First Nation exercised its right under the contract and took the balance of the Contract work out of Razar’s hands due to uncorrected defaults by Razar. Pursuant to the terms of the Contract, if any part of the work is taken out of Razar’s hands, Razar’s right to any further payment under the contract is extinguished.

[9] As of May 18, 2022, the accrued 10% statutory holdback was \$1,003,768.80 and the accrued maintenance holdback was \$200,752.75. The Fund consists of a total of these two amounts, being \$1,204,516.55. The Project is ongoing and has not been deemed substantially complete.

[10] Starting in mid-2021, the Project Engineer, JR Cousins Consultants Ltd., began receiving written notices from various of Razar's suppliers and subcontractors who had not been paid by Razar. As of the hearing of this application, the amounts claimed in these notices were in the sum of \$1,913,038.14.

[11] Pro-Gen was a subcontractor on the Project. Pro-Gen commenced a claim against Razar in relation to amounts owing for work performed on the project and obtained a default judgment on July 26, 2022 (the "Judgment"). On September 8, 2022, Pro-Gen obtained a Notice of Garnishment in the amount of \$207,637.68 in relation to the Judgment and served it on the First Nation.

[12] On October 17, 2022, the First Nation was served with the CRA RTP, pursuant to which CRA demands payment of \$281,473.77 from any amounts the First Nation would otherwise pay Razar.

[13] The amounts claimed by Pro-Gen and CRA are in addition to the \$1,913,038.14 claimed by Razar's other suppliers and subcontractors.

[14] Razar has not commenced legal proceedings against the First Nation. Razar appeared at the hearing of this application but did not file any material or take any position on the issues, other than commenting on the terms of the draft order submitted by the First Nation.

THE ISSUES

1. Is an Order to interplead the Fund available in the circumstances?
2. Are the trust provisions of the *Construction Act*, R.S.O. 1990, c. C. 30 applicable to the Project, given that the Project was on a First Nation?
3. If the trust provisions of the *Construction Act* apply, is the Fund a trust fund pursuant to Part II of the *Construction Act*?
4. If not, is the Fund otherwise impressed with a trust for the benefit of Razar's unpaid subcontractors and suppliers?
5. Is Pro-Gen entitled to payment from the fund in priority to the other claimants pursuant to the Notice of Garnishment?
6. Is CRA entitled to payment from the fund in priority to the other claimants pursuant to the RTP?

THE POSITIONS OF THE PARTIES

Northwest Angle 33 First Nation

[15] The First Nation disclaims any beneficial interest in the Fund. The First Nation takes no position respecting the right of Pro-Gen and/or CRA to receive payment from the Fund in priority to any payment to other claimants.

[16] The First Nation seeks to interplead the Fund to allow for its orderly distribution among the respondents and any other subcontractors and suppliers of Razar who may come forward, in accordance with their entitlements as found by the Court.

[17] The First Nation submits that this fact situation falls squarely within the provisions of r. 43.02(1)(a) and (b) and that the remedy of interpleader, together with an order establishing a process to determine the rights of the claimants in a summary manner, is appropriate in all the circumstances.

Pro-Gen

[18] Pro-Gen submits that the *Construction Act* does not apply to construction projects on lands reserved for First Nations. Pro-Gen further submits that the trust provisions found in s. 8 of the *Construction Act* are inconsistent with s. 89(1) of the *Indian Act*, R.S.C. 1985, c. I-5, as am., and are therefore not applicable to the Fund.

[19] Pro-Gen submits that section 8 of the *Construction Act* does not apply to First Nations. Where an improvement is on lands reserved for First Nations, the imposition of the trust is the equivalent of seizing “the personal property of an Indian or a band situated on a reserve”, which is inconsistent with and prohibited by s. 89(1) of the *Indian Act*, according to Pro-Gen.

[20] Pro-Gen contends that the Fund created by the Contract is not a trust fund, but rather a contractual holdback created for the benefit of subcontractors and suppliers. It allows the First Nation, in their discretion, to pay subcontractors and suppliers directly. Unless and until paid out, the contractual holdback remains the property of the First Nation, according to Pro-Gen.

[21] However, given that NWA 33 has disclaimed any beneficial interest in the Fund on this application, Pro-Gen submits that the Fund must be money or a debt payable to Razar pursuant to the contract and therefore subject to Pro-Gen's Notice of Garnishment in priority to the claims of the other respondents.

Canada Revenue Agency

[22] CRA requests that the Court determine, on this Application and in a summary manner, that CRA has priority to the Fund over any other party and that funds in the amount of \$247,180.35, plus interest and penalties to the date of payment, be paid directly to CRA prior to the Fund being interpleaded.

[23] CRA submits that it issued an RTP to the First Nation on October 17, 2022, in the amount of \$272,034.64, being the source withholding tax debt owed by Razar to CRA. The RTP directed the First Nation that any money otherwise payable to Razar, up to the amount set out in the RTP, must be paid to CRA. As of the date of the hearing of the application, the debt owed by Razar to CRA has been reduced to the lower figure set out above.

[24] CRA submits that source withholding amounts are deemed to be held in trust for His Majesty pursuant to s. 227(4) of the *Income Tax Act (Canada)* ("ITA"). CRA further submits

that s. 227(4.1) of the *ITA* provides that where a source withholding amount is not paid to the Crown, property of the taxpayer equal to the source withholding amount payable is subject to the trust under s. 227(4.1), forms no part of the property of the taxpayer and is beneficially owned by and payable to His Majesty in priority to all security interests.

[25] CRA contends that these provisions of the *ITA* confer a priority to CRA in respect of all property and assets of a tax debtor. CRA suggests that this priority includes the Fund. CRA submits that no creditor or claimant in this application can assert a claim that is equal to or greater than CRA's claim pursuant to the RTP. CRA submits that when it issued the RTP on October 17, 2022, it retained a priority over all other creditors with a claim against Razar.

[26] CRA submits that there is no authority supporting the submission that a trust created pursuant to s. 8 of the *Construction Act*, or any other provincial construction lien legislation, prevails over the deemed trust created by the *ITA* in respect of source withholding amounts.

[27] In any event, the doctrine of paramountcy dictates that the *ITA*, being federal legislation, prevails in the event of conflict with provincial legislation (the *Construction Act*) according to CRA.

[28] CRA submits that it is entitled to an order requiring payment of an amount out of the Fund equal to the balance of the unremitted and outstanding source deduction debt owing by Razar to CRA prior to the Fund being interpleaded and in priority to all other creditors and claimants in this application.

A.D. Hanslip Ltd.

[29] A.D. Hanslip (“Hanslip”) is a subcontractor on the project and submits that it is owed \$268,523.51 by Razar for work performed pursuant to a subcontract.

[30] Hanslip agrees with the position of the First Nation and submits that it is appropriate for the Fund to be interpleaded and for an orderly claims process to be determined by the Court to regulate the distribution of the Fund amongst claimants.

[31] Hanslip disputes the priority claims of Pro-Gen and CRA. Hanslip submits that the positions of both Pro-Gen and CRA are premised on the Fund being either the property of Razar or a debt payable to Razar. Hanslip submits that for the priority claims of Pro-Gen and CRA to succeed they must establish that this is in fact the case. Hanslip contends that the facts do not support that conclusion.

[32] Hanslip submits that pursuant to the terms of the Contract, the Fund is comprised of “statutory holdbacks” and “maintenance holdbacks” retained from progress payments and to be paid to Razar “not later than 60 days after the date the [P]roject has been deemed substantially complete”.

[33] Hanslip submits that it is not in issue that the Project has not yet been deemed substantially complete. Hanslip contends that no portion of the Fund is therefore, according to the terms of the Contract, payable to Razar.

[34] Hanslip further submits that it is not in issue that the Project has been taken out of Razar’s hands. Hanslip submits that, pursuant to the terms of the Contract, if the work is taken out of Razar’s hands, Razar’s right to any further payment that is due under the contract,

including any portion of the Fund, “is extinguished”. As such, the Fund is not property of Razar or a debt payable to Razar by the First Nation and the First Nation therefore has no obligation to remit payment to Pro-Gen pursuant to the Notice of Garnishment, according to Hanslip.

[35] Hanslip submits that for CRA to be entitled to payment from the Fund in priority to the other respondents on the basis of a deemed trust pursuant to the provisions of the *ITA*, CRA must establish that the Fund is the property of Razar. Hanslip submits that until it has been determined that the Fund, or a portion of it, is the property of Razar or payable to Razar, CRA has no claim to the Fund and the First Nation has no obligation to remit payment to CRA from the Fund pursuant to the RTP.

[36] Hanslip contends that it and the other respondents are not asserting priority over CRA to the property of Razar. Hanslip submits that all claimants are beneficiaries of the Fund and that the total claims exceed the balance of the Fund such that it is highly unlikely that Razar will realize anything from the Fund. Hanslip does not dispute that CRA’s deemed trust attaches to Razar’s property. Hanslip’s position is that it has not been established that the Fund, or any portion of it, is Razar’s property and that until that determination is made, CRA’s claim (and Pro-Gen’s) is premature.

[37] In the alternative, Hanslip submits that the Fund constitutes a trust fund, pursuant to s. 8(1) of the *Construction Act*, for the benefit of subcontractors and suppliers who are owed money by Razar. As such, the Fund is neither the property of Razar nor a debt payable to Razar and is therefore not subject to the priority claims of Pro-Gen and CRA.

[38] Hanslip submits that the trust remedy in the *Construction Act* is a separate and distinct remedy applicable to the Project and the Fund independent of a right to lien, which is conceded to be unavailable in this case because the Project is on federal lands reserved for the First Nation. Hanslip submits that Ontario jurisprudence has established that s. 8(1) of the *Construction Act* applies to construction projects on federal lands held for First Nations.

[39] Hanslip disputes Pro-Gen's assertion that s. 8(1) of the *Construction Act* is inconsistent with s. 89(1) of the *Indian Act*. Hanslip notes that the First Nation has disclaimed any interest in the Fund and that, but for the claims of the Respondents in this application, the Fund is otherwise payable to Razar. Hanslip submits that the Fund is therefore not "the real or personal property of an Indian or a band situate on a reserve" within the meaning of s. 89(1) of the *Indian Act*.

[40] Hanslip also disputes CRA's assertion that the doctrine of paramountcy applies, such that CRA's claim to the fund pursuant to the *ITA* prevails over the provisions of the *Construction Act*, which deem the Fund to be a trust fund. Hanslip contends that CRA's deemed trust applies only to the property of Razar and that the Fund is not the property of Razar, such that there is no conflict between the *ITA* and *Construction Act* in these circumstances.

[41] Hanslip submits that the priority claims of Pro-Gen and CRA should be dismissed and that the First Nation's request to interplead the Fund should be granted and a claims process established.

Delco Automation Inc.

[42] Delco Automation Inc. (“Delco”) supports the First Nation’s request to interplead the Fund. Delco adopts and endorses the position of Hanslip and other respondents in opposing the priority claims of Pro-Gen and CRA.

[43] Delco opposes Pro-Gen’s assertion that the *Construction Act* has no application to the Project. Delco submits that the *Construction Act* is a provincial statute of general application which applies to the Project except to the extent that it is inconsistent with the *Indian Act*. As a result, as acknowledged by all parties, the lien remedy in the *Construction Act* is not available to unpaid subcontractors and suppliers to the Project given the federal nature of the First Nations lands.

[44] However, Delco joins with Hanslip in submitting that Ontario jurisprudence confirms that the trust provisions of the *Construction Act* apply to construction projects on First Nations lands. Delco submits that the case law relied upon by Pro-Gen does not support the general proposition advanced by Pro-Gen that the *Construction Act* does not apply to projects on land reserved for First Nations. These authorities simply confirm that the lien remedy cannot be exercised in respect of reserve lands, according to Delco.

[45] Delco submits that the Fund is comprised of funds the First Nation is required to have retained as a contractual holdback from progress payments owing to Razar. As the First Nation has disclaimed any interest in the Fund, Delco submits that the Fund is comprised of amounts owing to Razar and which constitute a trust fund pursuant to Part II of the *Construction Act* for the benefit of Razar’s unpaid subcontractors and suppliers.

[46] Granting the First Nation's request to interplead the Fund and to establish a procedure allowing entitled beneficiaries to share in the Fund would be a fair and expeditious manner of proceeding, according to Delco.

Long Beach Construction

[47] Long Beach Construction ("Long Beach") is a subcontractor to Razar and submits that it is owed approximately \$437,000.00 on the Project. Long Beach takes no position with respect to the First Nation's interpleader application. Long Beach opposes the positions of Pro-Gen and CRA as to their entitlement to be paid from the Fund in priority to other respondents.

[48] Long Beach endorses the position of Hanslip opposing Pro-Gen's and CRA's priority claims to the Fund. Long Beach submits that the positions of Pro-Gen and CRA fail to recognize that the First Nation, pursuant to the express terms of the Contract, retains the Fund for the benefit of parties other than Razar.

[49] If it is ultimately determined that Razar is entitled to a portion of the Fund, it is only that portion of the Fund which is properly subject to Pro-Gen's Notice of Garnishment and CRA's RTP, according to Long Beach. Simply put, Long Beach submits that Pro-Gen's and CRA's entitlement to the Fund is only as strong as Razar's and unless and until it is determined that a portion of the Fund is Razar's property, the claims of Pro-Gen and CRA are premature.

Solid Silver Construction Ltd.

[50] Solid Silver Construction Ltd. (“Solid Silver”) agrees with the First Nation that an order to interplead the Fund is appropriate and would lead to an equitable and effective resolution of this matter.

[51] Solid Silver adopts the position of Hanslip in relation to the priority claims of Pro-Gen and CRA. Solid Silver submits that the First Nation and Razar deliberately chose to use language in the Contract that mirrored the trust provisions of the *Construction Act*, specifically the requirement of a holdback from monies otherwise payable to Razar for progress payments for the benefit of subcontractors and suppliers.

[52] Solid Silver contends that the Fund is impressed with trust obligations pursuant to the Contract such that the Fund is trust property which cannot be subject to either Pro-Gen’s Notice of Garnishment or CRA’s RTP, unless and until a determination is made as to Razar’s entitlement to the Fund, if any, in light of the claims of unpaid subcontractors and suppliers.

Kako Investments

[53] Kako Investments (“Kako”) submits that it is owed approximately \$30,000.00 by Razar for the supply of products to the Project. Kako agrees with the First Nation that the Fund should be interpleaded. Kako also adopts the position of Hanslip in opposition to the priority claims of Pro-Gen and CRA.

Crane Steel Structures Ltd.

[54] Crane Steel Structures Ltd. (“Crane Steel”) agrees that the Fund should be interpleaded as requested by the First Nation. Crane Steel adopts and endorses the positions taken by other respondents in opposing the priority claims of Pro-Gen and CRA.

[55] Crane Steel submits that the Fund consists of unpaid trust funds within the meaning of s. 8 of the *Construction Act*, held for the benefit of unpaid subcontractors and suppliers to the Project. In the alternative, Crane Steel submits that the terms of the Contract create a contractual holdback from progress payments owing to Razar.

[56] In either case, the Fund is a trust fund and not the property of Razar and therefore not, at this time, subject to Pro-Gen’s Notice of Garnishment or CRA’s RTP, according to Crane Steel.

DISCUSSION

[57] Rule 43.02(1) provides:

Application or Motion under Subrule 43.02 (1)

43.02 (1) A person may seek an interpleader order (Form 43A) in respect of property if,

(a) two or more other persons have made adverse claims in respect of the property; and

(b) the first-named person,

(i) claims no beneficial interest in the property, other than a lien for costs, fees or expenses, and

(ii) is willing to deposit the property with the court or dispose of it as the court directs. O. Reg. 42/05, s. 3.

[58] Rule 43.04(1) provides:

Disposition

Powers of Court

43.04 (1) On the hearing of an application or motion for an interpleader order, the court may,

- (a) order that the applicant or moving party deposit the property with an officer of the court, sell it as the court directs or, in the case of money, pay it into court to await the outcome of a specified proceeding;
- (b) declare that, on compliance with an order under clause (a), the liability of the applicant or moving party in respect of the property or its proceeds is extinguished; and
- (c) order that the costs of the applicant or moving party be paid out of the property or its proceeds. O. Reg. 42/05, s. 3.

[59] Sections 88 and 89(1) of the *Indian Act* provide:

General provincial laws applicable to Indians

88 Subject to the terms of any treaty and any other Act of Parliament, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that those laws are inconsistent with this Act or the *First Nations Fiscal Management Act*, or with any order, rule, regulation or law of a band made under those Acts, and except to the extent that those provincial laws make provision for any matter for which provision is made by or under those Acts.

Restriction on mortgage, seizure, etc., of property on reserve

89 (1) Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band.

[60] Sections 8(1) and (2) of the *Construction Act* provide:

Contractor's and subcontractor's trust

Amounts received a trust

8 (1) All amounts,

- (a) owing to a contractor or subcontractor, whether or not due or payable; or
- (b) received by a contractor or subcontractor,

on account of the contract or subcontract price of an improvement constitute a trust fund for the benefit of the subcontractors and other persons who have supplied services or materials to the improvement who are owed amounts by the contractor or subcontractor. R.S.O. 1990, c. C.30, s. 8 (1); 2017, c. 24, s. 66.

Obligations as trustee

(2) The contractor or subcontractor is the trustee of the trust fund created by subsection (1) and the contractor or subcontractor shall not appropriate or convert any part of the fund to the contractor's or subcontractor's own use or to any use inconsistent with the trust until all subcontractors and other persons who supply services or materials to the improvement are paid all amounts related to the improvement owed to them by the contractor or subcontractor. R.S.O. 1990, c. C.30, s. 8 (2); 2017, c. 24, s. 66.

[61] Sections 227(4) and (4.1) of the *ITA* provide:

Trust for moneys deducted

(4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of trust

(4.1) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

[62] The relevant terms of the Contract between the First Nation and Razar are as follows:

TP4 TIME OF PAYMENT

.4 Subject to TP1 and TP4.5 the Band Council shall, not later than 30 days after the receipt by the Engineer of a progress claim referred to in TP4.2, pay the Contractor

.1 an amount that is equal to the value that is indicated in the progress report referred to in TP4.3.2 if a labour and material payment bond has been furnished by the Contractor, minus:

.1 an amount that is equal to 10% of the amount referred to in TP4.3.2, which will be retained as a statutory holdback to be paid to the Contractor not later than 60 days after the date that the project has been deemed substantially complete, in described herein; and

.2 an amount that is equal to 2% of the amount referred to in TP4.3.2, which will be retained as a maintenance holdback to be paid to the Contractor not later than 30 days after the end of the warranty period described in GC32.1.2.

GC 38 TAKING THE WORK OUT OF THE CONTRACTOR'S HANDS

.1 The Band Council may, at its sole discretion, by giving a notice in writing to the Contractor in accordance with GC11, take all or any part of the work out of the Contractor's hands, and may employ such means as it sees fit to have the work completed if the Contractor

.1 has not, within six days of the Band Council or the Engineer giving notice to the Contractor in writing in accordance with GC11, remedied any delay in the commencement or any default in the diligent performance of the work to the satisfaction of the Engineer;

.2 has defaulted in the completion of any part of the work within the time fixed for its completion by the contract;

-
- .3 has become insolvent;
 - .4 has committed an act of bankruptcy;
 - .5 has abandoned the work;
 - .6 has made an assignment of the contract without the consent required by GC3.1; or
 - .7 has otherwise failed to observe or perform any of the provisions of the contract.
- .2 If the whole or any part of the work is taken out of the Contractor's hands pursuant to GC38.1,
- .1 the Contractor's right to any further payment that is due or accruing due under the contract is, subject only to GC38.4, extinguished, and
 - .2 the Contractor is liable to pay the Band Council, upon demand, an amount that is equal to the amount of all loss and damage incurred or sustained by the Band Council in respect of the Contractor's failure to complete the work.

GC 42 CLAIMS AGAINST AND OBLIGATIONS OF THE CONTRACTOR OR SUBCONTRACTOR

- .5 To the extent that the circumstances of the work being performed for the Band Council permit, the Contractor shall comply with all laws in force in the Province or Territory where the work is being performed relating to payment period, mandatory holdbacks, and creation and enforcement of mechanics' liens, builders' liens or similar legislation or in the Province of Quebec, the law relating to privileges.

[63] On May 18, 2022, NWA 33 exercised its right under section GC 38.1 of the Contract and took the balance of the work on the Project out of Razar's hands. As a result, pursuant to section GC 38.2 of the Contract, Razar's right to any further payment due or accruing due under the Contract was extinguished. Razar has not demanded any further payment from the First Nation subsequent to the work being taken out of its hands, including any claim to the Fund the First Nation now seeks to interplead.

[64] As of May 18, 2022, the date the work was taken out of Razar's hands, the total of the "statutory holdback" and the "maintenance holdback" required to be retained by the First Nation pursuant to section TP4.4.1 of the Contract was \$1,204,516.55. The Project has not been deemed substantially complete and the First Nation disclaims any beneficial interest in the Fund.

[65] I accept the submissions of the respondents opposing the priority claims of Pro-Gen and CRA that the legal characterization of the Fund is determinative of their right to priority. If the Fund is the property of Razar or a debt payable to Razar, Pro-Gen's and CRA's claims to priority prevail. If the Fund is not the property of Razar or a debt payable to Razar, their claims to priority fail at this stage in the proceedings.

[66] In my view, the legal characterization of the Fund must be determined by the intent of the parties to the Contract as evidenced by the plain meaning of the words used in the relevant sections of the Contract, considered in the context of the Contract as a whole.

[67] The First Nation and Razar agreed, as set out in section TP4.4 of the Contract, that the progress payment obligations of the First Nation to Razar would be subject to a 10% "statutory holdback" and a 2% "maintenance holdback". The First Nation and Razar further agreed, as set out in section TP4.4.1, that a condition precedent to the First Nation's obligation to pay the Fund to Razar, and to Razar's right to demand payment from the Fund, was that the Project be deemed substantially complete, which has not yet occurred.

[68] In my view, it is clear from the express terms of the Contract that the First Nation and Razar intended the Fund to be retained by the First Nation and to remain available as a holdback to unpaid subcontractors and suppliers of Razar pending substantial completion of the Project.

[69] The First Nation and Razar also agreed, as set out in section GC 38.2, that if work on the Project is taken out of Razar's hands, Razar's right to any further payment from the Fund is extinguished. The First Nation exercised its rights under the Contract and the work was taken out of Razar's hands on May 18, 2022.

[70] As a result, Razar's right to *any payment* from the Fund was extinguished on that date. In my view, the parties clearly intended that Razar would have no claim to the Fund in the event the Project was taken out of Razar's hands prior to substantial completion.

[71] I find that it is reasonable to infer that the parties intended, should Razar's right to any payment from the Fund be extinguished pursuant to section GC 38.2, that the Fund, being a holdback from progress payments pending substantial completion, be available for unpaid subcontractors and suppliers of Razar. To suggest that the Fund is, in these circumstances, either the property of Razar or a debt owing to Razar, is contrary to the clear intention of the parties, in my opinion.

[72] I find that pursuant to the terms of the Contract and specifically the First Nation's exercise of their contractual rights pursuant to section GC 38, the Fund is neither the property of Razar nor a debt payable to Razar.

[73] In the event I am incorrect in my conclusion that the parties intended the Fund to be a contractual holdback and not the property of Razar or a debt payable to Razar pending substantial completion, I also conclude that the Fund is a trust fund for the benefit of the unpaid subcontractors and suppliers of Razar, pursuant to section 8(1) of the *Construction Act*.

[74] I reject the submission of Pro-Gen that the trust provisions of the *Construction Act* do not apply to the Fund because the Project is on federal lands reserved for First Nations. Wright J. considered this issue in *Skukowski v. James Conci Holdings Inc.*, 1998 CarswellOnt 4119 (Ont. Gen. Div.). Wright J. held that section 8 of the *Construction Act* was provincial legislation of general application and therefore applicable on First Nations pursuant to section 88 of the *Indian Act*. He further held that a trust claim can be advanced in relation to an improvement on federal land, including land reserved for First Nations. In my view, *Skukowski* remains good law.

[75] I also reject Pro-Gen's submission that the application of the lien provisions of the *Construction Act* are inconsistent with section 89(1) of the *Indian Act* and therefore inapplicable to the Fund. Pro-Gen argues that the imposition of a trust on the Fund pursuant to section 8 of the *Construction Act* amounts to a seizure of the personal property of an "Indian or band" and is therefore prohibited by section 89(1) of the *Indian Act*.

[76] However, on this Application the First Nation has expressly disclaimed any interest in the Fund. Further, the intention of the parties to the Contract is that the Fund be held by the First Nation as a holdback for the benefit of the unpaid subcontractors and suppliers of Razar's, not that ownership of the Fund somehow revert to the First Nation. In any event, in the circumstances of this case, I fail to see how the Fund can be characterized as the personal property of the First Nation within the meaning of section 89(1) of the *Indian Act* and therefore exempt from the application of section 8 of the *Construction Act*.

[77] Rule 60.08(1) provides that a creditor under an order for the payment of money may enforce the order by garnishment of debts payable to the debtor by other persons. For Pro-Gen

to be entitled to priority pursuant to the Notice of Garnishment, it must establish that the Fund is a debt payable to Razar by the First Nation.

[78] For the reasons stated above, the Fund is neither the property of Razar nor a debt payable to Razar by the First Nation. The First Nation therefore is not required to remit payment to Pro-Gen pursuant to Pro-Gen's Notice of Garnishment.

[79] It is not in dispute that Razar is indebted to CRA on account of unremitted source deductions. CRA submits that the deemed trust provisions of section 227 of the *ITA* confer a priority to CRA in respect of all property and assets of Razar as a tax debtor. This submission is consistent with *First Vancouver Finance v. M.N.R.*, 2002 SCC 49 cited by CRA and is not disputed by any of the respondents.

[80] CRA further submits, citing *Royal Bank of Canada v. Saskatchewan Power Corp et al*, 1990 DTC 6330, that its claim to priority on account of unremitted source deductions takes priority over the secured creditors of Razar. Once again, that submission is not in dispute.

[81] However, CRA's claim to the Fund in priority to all other claimants is premised, as is Pro-Gen's, on the Fund being property of Razar or a debt payable to Razar. CRA is only entitled to the Fund if the Fund, or a portion of it, is found to be payable to Razar. Absent a determination of Razar's entitlement to the Fund, if any, CRA's (and Pro-Gen's) entitlement to the Fund cannot be determined.

[82] The British Columbia Supreme Court's decision in *PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc.* 2009 BCSC 95 ("*Norex*") dealt with this very issue.

[83] The contract provided that Norex would undertake construction services for PCL. Norex hired subcontractors to carry out the work under the contract. Before the work was completed, Norex defaulted on its obligations and PCL terminated the contract.

[84] Before the contract was terminated, PCL paid Norex about \$1,100,000. PCL held back 10% of this amount pursuant to British Columbia's *Builder's Lien Act*, S.B.C. 1997, c. 45. Two of Norex's subcontractors filed liens seeking payment from this holdback amount.

[85] As in this case, Norex owed CRA for unpaid tax liabilities. CRA's position was that the holdback is subject to a deemed trust pursuant to the *ITA*. Since the amount of the deemed trust exceeded the holdback, CRA submitted that it was owed the entire holdback. One of the central issues before the court was how the holdback provisions of British Columbia's *Builder's Lien Act* interact with the deemed trust provisions in ss. 227(4) and (4.1) of the *ITA*.

[86] The court determined that a holdback does not create an ordinary trust. Instead, the holdback creates a fund to which the contractor, for whom it is held in trust, "may eventually become entitled" (*Norex* at para 62). The CRA's deemed trust could not result in CRA having a greater beneficial ownership than the contractor. The deemed trust *only gives the CRA a beneficial right to the property of the contractor which the contractor actually holds*. If the contractor has no claim to any portion of the holdback, neither does the CRA (*Norex* at para. 79).

[87] The ratio of *Norex* has also been adopted in Ontario: see *Thompson v. Carleton University*, 2019 ONSC 4336 at para 7, 50.

[88] In my view, the legal principles in *Norex* apply to the present case. Razar owes CRA for tax liabilities. CRA seeks payment from Razar out of the Fund. It has not yet been established that any part of the fund is Razar's property. Therefore, CRA's claim cannot succeed at this time.

[89] As set out above, as a result of the First Nation exercising its rights pursuant to section GC 38 of the Contract, Razar's claim to the Fund has been extinguished. The Fund is therefore not the property of Razar and the First Nation has no obligation to honour the RTP from the Fund in priority to other claimants prior to the Fund being paid into Court pursuant to an interpleader order.

[90] I accept the submission of Long Beach that granting Pro-Gen and CRA priority to the Fund prior to the Fund being paid into Court runs the risk of Pro-Gen and/or CRA potentially receiving funds to which they do not have a legal right. I further accept the submission of Long Beach that accepting Pro-Gen's and CRA's priority claims would negate any purpose or function of the holdback provisions of the Contract, which clearly cannot have been the intention of the First Nation and Razar when the Contract was entered into.

[91] For the reasons set out above, the priority claims to the Fund advanced by Pro-Gen and CRA, pursuant to their Notice of Garnishment and RTP respectively, are dismissed.

[92] An interpleader order shall issue permitting and requiring the First Nation to deposit the Fund, being the amount of \$1,204,526.55, with the Accountant of this Court.

[93] The First Nation has filed a draft order for the court's consideration. The respondents, but for Razar, are content with the terms of the draft order filed.

[94] Razar takes issue with para. 14 of the draft order, specifically the right of the First Nation to retain the balance of the Fund, if any, remaining after the determination of the rights of the respondents to the Fund. Razar submits that this is inconsistent with r. 43.02(1) and with the position of the First Nation on this application. I agree. That provision in para. 14 of the draft order shall be deleted.

[95] The First Nation shall file an amended draft order for my consideration, consistent with these reasons and my decision as to the priority claims of Pro-Gen and CRA. For greater certainty:

1. Paragraphs 4 and 5 shall be deleted;
2. Paragraph 9 shall be amended such that the date set out therein is 4 weeks subsequent to the date of release of this decision;
3. Paragraph 14 shall be amended as indicated above; and
4. Providing for the costs of the application as set out below.

[96] The First Nation is entitled to their reasonable costs, on a partial indemnity basis, in respect of this application. Pursuant to r. 43.04(1)(c), I order that the First Nation's costs, as fixed by this court, shall constitute a first charge upon the Fund.

[97] The First Nation shall file Costs Submissions, not to exceed three pages, exclusive of its Bill of Costs and Costs Outline, within 14 days of the release of this decision. The First Nation's Costs Submissions shall be served on all respondents who made submissions on this application.

[98] These respondents shall file responding submissions, preferably through a single representative respondent, as to the costs claimed by the First Nation, within 10 days following receipt of the First Nation's Costs submissions.

[99] The costs of the respondents, if any should be claimed, are reserved to be addressed at the summary hearing.

"Original signed by"
The Honourable Mr. Justice J.S. Fregeau

Released: February 21, 2023

CITATION: Northwest Angle 33 First Nation v. Razar Contracting Services Ltd. et al., 2023 ONSC 1233
COURT FILE NO.: CV-22-0462-00
DATE: February 21, 2023

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

Northwest Angle 33 First Nation

Applicant

- and -

Razar Contracting Services Ltd. et al.

Respondents

ENDORSEMENT

Fregeau J.

Released: February 21, 2023

/dg

Appendix “G”

2022 01G 1964
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies*
Creditors Arrangement Act, R.S.C., 1985 c.
C-36 as amended (the “CCAA”)

AND IN THE MATTER OF an application of
Edward Collins Contracting Ltd., Classic
Security Limited, FGC Holdings Limited,
51037 Newfoundland and Labrador Inc. and
H&E Designs Ltd. (collectively “ECC” or the
Company”)

AFFIDAVIT

SUMMARY OF CURRENT DOCUMENT	
Court File No.	2022 01G 1964
Date of Filing Document:	February __, 2023
Name of Party Filing Party of Person:	Western Surety Company
Application to which Document being filed relates:	Application by Western Surety Company to affirm and declare settlements
Statement of Purpose in filing:	To support the within application.
Court Sub-file No: (if any)	N/A

AFFIDAVIT

I, **JAMES TOOTHILL**, of the City of Regina, in the Province of Saskatchewan, **MAKE OATH**
AND SAY:

1. That I am Chief Claims Manager & Privacy Officer at Western Surety Company (“Western”), and, as such, I have knowledge of the matters contained in this Affidavit.
Where I make statements in this Affidavit which are not within my personal knowledge, I have identified the source of that information and belief, and I verily believe it to be true.

2. I have primary day-to-day responsibility, on behalf of Western, for handling claims related to Edward Collins Contracting Limited (“ECC”), including in relation to a construction project for the Town of Placentia (the “Town”) as owner for water systems upgrades (the “Project”), described further below.
3. Western is a corporation licensed to carry on business as a surety in the Province of Newfoundland and Labrador. Western’s business includes writing surety bonds for the construction industry, from small to large firms performing public works projects, as well as private construction projects.
4. This Affidavit is made in support of Western’s application to affirm and declare settlements between Western, ECC, Rodco Mechanical (2014) Ltd. (“Rodco”) and Crane Supply Canada (“Crane”), which settlements provide that certain remaining contract funds being held by the Town be paid to Western. Such remaining contract funds constitute the holdback funds required to be held back by owners pursuant to the Newfoundland and Labrador *Mechanics’ Lien Act*.

Background

5. ECC was a client of Western that requested surety bonds for various construction contracts. ECC executed an Indemnity Agreement in favour of Western on March 8, 2021, in which ECC and others jointly and severally agreed to indemnify Western for any loss or damage by reason of having issued any surety bonds. Attached hereto and marked as **Exhibit “A”** to this my Affidavit is a copy of the Indemnity Agreement.

6. At the request of ECC and in reliance upon the Indemnity Agreement, Western issued various bonds, including both performance bonds and labour and material payment bonds, for ECC contracts, including the contract in relation to the Project.
7. ECC was the contractor for the Town in connection with the Project. On March 3, 2021, ECC entered into a contract with the Town for Water System Upgrades 17-GI-20-00050 / 17-SCF-19-00129 (the “Contract”). Attached hereto and marked as **Exhibit “B”** to this my Affidavit is a copy of the Contract.
8. ECC entered into subcontracts with Rodco and Crane (together, the “Subcontractors”) for the supply of certain services and materials in relation to the Contract. Attached hereto and marked collectively as **Exhibit “C”** to this my Affidavit are copies of the subcontracts.

Western Issued Bonds for the Project

9. Western issued Labour & Material Payment Bond No. 532,090 (the “Payment Bond”) under which ECC is “Principal”, the Town is “Obligee” and Western is “Surety”, in relation to the Contract. Attached hereto and marked as **Exhibit “D”** to this my Affidavit is a copy of the Payment Bond.
10. In general, the purpose of the Payment Bond was to ensure that ECC’s subcontractors who have valid claims are paid where ECC fails to pay such “Claimants” (as defined in the Payment Bond). The Payment Bond is therefore for the benefit of both ECC’s subcontractors and the Town as it helps mitigate impacts to the completion of the Contract and Project.

Claims Against the Payment Bond & Claims for Lien

11. In September 2021, Western first became aware of issues with ECC's performance regarding the Project when it received claims from the Subcontractors under the Payment Bond.
12. On or about September 1, 2021, Crane made a claim under the Payment Bond in the amount of \$251,635.00 for unpaid invoices (the "Crane Debt"). Attached hereto and marked as **Exhibit "E"** to this my Affidavit is a copy of the executed Proof of Claim that Western received from Crane along with supporting documentation.
13. In addition to Crane's claim against the Payment Bond, on September 9, 2021, Crane registered a Claim for Lien in the Supreme Court of Newfoundland and Labrador bearing Registration No. 19909 in relation to the Crane Debt. Attached hereto and marked as **Exhibit "F"** to this my Affidavit is a copy of the Claim for Lien of Crane.
14. On or about December 2, 2021, Rodco made a claim under the Payment Bond in the amount of \$508,271.50 for unpaid invoices (the "Rodco Debt"). Attached hereto and marked as **Exhibit "G"** to this my Affidavit is a copy of the Proof of Claim that Western received from Rodco along with supporting documentation.
15. In addition to Rodco's claim against the Payment Bond, on December 3, 2021, Rodco registered a Claim for Lien bearing Registration No. 19963 in relation to the Rodco Debt and later filed a Certificate of Action and Statement of Claim in the Supreme Court of Newfoundland and Labrador (the "Rodco Lien"). Attached hereto and marked collectively as **Exhibit "H"** to this my Affidavit are a copies of the Notice of Action and Statement of Claim of Rodco.

16. On December 22, 2021, Josh Collins, Principal of ECC, sent me an email advising that ECC had made a lump sum payment to Rodco in the amount of \$135,000.00, reducing the Rodco Debt. This payment to Rodco is also acknowledged in paragraph 7 of Rodco's Statement of Claim. Attached hereto and marked as **Exhibit "I"** to this my Affidavit is a copy of the correspondence from Mr. Collins.
17. Josh Collins alleged to me on two other occasions payments made by ECC to Rodco: (i) on January 24, 2022, Mr. Collins advised me by email that ECC had made a payment of \$75,000.00 to Rodco; and (ii) on March 29, 2022, Mr. Collins advised me during a meeting that ECC had made a lump sum payment of \$48,000.00 to Rodco. However, I was unable to verify with Rodco that these amounts had been paid as Mr. Collins did not provide me with payment receipts or account payable statements. Attached hereto and marked as **Exhibit "J"** to this my Affidavit is a copy of the email from Mr. Collins dated January 24, 2022.
18. On April 1, 2022, I emailed Brad Leyte, counsel for Rodco, asking if Rodco had received any further payments from ECC. On April 8, 2022, Mr. Leyte said he could offer the following information: (i) Rodco is still owed \$391,700.24 from ECC; (ii) Rodco has been pursuing updates from ECC regarding payment, but no firm answers have been received to date; and (iii) Rodco has only received progress payments on current progress claims, and no lump sum payment on the long overdue balance. Attached hereto and marked collectively as **Exhibit "K"** to this my Affidavit are copies of said correspondence.

ECC Settles the Claims of Rodco and Crane

19. On or about October 4, 2021, ECC entered into a Settlement Agreement with Crane to resolve the Crane Debt (the "Crane Agreement").

20. On or about July 7, 2022, ECC, Western and Rodco entered into a Settlement Agreement to resolve the Rodco Debt (the “Rodco Agreement”).
21. Both the Crane Agreement and the Rodco Agreement (together, the “Settlement Agreements”) contemplate the Subcontractors being paid a specified amount directly from the holdback held by the Town in relation to the Contract, which is currently \$244,977.53 (the “Holdback”). Further, details regarding the negotiations and execution of the Settlement Agreements are discussed in more detail below.
22. ECC failed to perform the settlements and the Subcontractors were not paid any funds from the Holdback. The Subcontractors then looked to Western to pursue payment under the Payment Bond.
23. Western fulfilled its obligations under the Payment Bond and paid the valid claims of the Subcontractors. Western issued payment to Crane in the amount of \$204,781.32 and to Rodco in the amount of \$398,607.88, in exchange for Releases, Assignments, Undertakings, and Grants (the “Assignments”). Attached hereto and marked collectively as **Exhibit “L”** to this my Affidavit are copies of the Assignments.
24. I am advised by Western’s lawyers, Borden Ladner Gervais LLP (“BLG”), and do verily believe to be true, that as a result of the Assignments, Western is assignee of all of the claims and rights of action of both Crane and Rodco.
25. I am advised by BLG, and do verily believe to be true, that Western has made all reasonable efforts to negotiate the release of the Holdback on account of the Assignments and the Settlement Agreements to avoid a hearing. However, ECC disagrees with Western and

asserts that ECC did not enter into any settlements and that Western is not entitled to the Holdback.

26. I am advised by BLG and do verily believe to be true, that it is Western's understanding that the Town does not object to the Holdback being paid to Western. However, the Town is reluctant to release the Holdback given its obligations under the *Mechanics' Lien Act* and the position taken by ECC.

The Crane Settlement

27. On September 22, 2021, Michael Cabot, previous counsel for ECC, sent a without prejudice letter to Lee Ballett of Duffy Law Office, then counsel for Crane, proposing a settlement to resolve the Crane Debt. The proposal provided that (i) ECC execute an assignment in favour of Crane, whereby the full amount of the Holdback held by the Town in connection with the Project, be assigned to Crane; and (ii) Crane vacate its Claim for Lien. Mr. Cabot advised that if there was an agreement, the Holdback amount as of September 30, 2021, should be available for release to Crane within 2-4 weeks of October 15, 2021. Attached hereto and marked as **Exhibit "M"** is a copy of said correspondence.
28. On September 28, 2021, Mr. Cabot on behalf of ECC wrote to the Town seeking written confirmation of the amount of the Holdback held by the Town in relation to the Project and confirmation that the Town would keep in trust the Holdback as of September 28, 2021, pending further direction from ECC and/or its solicitor. Attached hereto and marked as **Exhibit "N"** is a copy of said correspondence.

29. On September 28, 2021, Bernard Power, Mayor of the Town, wrote to Mr. Cabot confirming the Holdback amount at that time (\$178,070.71 plus HST) and that the Town would retain the Holdback as of September 28, 2021, pending further direction from ECC and/or its solicitor. Attached hereto and marked as **Exhibit “O”** is a copy of said correspondence.
30. On October 5, 2021, Crane discharged its Claim for Lien. Attached hereto and marked as **Exhibit “P”** to this my Affidavit is a copy of the Discharge of Lien.
31. On October 7, 2021, ECC executed the Crane Agreement. The Crane Agreement acknowledges the Crane Debt, directs ECC to make payment by way of Irrevocable Direction to the Town (the “Irrevocable Direction”), directing the Town to pay \$178,070.71 plus HST from the Holdback to Crane, in exchange for Crane discharging its Claim for Lien. Attached hereto and marked collectively as **Exhibit “Q”** are copies of the executed Crane Agreement and Irrevocable Direction to Pay.
32. On October 27, 2021, I received a letter from Michael Duffy, then counsel for Crane, advising that the Crane Debt remained outstanding, that the terms of the Crane Agreement were falsely represented to Crane, and that Crane was asserting a claim under the Payment Bond. Attached hereto and marked as **Exhibit “R”** is a copy of said correspondence.
33. On November 1, 2021, I received a letter from Mr. Cabot on behalf of ECC regarding Crane’s claim under the Payment Bond and details about the Crane Agreement. Mr. Cabot confirmed that ECC and Crane had agreed to resolve the Crane Debt by way of assignment of ECC’s interest in the Holdback retained by the Town, and that Crane agreed to vacate its Claim for Lien and not make any further claims against the Payment Bond. Mr. Cabot also confirmed that the Crane Agreement remained binding on the parties and suggested that

Western should deny Crane's claim against the Payment Bond. Attached hereto and marked as **Exhibit "S"** is a copy of said correspondence.

34. On March 8, 2022, I wrote to Josh Collins advising that Crane, through its lawyer, had advised that the Crane Agreement had not yet been performed. I asked Mr. Collins to let me know when Crane could expect payment and if the Rodco Lien was impacting payment of the Holdback from the Town. Attached hereto and marked as **Exhibit "T"** to this my Affidavit is a copy of said correspondence, dated March 8, 2022.
35. On May 12, 2022, I wrote to the Town advising of the Payment Bond claims of Crane and Rodco and asked the Town to hold all funds in connection with the Project until arrangements could be put in place to ensure payment to the Subcontractors. Attached hereto and marked as **Exhibit "U"** to this my Affidavit is a copy of said correspondence.
36. That same day, I received an email from Matthew Craig, counsel for the Town, indicating that the Town did not intend to release the Holdback while liens remained outstanding. Attached hereto and marked as **Exhibit "V"** to this my Affidavit is a copy of said correspondence, dated May 12, 2022.
37. On May 13, 2022, Mr. Cabot on behalf of ECC sent a without prejudice letter to Mr. Paul Guaragna of Miller Thomson, counsel for Crane at that time, confirming the Crane Agreement and the payment of the Holdback to Crane by way of the Irrevocable Direction. With respect to payment, Mr. Cabot advised that the timing of the release of the Holdback to Crane was under the Town's purview and that there appeared to be competing claims to the Holdback on account the Rodco Lien. Attached hereto and marked as **Exhibit "W"** to this my Affidavit is a copy of said correspondence.

38. On May 17, 2022, Mr. Guaragna advised my lawyers at BLG that the Holdback had not been paid to Crane despite the Contract having reached substantial performance. Mr. Guaragna considered ECC to be in default of the Crane Agreement and sought payment under the Payment Bond. Attached hereto and marked as **Exhibit "X"** to this my Affidavit is a copy of said correspondence.

The Rodco Settlement

39. As a result of the Rodco Lien, the Town would not release the Holdback to Crane in accordance with the Irrevocable Direction to Pay. To resolve this issue, Western, ECC, and Rodco negotiated the Rodco Agreement. The Rodco Agreement was confirmed by all parties and contemplates the Rodco Lien being vacated and Crane and Rodco being paid directly from the Holdback.
40. On May 26, 2022, Mr. Cabot on behalf of ECC, sent a without prejudice email to Brad Leyte, counsel for Rodco, advising that he understood ECC and Rodco had worked out the framework for a resolution, which included:
- (a) Rodco discharging its lien;
 - (b) Crane being paid \$206,000 from the Holdback;
 - (c) Rodco receiving the balance of the Holdback, being \$50,000; and
 - (d) ECC paying the remaining balance of the Rodco Debt, failing which Rodco would claim under the Payment Bond.

Mr. Cabot requested Mr. Leyte's position and said it was his understanding that a deal had been reached between their clients. Attached hereto and marked as **Exhibit "Y"** to this my Affidavit is a copy of said correspondence.

41. On May 27, 2022, Mr. Cabot wrote to Mr. Leyte providing further details regarding the settlement. Mr. Cabot confirmed the total amount of the Holdback to be \$244,977.53, of which Crane would receive \$204,781.36 and Rodco would receive the balance, being \$40,196.17. Attached hereto and marked as **Exhibit "Z"** to this my Affidavit is a copy of said correspondence.
42. On May 30, 2022, Mr. Cabot wrote to Mr. Leyte indicating that the amounts referenced in his email of May 27, 2022, included all claims. Mr. Cabot also stated that no other company was claiming any payment, including ECC. Attached hereto and marked as **Exhibit "AA"** to this my Affidavit is a copy of said correspondence.
43. On May 30, 2022, Mr. Leyte sent a without prejudice email to Mr. Cabot advising that Rodco wished to move forward with the proposed settlement. Attached hereto and marked as **Exhibit "BB"** to this my Affidavit is a copy of said correspondence.
44. On June 3, 2022, Mr. Cabot circulated a draft settlement agreement and Mr. Leyte provided comments. Attached hereto and marked as **Exhibit "CC"** to this my Affidavit is a copy of said correspondence.
45. On June 7, 2022, Mr. Cabot advised that he had incorporated Mr. Leyte's comments and circulated what is now the Rodco Agreement. Among other things, the Rodco Agreement contains the following terms and conditions:

(a) The parties to the Rodco Agreement acknowledge and agree that the Holdback can be released and paid to the Subcontractors; and

(b) ECC and Rodco will do all things necessary and execute all documents reasonably necessary to give full effect to their obligations under the Rodco Agreement.

Mr. Cabot told Mr. Leyte he would arrange to have ECC execute the Rodco Agreement and asked Mr. Leyte if Rodco would agree to sign the Rodco Agreement in counterpart. Attached hereto and marked as **Exhibit “DD”** to this my Affidavit is a copy of said correspondence.

46. On June 8, 2022, Mr. Leyte advised Mr. Cabot that Rodco had no problem signing in counterpart and that Rodco would execute the Rodco Agreement. Mr. Leyte asked Mr. Cabot to coordinate with the Town regarding the release the Holdback. Attached hereto and marked as **Exhibit “EE”** to this my Affidavit is a copy of said correspondence.

47. On June 8, 2022, Mr. Cabot advised Mr. Leyte that he had spoken to Mr. Craig and was told that the Town would cooperate in having the Holdback released as contemplated in the Rodco Agreement and raised the prospect of getting a release from Crane and Rodco. Attached hereto and marked as **Exhibit “FF”** to this my Affidavit is a copy of said correspondence.

48. On June 23, 2022, Mr. Cabot wrote to Mr. Craig copying Western and BLG. Mr. Cabot advised that Rodco and ECC had settled the terms of the Rodco Agreement on June 7, 2022, which included Rodco’s Lien being vacated. Mr. Cabot said all that remained was execution of the Rodco Agreement. Attached hereto and marked as **Exhibit “GG”** to this my Affidavit is a copy of said correspondence.

49. On June 28, 2022, Mr. Leyte advised Mr. Cabot that Rodco had attend at his office that morning to execute the Rodco Agreement. Attached hereto and marked as **Exhibit “HH”** to this my Affidavit is a copy of said correspondence.
50. On July 4, 2022, Mr. Cabot wrote to me asking if Western had signed the Rodco Agreement. I responded saying that the initial draft of the agreement did not have a signature line for Western. I told him that if a signature line was added Western would execute the Rodco Agreement. Attached hereto and marked as **Exhibit “II”** to this my Affidavit is a copy of said correspondence.
51. On July 4, 2022, Mr. Cabot sent BLG the Rodco Agreement for review and execution. Attached hereto and marked as **Exhibit “JJ”** to this my Affidavit is a copy of said correspondence.
52. On July 6, 2022, Mr. Cabot wrote to BLG and me, copying Mr. Leyte, confirming that ECC had signed the Rodco Agreement. Attached hereto and marked as **Exhibit “KK”** to this my Affidavit is a copy of said correspondence.
53. On July 13, 2022, I wrote to Mr. Cabot advising that BLG had suggested a few changes to the Rodco Agreement. I specifically asked Mr. Cabot if these changes would be approved or if they would cause hardship with the parties. I did not want to interrupt the performance of the settlement in place, therefore, I was simply asking if the proposed revisions could be incorporated. To the extent incorporating the proposed revisions would delay the settlement, I was happy to proceed with the version already signed by ECC and Rodco. Attached hereto and marked as **Exhibit “LL”** to this my Affidavit is a copy of said correspondence.

54. Mr. Cabot did not respond to my email of July 13, 2022. On July 18, 2022, Mr. Leyte followed up with me for an update on the Rodco Agreement. That same day, I advised Mr. Leyte and Mr. Cabot that I would sign the Rodco Agreement without the proposed changes. Attached hereto and marked as **Exhibit “MM”** to this my Affidavit is a copy of said correspondence.
55. On July 19, 2022, I signed the Rodco Agreement and circulated Western’s signed copy to Mr. Leyte and Mr. Cabot. Attached hereto and marked as **Exhibit “NN”** to this my Affidavit is a copy of the signed Rodco Agreement from Western and the corresponding email to counsel.
56. At this time, because all the parties had now signed the Rodco Agreement and it was previously noted on June 8, 2022, that the parties would sign in counterpart, it was clear to me that a settlement was in place, whereby ECC assigned any interest in the Holdback to Rodco and Crane and further agreed to pay the shortfall to Rodco. Therefore, I considered Western’s Payment Bond exposure regarding Crane and Rodco to have been addressed.
57. As of the date of the swearing of this my Affidavit, Western has not received the signed copy of the Rodco Agreement from ECC or Rodco, despite confirmation from their lawyers that the Rodco Agreement was signed.

ECC Breaches the Settlements and Western Pays Rodco and Crane

58. On July 26, 2022, BLG wrote to Mr. Cabot to follow up on the status of ECC’s performance of the settlement obligations. The following day, Mr. Cabot advised BLG that he was no

longer acting for ECC in this matter and said he would pass his correspondence to ECC. I am advised by BLG and do verily believe that they never received a response from ECC after Mr. Cabot's email of July 27, 2022. Attached hereto and marked as **Exhibit "OO"** to this my Affidavit is a copy of said correspondence.

59. As a result of ECC's failure to perform its settlement obligations, Western was forced to comply with its obligations under the Payment Bond and pay Crane \$204,781.32 and Rodco \$398,607.88.
60. On August 23, 2022, BLG wrote to Josh Collins of ECC advising that Crane and Rodco would be paid under the Payment Bond, and they asked ECC to direct the Holdback funds to Western as contemplated in the Rodco Agreement. Attached hereto and marked as **Exhibit "PP"** to this my Affidavit is a copy of said correspondence.
61. I am advised by BLG and do verily believe that they did not receive a response from Josh Collins regarding their email of August 23, 2022. However, they did receive an email from Darren O'Keefe, current counsel for ECC, that same day alleging that the Rodco Agreement was never executed between the parties. Attached hereto and marked as **Exhibit "QQ"** to this my Affidavit is a copy of said correspondence.
62. On August 24, 2022, BLG wrote to Mr. O'Keefe, advising that Western would be obtaining the Assignments and would be entitled to the Holdback as the assignee of Rodco's claims. BLG further advised that the Town was willing to direct the Holdback to Western but required an acknowledgment or direction from ECC. BLG asked Mr. O'Keefe if ECC would provide the acknowledgement or direction as it was contemplated in the Rodco Agreement.

Attached hereto and marked as **Exhibit “RR”** to this my Affidavit is a copy of said correspondence.

63. I am advised by BLG and verily believe that Mr. O’Keefe did not respond to their email of August 24, 2022.

Western’s Efforts to Affirm the Settlement Obligations

64. On October 18, 2022, BLG wrote to Phil Clarke of Grant Thornton Limited (the “Monitor”), copying Mr. Craig and Mr. O’Keefe, explaining the claims against the Payment Bond, the Rodco Agreement, and the Assignments. BLG advised the Monitor that the Town was agreeable in principle to releasing the Holdback directly to Western, but the Town would require a release from ECC and/or approval from the Monitor disclaiming any rights to the Holdback and confirming ECC would not seek further amounts from the Town in connection with the Contract. Attached hereto and marked as **Exhibit “SS”** to this my Affidavit is a copy of said correspondence.
65. On October 19, 2022, Mr. O’Keefe wrote to BLG setting out ECC’s position with respect to the Holdback. Mr. O’Keefe alleged, among other things, that the Rodco Agreement was not finalized, and that the Holdback should be paid to ECC and form part of its estate. Attached hereto and marked as **Exhibit “TT”** to this my Affidavit is a copy of said correspondence.
66. On October 26, 2022, the Monitor responded to BLG’s correspondence of October 18, 2022, requesting information regarding the Subcontractor liens, the Settlement Agreements, and confirmation that Rodco and Crane had been paid under the Payment Bond. Attached hereto and marked as **Exhibit “UU”** to this my Affidavit is a copy of said correspondence.

67. On November 25, 2022, BLG wrote to the Monitor providing the requested information. On December 7, 2022, the Monitor advised that ECC was disputing Western's position along with the validity of the Rodco Lien. Attached hereto and marked as **Exhibit "VV"** to this my Affidavit is a copy of said correspondence.
68. On December 12, 2022, BLG wrote to the Monitor requesting that ECC provide information to support its position regarding the validity of the Rodco Lien. That same day, Mr. O'Keefe responded to BLG indicating that the only information ECC had was its interpretation of the *Mechanics' Lien Act* and relevant legal principles concerning how a lien survives after the underlying debt obligation is paid. Attached hereto and marked as **Exhibit "WW"** to this my Affidavit is a copy of said correspondence.
69. On December 15, 2022, Justice MacDonald issued the Extension to Stay Order (the "Extension Order") in this proceeding. The Extension Order invites parties to file materials in reply to the Monitor's Interim Report and return for an interim hearing on February 17, 2023, to review the contents of the Monitor's Interim Report. Attached hereto and marked as **Exhibit "XX"** to this my Affidavit is a copy of the Extension Order.
70. I am advised by BLG and do verily believe to be true, that they attended a meeting with Mr. O'Keefe, Mr. Craig, and the Monitor on January 5, 2023. I am further advised by BLG and do verily believe that during the meeting, Mr. O'Keefe agreed to provide information in support of ECC's position regarding its alleged entitlement to the Holdback.
71. Following the call, BLG wrote to Mr. O'Keefe, copying the Monitor and Mr. Craig, advising that Western's preference would be for the Town to hold onto the Holdback funds rather than paying them into court because Western's approach contemplated cost efficiency by

having one hearing to determine to who and where the Holdback should be paid by the Town, rather than separate applications to (i) pay Holdback into court, then (ii) return to address the merits. Attached hereto and marked as **Exhibit “YY”** to this my Affidavit is a copy of said correspondence.

72. I am advised by BLG and do verily believe that ECC has not provided any information to support its position regarding the Holdback. I am further advised by BLG and do verily believe that the Monitor requested documents from ECC on this issue. As referenced in the Fourth Report of the Monitor dated February 3, 2023, ECC has not provided the Monitor with the documents. Attached hereto and marked as **Exhibit “ZZ”** to this my Affidavit is a copy of the Fourth Monitor’s Report.
73. On January 20, 2023, Mr. O’Keefe wrote to BLG and the Town advising that the Holdback should be paid to ECC and constituted ECC receivables that should be made available to its creditors. Mr. O’Keefe said he had instructions to make an application to compel the Town to pay the funds into court if they were not paid to the Monitor. Attached hereto and marked as **Exhibit “AAA”** to this my Affidavit is a copy of said correspondence.
74. On January 23, 2023, BLG responded to Mr. O’Keefe’s January 20 letter and advised of Western’s position, namely, that Western disagrees that the Holdback should be paid to ECC and the basis of Western’s position. Attached hereto and marked as **Exhibit “BBB”** to this my Affidavit is a copy of said email.
75. On January 31, 2023, Mr. O’Keefe wrote to BLG and Mr. Craig suggesting that the Holdback be paid into court in the *Mechanics’ Lien* action commenced by Rodco (the “Rodco Lien Action”). Mr. O’Keefe indicated that if an agreement could not be reached, he

expected to make an application to have the funds paid into court as proposed. Attached hereto and marked as **Exhibit “CCC”** to this my Affidavit is a copy of said correspondence.

76. On February 2, 2023, BLG advised Mr. O’Keefe that Western would bring an application to affirm and declare the Settlement Agreements, which application would be brought in the CCAA proceedings in accordance with the Extension Order. BLG asked Mr. O’Keefe if he would like to work cooperatively and agree on a mutually acceptable timetable for the exchange of materials, cross-examination, and hearing date. Attached hereto and marked as **Exhibit “DDD”** to this my Affidavit is a copy of said correspondence.
77. On February 2, 2023, Mr. O’Keefe responded to BLG asserting that he did not agree with Western’s proposed approach and reiterated ECC’s position that there was no settlement agreement. Mr. O’Keefe served an application in the Rodco Lien Action to have the Holdback paid into court along with supporting Affidavits from Mr. O’Keefe and Josh Collins. Attached hereto and marked as **Exhibit “EEE”** to this my Affidavit is a copy of said correspondence.
78. In addition, on February 2, 2023, Mr. O’Keefe served a Notice to Produce for Inspection on Western in the Rodco Lien Action. Attached hereto and marked as **Exhibit “FFF”** to this my Affidavit is a copy of the Notice to Produce for Inspection.
79. That same day, BLG responded to Mr. O’Keefe objecting to the Notice to Produce for Inspection on several grounds, including that Western is not a party to the Rodco Lien Action, BLG not being counsel of record for any party in that action, and that the documents requested are not contemplated under the *Rules of the Supreme Court*. In reply, Mr. O’Keefe advised BLG that ECC would bring an application to force production of the documents

indemnity basis. Attached hereto and marked as **Exhibit "GGG"** to this my Affidavit is a copy of said correspondence, dated February 2, 2023.

80. As of the date of the swearing of this my Affidavit, I am advised by BLG and do verily believe to be true that ECC has not provided any supporting information regarding its entitlement to the Holdback funds or any information in support of the position that the Rodco Agreement was never finalized.
81. I swear this Affidavit in support of Western's position in the within application and for no other or improper purpose.

SWORN TO at Regina, in the Province of Saskatchewan, the 10th day of February, 2023 before me:


Barrister, Notary Public or Commissioner for Oaths




JAMES TOOTHILL

TAB A

This is **Exhibit "A"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan



REGINA, SASKATCHEWAN

Indemnity and Security Agreement

The following parties are hereinafter collectively called the "Principal":

**EDWARD COLLINS CONTRACTING LIMITED & UNIVERSAL ENVIRONMENTAL SERVICES INC.
OR ANY ONE OR COMBINATION OF THEM**

The beneficiary of this agreement is: Western Surety Company, (hereinafter called the "Surety") and any other person described in paragraph 9 herein.

IN CONSIDERATION OF THE ISSUE BY THE SURETY OF BONDS AS DEFINED HEREUNDER, THE UNDERSIGNED COVENANT AND AGREE AS FOLLOWS:

1. *Date and place of execution of this agreement* - This Agreement, for all legal intents and purposes, is deemed to have been executed the 8TH day of MARCH 2021 in the province of NEWFOUNDLAND AND LABRADOR Canada.
2. *The "Principal"* - All references herein to the "Principal" mean one or the other or each of the parties designated hereinabove as the "Principal" and any other person described in paragraph 10 herein.
3. *The "Indemnitors"* - For purposes of this agreement, "Indemnitors" means:
 - a) all the parties designated as the "Principal" and, should the case arise,
 - b) the other signatories of this agreement.
4. *Purpose of this agreement and definition of "Bonds"* - The purpose of this agreement is:
 - a) to set forth the rights of the Surety and other beneficiaries, and
 - b) to set forth the rights and obligations of the Indemnitors, and
 - c) to create and obtain hypothecs, assignments and security interests,

following from the execution of one or several bonds to guarantee the obligations of any Principal (including, but not limited to bid bonds, performance bonds, labour and material payment bonds, claimant's payment bonds, maintenance bonds, lien bonds, bonds relating to advances by obligees, holdback bonds, credit or financial guarantee bonds as well as letters of intent or of undertaking and consents of surety) or other forms of guarantee or obligation (herein called the "Bonds"); the word "Bonds" includes any alteration, renewal, continuance, replacement or extension thereof.

5. *Bonded Contracts* - For purposes of this agreement, any reference to the term "Bonded Contracts" means contracts in respect of which one or more Bonds have been issued.

6. *Indemnitors' interest in the Principal* - The Indemnitors acknowledge that this agreement will remain in full force and effect and continue to bind them even if they never had or no longer have any interest in the Principal of each or any of them.
7. *Consideration for this agreement* - The Indemnitors acknowledge that the Surety requires their signatures to this agreement in consideration:
 - a) of the issue of Bonds, whether past, present and future, by the Surety or by others referred to in paragraph 9 herein, directly or indirectly, or
 - b) of the Surety refraining from cancelling such Bonds, and
 - c) of the sum of Two Dollars and other good and valuable consideration paid and furnished by the Surety to each of the Indemnitors (the receipt and sufficiency of which are hereby acknowledged).
8. *Bonds covered by and duration of this agreement* - This Agreement applies to all Bonds issued by the Surety since _____ (the absence of any date means that this agreement applies only to Bonds issued from the date hereof), for an indeterminate term, until such time as this agreement is terminated in accordance with its terms.
9. *Additional beneficiaries of this agreement* - All of the terms and conditions of this agreement are for the benefit of:
 - a) any successors or assigns of the Surety, including as a result of mergers, acquisitions of portfolios, or otherwise, and
 - b) any surety, joint or several, any re-insurance company and any other surety procured by the Surety upon the request of the Principal to issue a Bond or Bonds, whether or not such Bond or Bonds are issued by the Surety or whether or not the Surety retains any interest in any such Bond or Bonds.
10. *Bonds issued for an affiliate, subsidiary or related company of the Principal or for a joint venture* - This Agreement applies equally to Bonds issued:
 - a) on behalf of any present or future subsidiary or related company of the Principal, and
 - b) on behalf of any joint venture or other form of common enterprise or partnership to which the Principal is a party or is about to become a party at the time of issue of such Bond or Bonds.

The Principal shall require that any such affiliate, subsidiary, related company, joint venture or other form of common enterprise or partnership, execute an endorsement agreement to be bound by this agreement. Such endorsement shall be in the form required by the Surety.
11. *Parties bound by this agreement* - Each of the Indemnitors acknowledges that it is bound by all of the terms and conditions of this agreement, as are its representatives, successors and assigns.
12. *Joint and several obligation of the Indemnitors* - The Indemnitors agree that they bind themselves jointly and severally with respect to all of the obligations assumed hereunder; this means that each of the Indemnitors may be compelled separately to perform all of the Indemnitors' obligations hereunder.
13. *Waiver of the benefit of division* - The Indemnitors specifically waive the benefit of division, which would, in the absence of the present waiver, permit any one Indemnitor to require the Surety to divide its claim proportionately amongst all the Indemnitors.
14. *Waiver of the benefit of discussion* - The Indemnitors specifically waive the benefit of discussion, which would, in the absence of the present waiver, permit the Indemnitors to require the Surety to exhaust its resources against the Principal, before calling upon the Indemnitors under this agreement.
15. *Obligations in respect of Bonds, Bonded Contracts and this agreement* - The Principal agrees to fulfil and the Indemnitors, other than the Principal, agree to cause the Principal to fulfil all of the Principal's obligations under:

- a) Bonds,
- b) Bonded Contracts, and
- c) sub-contracts and supply contracts entered into by the Principal.

The Principal undertakes moreover to first use funds received from obligees under Bonded Contracts for the purpose of fulfilling its obligations under Bonded Contracts and under related sub-contracts and supply contracts to which it is a party. The Indemnitors undertake to do nothing which could give rise to a claim or a default under the terms of this agreement, or any Bond or of any Bonded Contract.

16. *Use of tools, equipment, materials and work in process* - The Principal agrees to keep available and to use for the performance of Bonded Contracts, all tools, equipment, materials and work in process necessary for such execution.
17. *Indemnification of the Surety* - The Indemnitors undertake to indemnify the Surety in full for any loss or damages that it may suffer arising from the issue of one or several Bonds, or arising from a decision of the Surety not to issue any Bond, or arising from any default by the Indemnitors under this agreement. The present undertaking includes, without limitation, the obligation of the Indemnitors to reimburse to the Surety all sums which it might be called upon to pay:
- a) in respect of any claim, liability or loss;
 - b) as expenditure, costs or fees that it may incur, including the cost of internal or external adjusters and consultants;
 - c) as a result of a judgment, arbitration award or settlement;
 - d) as damages of any nature, including punitive and exemplary damages, as the case may be;
 - e) in satisfaction of judicial and extra-judicial fees and disbursements of the Surety's counsel on a solicitor and client basis and legal fees of claimants' counsel;
 - f) as administration costs related to claims under Bonds and under this agreement.
18. *Loan and guarantee by the Surety of a loan or advance* - In the event that the Surety decides in its sole discretion to:
- a) lend any sum of money to the Principal or
 - b) guarantee any loan or advance made by anyone to the Principal,
- so as to permit the Principal to fulfil its obligations under Bonded Contracts, the Indemnitors undertake to reimburse to the Surety the full amount of such loan in principal, interest and costs, and they acknowledge that all the terms and conditions of this agreement apply to such undertaking.
19. *Obligation to pay the premium* - The Indemnitors undertake to pay to the Surety:
- a) the initial premium for the issue of any Bond, in conformity with the Surety's tariff in force, or such other tariff as may be agreed upon with the Principal; and
 - b) thereafter, any additional or other premium, in conformity with the Surety's tariff in force or such other tariff as may be agreed upon with the Principal until such time as the Surety receives proof to its satisfaction, confirming its complete release from all Bond issued by it, and from the renewal or extension of such Bonds.
20. *Assignment of the Principal's rights* - As a continuing and collateral security for the obligations of the Indemnitors towards the Surety under this agreement, each Principal hereby grants, bargains, sells and conveys to the Surety, a continuing, specific and fixed assignment, transfer, mortgage, charge and security interest in the following:
- a) all of the claims and debts which it holds against all persons, and without limitation, against:
 - i) all persons with whom it has or will enter into Bonded Contracts; and
 - ii) all persons with whom it has or will enter into a sub-contract or a supply contract; and
 - iii) all persons with whom it has or will enter into unbonded contracts;

the said claims including, without limiting the generality hereof, all sums due in virtue of the said Bonded Contracts, sub-contracts, supply contracts, unbonded contracts, deferred and final payments, holdbacks, balances of contract funds whether earned or unearned, claims for extras and claims in damages; and

- b) any construction lien or mechanic's lien that it may hold; and
- c) any insurance contract, particularly insurance contracts relating directly or indirectly to Bonded Contracts; and
- d) all of the sub-contracts and supply contracts which it has granted or will grant, comprising all guarantees and warranties attached thereto, together with all materials included thereunder relating to the execution of the Bonded Contracts and unbonded contracts; and
- e) any bond issued to guarantee the obligations of sub-contractors or suppliers of the Principal; and
- f) all the equipment, tools, materials, work in process, patents, royalties, trade marks, computer programs, computers, disks, diskettes, files and records of the Principal, required, in the opinion of the Surety, for the performance of the Bonded Contracts, being:
 - i) on the job sites of the Bonded Contracts; or
 - ii) in the possession of the Principal or other parties engaged by the Principal; or
 - iii) at any of the Principal's place or places of business; or
 - iv) in storage elsewhere; or
 - v) in transit between the job sites of the Bonded Contracts and the Principal's place or places of business or storage facilities; and
- g) all proceeds and personal property in any form derived directly or indirectly from any dealing with the Collateral as defined hereunder, or any part thereof and all proceeds of proceeds and any part thereof; and
- h) all of the Principal's property, assets, rights and undertakings of every nature, item and kind, now or at any time and from time to time, wherever situate; all items listed above from a) to h) being collectively defined as the "Collateral".

21. *Obligations secured* - The Collateral constitutes and will constitute continuing security for the following obligations (collectively, the "Obligations") of the Indemnitors to the Surety:

- a) the prompt payment, as and when due and payable, of all amounts now or hereafter owing by the Indemnitors to the Surety, including by way of guarantee and indemnity, whether now existing or hereafter incurred, matured or unmatured, direct, indirect, joint or several, or contingent including any extensions and renewals thereof, and all further advances or readvances; and
- b) the strict performance and observation by the Indemnitors of all agreements, warranties, representations, covenants, conditions and undertakings of the Indemnitors made pursuant to this Indemnity Agreement or any other agreement between any one or more of the Indemnitors and the Surety all as now in effect or as hereafter entered into or amended.

22. *Trust funds* -

- a) The Principal agrees and hereby expressly declares that all funds due or to become due under any Bonded Contract, are, whether in the possession of the Principal or another, trust funds for the benefit of and payment to all persons to whom the Principal incurs, in the performance of such Bonded Contract, obligations for which the Surety would be liable under any Bond. If the Surety assumes or discharges any such obligation, it shall be entitled to assert the claim of such person to the trust funds;
- b) The Principal shall, upon demand and in implementation of any trust hereby created, open an account or accounts with a bank or similar depository designated by the Principal and approved by the Surety, which account or accounts shall be designated as a trust account or accounts for the deposit of such trust funds, and shall deposit therein all monies received pursuant to said Bonded Contract or contracts. Withdrawals from such accounts shall be by cheque or similar instrument signed by the Principal and countersigned by a representative of the Surety.
- c) Said trust or trusts shall terminate on the payment by the Principal of all the contractual obligations for the payment of which the trust or trusts are hereby created or upon the expiration of twenty years from the date hereof, whichever shall first occur.

23. *Consent to the delivery and publication of this agreement, and waiver* - In order to give effect to the hypothecs, assignments and security interests granted hereunder and to allow them to be set-up against third parties, the Indemnitors specifically acknowledge and agree that the Surety may, at any time:
- a) deliver or transmit a copy of this agreement to any person, firm or corporation; and
 - b) publish, file or register this agreement and any right or security thereunder, in any appropriate office or registry.

Each of the Indemnitors further waives its right (if applicable) to receive a copy of any financing statement, financing change statement and verification statement outside Quebec or, everywhere, any notice delivered, filed or issued in respect of this agreement.

24. *Power of attorney given by the Surety resulting from the securities and security interests granted herein and authorization to collect and to endorse any cheque, money order or other instrument* - In order to give effect to the securities and security interests granted or created by this agreement, each Principal specifically constitutes the Surety, its irrevocable attorney:
- a) to enforce any of the securities and security interests granted or created by this agreement and particularly privileges ("construction liens" or "mechanic's liens") as well as legal or movable hypothecs, assignments and other security interests; and
 - b) to collect and to endorse in the name of the payee and to cash any cheque, money order or other instrument created or issued in payment of funds payable under Bonded Contracts and unbonded contracts, and to retain and disburse such cash; and
 - c) to sign any document and deed, give any notice or make any inscription or registration in order to give effect to the provisions of this agreement and particularly, the hypothecs, charges, assignments and other security interests.
25. *Signature of other documents by the Indemnitors* - The Indemnitors undertake to sign all other documents required by the Surety in order to give effect to the hypothecs, assignments and security interests granted by this agreement.
26. *Reduction of obligations* - The Obligations as defined in paragraph 21 above and the Indemnitors' obligations hereunder, may be reduced to zero from time to time without affecting the validity, perfection or enforceability of this Indemnity Agreement for subsequent obligations or of the hypothecs, assignments and security interests created hereby until this Indemnity Agreement is terminated in accordance with the terms hereof.
27. *Subordination of Indemnitors* - None of the Indemnitors shall enforce any rights of contribution or indemnity against any Principal or its property and undertakings until such Principal's obligations to the Surety under this agreement have been satisfied in full.
28. *Indemnitors' obligation to advance funds required by the Surety to meet its obligations* - In order to permit the Surety to meet its obligations under the Bonds, the Indemnitors undertake to advance to the Surety upon demand, funds or satisfactory guarantees sufficient to allow the Surety to perform any or all of its obligations under the Bonds, which could be subject to indemnification under the terms of this agreement, even before any payment has been made by the Surety to a third party. Without limiting the generality of the foregoing, the Indemnitors undertake to advance funds or furnish guarantees, as soon as the Surety establishes or increases a reserve with respect to a claim or a situation relating to any Bonds, up to the amount of such reserve which will be established by the Surety in its sole discretion.
29. *Advance and payment to the Surety when the Principal requires the Surety to take part in an action or a defence* - The Indemnitors undertake to advance and pay to the Surety funds sufficient to satisfy any judgment or arbitration award which could be rendered against the Surety, as well as disbursements or costs incurred by the Surety or awarded against it, including judicial or extra-judicial fees and disbursements of the

Surety's counsel on a solicitor and client basis, when the Principal requires the Surety to take part in any legal action or in the defence of any legal proceedings. The Indemnitors undertake to make further advances and payments when required by the Surety.

30. *Investment and use of advances to the Surety and of funds collected from obligees* - The Surety may hold any advance made by any Indemnitor and any sums collected from obligees under Bonds, in such form as the Surety may in its sole discretion decide, and shall have no obligation to invest, or provide any income or return on any such advance. The Surety may use all or any part of such advance and any income earned thereon, in payment or compromise of any of the Indemnitors' obligations hereunder.
31. *Surety's right to intervene in Bonded Contracts* - In the event of:
- a) any default of the Principal under any Bond; or
 - b) any default of the Principal under any Bonded Contract or under any sub-contract or supply contract relating to a Bonded Contract; or
 - c) any default of an Indemnitor under this agreement; or
 - d) any action by an Indemnitor which could affect the rights of the Surety under any Bond or under this agreement; or
 - e) any act of bankruptcy of the Principal or the insolvency of the Principal or the making by the Principal of any arrangement with its creditors; or
 - f) any default by the Principal with respect to any of its secured creditors; or
 - g) any default by the Principal on a contract not bonded by the Surety; or
 - h) any other act, event, circumstance or occurrence which, in the Surety's reasonable discretion, gives rise to any concern as to the enforcement of its rights hereunder;

the Surety may, without notice of default, intervene in any Bonded Contract, for the purpose of assuming its obligations and exercising any of its rights under Bonds. The Surety will then have the right, without prejudice to its other rights and recourses in virtue of this agreement, to take possession of and to use the equipment, tools, materials, work in process, patents, royalties, trademarks, computer programs, computers, disks, diskettes, files and records, for purposes of completing the Bonded Contracts.

32. *Decision as to the payment of claims* - The Indemnitors acknowledge that the Surety will have the right, in its sole and entire discretion, to decide whether to pay, settle or contest any claim under a Bond, without any obligation to consult or advise the Indemnitors in advance of so doing.
33. *Proof of payments made by the Surety* - The Indemnitors acknowledge their obligation to indemnify the Surety in virtue of this agreement, upon presentation by the latter of a release or a copy of a cheque or any other proof of payment, which will be deemed to be complete proof of the amount paid and of the Surety's right to make such payment as a result of the issue of the Bonds and, consequently, its right to demand reimbursement from the Indemnitors under the terms of this agreement.
34. *Surety's right of access to the books and records of the Indemnitors* - The Indemnitors hereby grant to the Surety full right of access to, examination of and making of copies of, during normal business hours, their books, records, files, computer records and accounts, for such period as any rights and obligations under Bonds remain in effect or so long as the Indemnitors are potentially or actually indebted to the Surety for any sum or sums whatsoever.
35. *Undertaking to furnish certain information* - The Indemnitors undertake to furnish to the Surety, on demand, all information or pertinent documentation required by the Surety relevant to:
- a) the Indemnitors' financial position; and
 - b) any modification to the corporate or partnership structure of any of the Indemnitors, particularly any change of name, merger, amalgamation, etc.; and
 - c) the state of the work on any contract, particularly Bonded Contracts, and the financial situation of such contracts.

36. *Undertaking to deliver certain documents to the Surety* - So long as the Surety has any potential liability under any Bond, the Indemnitors undertake, without delay, to deliver to the Surety copies of the following documents:
- a) the annual or interim financial statements of each Indemnitor; and
 - b) any petition for a receiving order, petition in bankruptcy or proceeding for arrangement with its creditors made against or by an Indemnitor; and
 - c) any proposal by an Indemnitor to its creditors; and
 - d) any notice of default or action involving an Indemnitor, which could result in a claim under a Bond.
37. *Cooperation and discharge* - The Indemnitors undertake to cooperate with the Surety in any way which may assist the Surety in limiting, reducing or discharging its obligations under any Bond in accordance with its terms and particularly in respect of any proceeding taken against the Surety, without any obligation on the Surety's part to indemnify them. The present undertaking includes that of being present at any examination or trial relating to any Bond or to any right granted to the Surety under this agreement. The Surety may, at any time, take such action as it deems necessary or proper to obtain its release from any and all liability under any Bond.
38. *Information concerning the Indemnitors* - The Indemnitors specifically authorize the Surety to obtain any credit or other personal information concerning any or all Indemnitors which it desires and which is pertinent to the conclusion or the execution of this agreement and to the issue of any Bond, and any person, credit bureau, bank, financial institution, obligee, architect, engineer, accountant, sub-trade or supplier possessing any such information is, by this agreement, authorized to communicate such information to the Surety, on demand, during the life of this agreement and, if necessary, thereafter.
39. *Authorization to the Surety to make changes* - The Surety is hereby authorized to make the following changes, without notice to the Indemnitors:
- a) in the terms of any Bond or Bonded Contract; and
 - b) in the designation of any obligee of a Bond; and
 - c) respecting any renewal, continuation, replacement, reinstatement or extension of any Bond; and
 - d) correcting errors in and executing any substitute to any Bond with the same or different conditions, provisions, amounts and obligees; and
 - e) for the purpose of completing this agreement or any Bond or of correcting errors of declaration or description of Bonds or of this agreement.
40. *Validity of this agreement notwithstanding the absence of the signatures of one or more Indemnitors or witnesses* - This Agreement will be and will remain in full force, even if one or more of the Indemnitors designated herein, or one or more of the witnesses have not signed this agreement or their signature has been adjudged invalid.
41. *Failure of the Principal to sign or deliver any Bond* - The Indemnitors are fully responsible under this agreement even in the event that the Principal has not signed any Bond signed by the Surety or that a Bond has not been delivered to an obligee, without prejudice to the Surety's right to assert that it is not liable under such Bond.
42. *Settlement with one or several Indemnitors* - In the event of a claim by the Surety against the Indemnitors in virtue of this agreement or in virtue of any other rights of the Surety, the Indemnitors specifically authorize the Surety to settle such claim with one or several of the Indemnitors, without reference to the others and such settlement shall not affect or reduce the obligations of such others. The Indemnitors expressly renounce and waive any rights which they may have to be discharged from their obligations or to have such obligations reduced by reason of the discharge of one or several Indemnitors.
43. *Surety's rights following settlement with one Indemnitor* - The Indemnitors agree that any settlement made by the Surety with one of them will not effect novation of the obligations of the Indemnitor in question (i.e.

TAB B

This is **Exhibit "B"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, consisting of a stylized 'J' followed by a series of loops and a long horizontal stroke.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

March 3, 2021

Joshua Collins
Edward Collins Contracting Ltd
P.O. Box 51
Jerseyside, NL
AOB 2G0

Dear Joshua:

RE: Town of Placentia – Water System Upgrades
17-GI-20-00050 / 17-SCF-19-00129

We are pleased to advise you that the Town of Placentia hereby awards the above referenced project to Edward Collins Contracting Ltd, in the amount of \$2,259,486.65 (including HST). Meridian Engineering Inc. will be administering this project on the Town's behalf, therefore please submit the following documentation to Meridian such that they can incorporate such documents into the Contract Documents and submit to both parties for signature of the Contract:

- Performance Bond
- Labour and Materials Bond
- Certificate of Clearance from WHSCC
- Letter of Good Standing from CORE
- Certificate of Insurances
- Construction Schedule
- Site Specific Safety Plan

We look forward to working with you and should you have any questions or concerns pertaining to this project, please contact Meridian Engineering Inc. (Scott Smith) at 709-466-2700.

Yours truly,
Meridian Engineering Inc.



Scott Smith, P.Eng
Project Manager / Senior Civil Engineer

cc Adam Green, Public Works Superintendent – Town of Placentia
Rob Beaupertuis, CAO, Town of Placentia
Chris Dohaney, Design Approval Technician, DTI-MI



GOVERNMENT OF NEWFOUNDLAND AND LABRADOR
Open Call for Bids
Bid Form

Bid for: Owner: Town of Placentia
Project Name: Water System Upgrades
Project Number: 17-GI-20-00050 / 17-SCF-19-00129

To: Deputy Minister
c/o Tendering and Contracts
Department of Transportation and Infrastructure
P.O. Box 8700
St. John's, NL, A1B 4J6

1. Having carefully examined the site of the proposed work and all conditions affecting such, as well as the Contract Documents including the Specifications, all Drawings listed in the Specifications, all Amendments, and the Instructions to Bidders for this project; and hereby acknowledge the requirements of the Instructions to Bidders.

WE, THE UNDERSIGNED, offer to furnish all necessary Labour, materials, superintendence, plant, tools and equipment, and everything else required to perform expeditiously and complete in a satisfactory manner the work for the sum as indicated on Appendix A of this Bid Form.
2. The Work will be substantially performed within 148 working days from the date of notification of award of contract.
3. WE hereby acknowledge receipt of amendments issued related to this procurement.
4. In order for a Bid to be valid, it must be signed by duly authorized officials as indicated in the Instructions to Bidders.

SIGNATURE OF BIDDER

Firm Name: EDWARD COLLINS CONTRACTING LTD.

Address: P.O. BOX 51, Jersey Side, N.L.

Postal Code: A0B 2G0 E-Mail: ECOLLINS76@Jmail.com

Ph # 708-227-5508



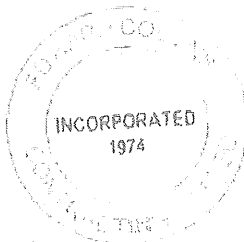
Signing Officer

Corporate Seal

Signing Officer



Witnessed by



Schedule of Quantities and Prices

1,964,771.00
294,715.65
2,259,486.65
03/15/21

Part A (Addendum 2)
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SSC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
01006	<u>Maintain Existing Services</u>				
	1 Maintain Existing Water Systems (Contractor to ensure that the Town has a supply of Chlorinated water at all times)	L.S.	Unit	<u>950.00</u>	<u>950.00</u>
01010	<u>Mobilization & Demobilization</u>				
	1 Mobilization & Demobilization (20% of contract value)	L.S.	Unit	<u>5000.00</u>	<u>5000.00</u>
01020	<u>Cash Allowances</u>				
	1 Contribution in Aid of Hydro	Allow	Unit	<u>\$5,000.00</u>	<u>\$5,000.00</u>
01500	<u>Temporary Facilities</u>				
	1 Engineers Site Office	L.S.	Unit	<u>1000.00</u>	<u>1,000.00</u>
01570	<u>Traffic Regulations</u>				
	1 Flagpersons Wages	hour	580	<u>28.00</u>	<u>19,040.00</u>
01560	<u>Environmental Requirements</u>				
	1 Silt Fence	m	50	<u>1.00</u>	<u>50.00</u>
01580	<u>Project Sign</u>				
	1 Project Sign	L.S.	1	<u>1000.00</u>	<u>1,000.00</u>
01710	<u>Reinstatement and Cleaning</u>				
	1 Oilching	m	450	<u>10.00</u>	<u>4,500.00</u>

Part A (Addendum 2)
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

DIVISION #2**02070****Site Work, Demolition & Removal of Structures**

1	Remove and replace section of arch culvert on Harbour Drive to install new watermain	LS	1	1000.00	1000.00
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02111**Cleaning and Grubbing**

1	Clearing	ha	12	800.00	9600.00
2	Grubbing	ha	12	800.00	9600.00

02215**Site Work & Site Grading**

1	Mass Common Excavation	m ³	750	1.00	750.00
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02223**Excavation, Trenching and Backfilling**

1	Main Trench Excavation				
1	Rock	m	2,300	1.00	2,300.00
2	Common	m	11,900	1.00	11,900.00
2	Imported Rock Backfill	m ³	950	80.00	76,000.00
3	Rock Underbedding	m ³	150	80.00	12,000.00
4	Granular Pipe Bedding				
1	Type 3	m ³	4015	1.00	4,015.00
5	Supply & Placement of Marking Tape				
1	Plastic Tape	m	3,640	2.00	7,280.00

02233**Selected Granular Base & Sub-base Materials**

1	Class "A" Granular Base	m ³	200	38.00	7,600.00
2	Class "B" Granular Base	m ³	200	38.00	7,600.00

Part A (Addendum 2)
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

02434	<u>Pipe Culverts</u>				
1	Supply and Install 450mm HDPE	m	60	<u>100.00</u>	<u>6000.00</u>
02574	<u>Reshaping & Patching of Asphalt Pavement</u>				
1	Removal of Asphalt	m ²	400	<u>5.00</u>	<u>2000.00</u>
2	Patching of Asphalt	m ²	400	<u>100.10</u>	<u>40,000.00</u>
3	Cutting of Asphalt	m	250	<u>1.00</u>	<u>250.00</u>
02713	<u>Water Mains</u>				
1	Supply & Installation of Water Main				
1	150mm Ø PVC Pipe DR18	m	400	<u>150.00</u>	<u>60,000.00</u>
2	300mm Ø PVC Pipe DR18	m	130	<u>200.00</u>	<u>26,000.00</u>
3	300mm Ø HDPE DR17 Fused Pipe	m	3050	<u>160.00</u>	<u>488,000.00</u>
2	Supply & Installation of Fitting				
1	150mm dia off 150mm dia tee	each	3	<u>400.00</u>	<u>1,200.00</u>
2	300mm dia off 300mm dia tee	each	2	<u>1,000.00</u>	<u>2,000.00</u>
3	200mm dia to 150mm dia reducer	each	1	<u>300.00</u>	<u>300.00</u>
4	300mm dia to 150mm dia reducer	each	1	<u>500.00</u>	<u>500.00</u>
5	150mm dia 90 deg bend	each	6	<u>300.00</u>	<u>1,800.00</u>
6	150mm Ø Sleeve Type Coupling	each	1	<u>250.00</u>	<u>250.00</u>
7	200mm Ø Sleeve Type Coupling	each	1	<u>300.00</u>	<u>300.00</u>
8	300mm Ø Sleeve Type Coupling	each	1	<u>500.00</u>	<u>500.00</u>
3	Supply & Install Valves including valve boxes				
1	150mm Ø	each	3	<u>2,000.00</u>	<u>6,000.00</u>
2	300mm Ø	each	1	<u>10,000.00</u>	<u>10,000.00</u>
3	300mm Ø c/w post indicator	each	6	<u>7,000.00</u>	<u>42,000.00</u>

Part A (Addendum 2)
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

4	Supply and Install New Fire Hydrant	each	1	<u>5,000.⁰⁰</u>	<u>5,000.⁰⁰</u>	
5	Swabbing of Water Lines	m	555	<u>5.⁰⁰</u>	<u>2,775.⁰⁰</u>	
6	Flush HDPE Water Line	m	3,650	<u>2.00</u>	<u>6,100.⁰⁰</u>	
7	Locate & Connect to Existing System	each	3	<u>5000.⁰⁰</u>	<u>25,000.⁰⁰</u>	
8	Supply and Install Rigid Insulation (thk as identified on the attached drawings)	m	6	<u>10.⁰⁰</u>	<u>60.⁰⁰</u>	
9	Supply & Install Air Release Valves					
1	50mm dia Air Release Valve (ARI-D 090)	each	2	<u>10,000.⁰⁰</u>	<u>20,000.⁰⁰</u>	
<u>15 10 00</u>	<u>Pressure Reducing Valve Station</u>					
1	Includes the supply, installation and commissioning of the PRV station as detailed in the specifications. Includes all valves, piping, fittings, joint restraints, flow meters, civil work and pre-fabricated enclosure. To include all valves, fittings and joints restraints required to connect to main line. No extra payment will be made for locate and connect to existing piping	LS	2	<u>115000.⁰⁰</u>	<u>230,000.⁰⁰</u>	(K.L.)
<u>15 20 00</u>	<u>Intake at Gull Pond</u>					
1	Supply and Install Timber Crib	LS	1	<u>2,000.⁰⁰</u>	<u>2,000.⁰⁰</u>	
2	Supply and Install Concrete Pipe Anchors	ea	10	<u>500.⁰⁰</u>	<u>5,000.⁰⁰</u>	
3	Supply and Install Wedgewire Screen	ea	1	<u>15,000.⁰⁰</u>	<u>15,000.⁰⁰</u>	
4	300mm HDPE DR17 Intake Pipe	m	20	<u>220.⁰⁰</u>	<u>6,600.⁰⁰</u>	(K.L.)
5	End of pipe flange fitting to accept new screen	ea	1	<u>500.⁰⁰</u>	<u>500.⁰⁰</u>	
<u>15 20 00</u>	<u>Discharge into Barron Pond</u>					
1	Supply and Install Concrete Pipe Anchors	ea	10	<u>750.⁰⁰</u>	<u>7,500.⁰⁰</u>	
2	300mm HDPE DR17 Intake Pipe	m	20	<u>220.⁰⁰</u>	<u>6,600.⁰⁰</u>	
<u>15 20 00</u>	<u>Intake at Barron Pond</u>					
1	Supply and Install Timber Crib	LS	1	<u>2,000.⁰⁰</u>	<u>2,000.⁰⁰</u>	
2	Supply and Install Concrete Pipe Anchors	ea	10	<u>500.⁰⁰</u>	<u>5,000.⁰⁰</u>	

Part A (Addendum 2)
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

	3	Supply and Install Wedgewire Screen	ea		15,000. ⁰⁰	15,000. ⁰⁰
	4	300mm HDPE DR17 Intake Pipe	m	30	220. ⁰⁰	6,600. ⁰⁰
	5	End of pipe flange fitting to accept new screen	ea	1	500. ⁰⁰	500. ⁰⁰
15 20 00		<u>Discharge into Little Barron Pond</u>				
	1	Supply and Install Concrete Pipe Anchors	ea	10	750. ⁰⁰	7,500. ⁰⁰
	2	300mm HDPE DR17 Intake Pipe	m	30	220. ⁰⁰	6,600. ⁰⁰
15 20 00		<u>Intake at Little Barron Pond</u>				
	1	Supply and Install Timber Crib	LS	1	2,000. ⁰⁰	2,000. ⁰⁰
	2	Supply and Install Concrete Pipe Anchors	ea	10	500. ⁰⁰	5,000. ⁰⁰
	3	Supply and Install Wedgewire Screen	ea	1	15,000. ⁰⁰	15,000. ⁰⁰
	4	300mm HDPE DR17 Intake Pipe	m	30	220. ⁰⁰	6,600. ⁰⁰
	5	End of pipe flange fitting to accept new screen	ea	1	500. ⁰⁰	500. ⁰⁰
15 20 00		<u>Discharge into Clarke's Pond</u>				
	1	Supply and Install Concrete Pipe Anchors	ea	12	750. ⁰⁰	750. ⁰⁰ 9000. ⁰⁰
	2	300mm HDPE DR17 Intake Pipe	m	30	220. ⁰⁰	6,600. ⁰⁰
15 40 00		<u>Hypo - Chlorination System</u>				
	1	The supply, installation and commissioning of a new hypo chlorination system including emergency eye shower unit for the PRV Station as detailed on the drawings and specifications	LS	1	8,000. ⁰⁰	16,000. ⁰⁰
	a.	Sub-Total:			1,323,820. ⁰⁰	1,315,570. ⁰⁰
	b.	HST @ 15%			198,573. ⁰⁰	197,335. ⁰⁰
	c.	PART A Total			1,522,393. ⁰⁰	1,512,905. ⁵⁰

AL
03/15/21

Part B (Addendum 2)
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
<u>01005</u>	<u>Maintain Existing Services</u>				
	Maintain Existing Water Systems (Contractor to be required to ensure that the Town has a supply of Chlorinated water at all times)	L.S.	Unit	<u>2,000.00</u>	<u>2,000.00</u>
<u>01010</u>	<u>Mobilization & Demobilization</u>				
	(not greater than 5% for the Island and 12% for the balance of 12% north of Carriacou Island (see table for details))	L.S.	Unit	<u>5,000.00</u>	<u>5,000.00</u>
<u>01020</u>	<u>Cash Allowances</u>				
	Contribution in Aid of Hydro	Allow	Unit	<u>\$20,000.00</u>	<u>\$20,000.00</u>
<u>01500</u>	<u>Temporary Facilities</u>				
	Engineers Site Office	L.S.	Unit	<u>1.00</u>	<u>1.00</u>
<u>01570</u>	<u>Traffic Regulations</u>				
	Flagpersons Wages	hour	200	<u>28.00</u>	<u>5,600.00</u>
<u>01580</u>	<u>Project Sign</u>				
	Project Sign	L.S.	1	<u>1,000.00</u>	<u>1,000.00</u>
<u>DIVISION #2</u>					
<u>02070</u>	<u>Sitework, Demolition & Removal of Structures</u>				
	Removal of existing piping, walls, roof truss, shingles, etc. as required to complete the new pumphouse extension. Any materials that are deemed useable are to be turned over to the Town	L.S.		<u>7,500.00</u>	<u>7,500.00</u>
	Removal of 300mm dia End Cap	ea	1	<u>500.00</u>	<u>500.00</u>
	Remove existing valve and reconnect piping (outside the pumphouse)	L.S.	1	<u>2,000.00</u>	<u>2,000.00</u>

Part B (Addendum 2)
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

4	Removal and disposal of AC pipe	m	20	<u>20.00</u>	<u>400.00</u>
02223	<u>Excavation, Trenching and Backfilling</u>				
1	Main Trench Excavation				
1	Rock	m ³	200	<u>1.00</u>	<u>200.00</u>
2	Common	m ³	900	<u>1.00</u>	<u>900.00</u>
2	Imported Rock Backfill	m ³	150	<u>80.00</u>	<u>12,000.00</u>
3	Rock Underbedding	m ³	50	<u>80.00</u>	<u>4,000.00</u>
4	Granular Pipe Bedding				
1	Type 3	m	380	<u>1.00</u>	<u>380.00</u>
5	Supply & Placement of Marking Tape				
1	Plastic Tape	m	300	<u>2.00</u>	<u>600.00</u>
02233	<u>Select Granular Base & Sub-base Materials</u>				
1	Class "A" Granular Base	m ³	70	<u>38.00</u>	<u>2,660.00</u>
2	Class "B" Granular Base	m ³	70	<u>38.00</u>	<u>2,660.00</u>
02574	<u>Reshaping & Patching of Asphalt Pavement</u>				
1	Removal of Asphalt	m ²	50	<u>5.00</u>	<u>250.00</u>
2	Patching of Asphalt	m ²	50	<u>100.00</u>	<u>5,000.00</u>
3	Cutting of Asphalt	m	100	<u>1.00</u>	<u>100.00</u>
02710	<u>Water Mains</u>				
1	Supply & Installation of Water Main				
1	300mm Ø PVC Pipe DR18	m	200	<u>200.00</u>	<u>60,000.00</u>
2	Supply & Installation of Fitting				
1	350mm dia off 250mm dia tee	each		<u>600.00</u>	<u>1,200.00</u>

Part B (Addendum 2)
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as actual quantities by the Contractor. The unit prices bid must include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SCC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

	2	300mm dia to 250 mm dia reducer	each	2	<u>750.⁰⁰</u>	<u>1,500.⁰⁰</u>
	3	300mm dia 90 deg bend	each	1	<u>750.⁰⁰</u>	<u>750.⁰⁰</u>
	4	300mm dia 45 deg bend	each	4	<u>750.⁰⁰</u>	<u>3,000.⁰⁰</u>
	5	300mm Ø Sleeve Type Coupling	each	2	<u>500.⁰⁰</u>	<u>1,000.⁰⁰</u>
	3	Supply & install Valves including valve boxes				
	2	250mm Ø	each	3	<u>3050.⁰⁰</u>	<u>9,150.⁰⁰</u>
	5	Swabbing of Water Lines	m	300	<u>2.⁰⁰</u>	<u>600.⁰⁰</u>
	7	Locate & Connect to Existing System	each	2	<u>5,000.⁰⁰</u>	<u>10,000.⁰⁰</u>
		<u>Pumphouse Extension</u>				
06000	1	Includes but not limited to all excavation and backfill required to supply and install the concrete foundation and floor slab. Includes building construction including but not limited to, all interior and exterior finishes. Includes all work within 1.5m perimeter of the building.	LS	1	<u>67,000.⁰⁰</u>	<u>67,000.⁰⁰</u>
	2	Includes but not limited to all building mechanical and electrical items. Includes but not limited to lighting, heating, electrical panels, exhaust fans, intake fans, electrical upgrades, plumbing and emergency eyewash / shower units.	LS	1	<u>120,000.⁰⁰</u>	<u>120,000.⁰⁰</u>
15 00 00		<u>Pumping / Control System</u>				
	1	Includes but not limited to the supply, installation and commissioning of all piping, fittings, valves, P3 submersible pump assembly, three VFD's, flow meters etc to provide and fully operational system.	LS	1	<u>100,000.⁰⁰</u>	<u>100,000.⁰⁰</u>
	2	Includes the supply, installation and commissioning of the pressure reducing solenoid - controlled control valve going to Dunville System as detailed in the specifications.	LS	1	<u>18,000.⁰⁰</u>	<u>18,000.⁰⁰</u>
	3	Includes the supply, installation and commissioning of the solenoid - controlled control valve going to Argenta System as detailed in the specifications.	LS	1	<u>15,000.⁰⁰</u>	<u>15,000.⁰⁰</u>

Part B (Addendum 2)
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

4	includes the design, supply, installation and commissioning of the pump system control panel. Includes programming, equipment, level sensors at the Wyse's Pond reservoir and required communication equipment. Minimum requirements for the control system and sequence is outlined in the specifications.	<u>70,000.00</u>	<u>70,000.00</u>
<u>15 30 00</u>	<u>Gas Chlorination System</u>		
1	The supply, installation and commissioning of a new gas chlorination system as detailed on the drawings and specifications. Includes, but not limited to, new booster pumps, piping, gauges, valves, fittings and gas detection system.	<u>80,000.00</u>	<u>80,000.00</u>
a. Sub-Total		<u>640,951.00</u>	
b. HST @ 15%		<u>96,142.65</u>	
c. Part B Total:		<u>737,093.65</u>	
1 PART A TOTAL		<u>1,522,393.00</u>	<u>1,522,393.00</u>
2 PART B TOTAL		<u>737,093.65</u>	
3 BID TOTAL (carry forward to Appendix 'A' of the Bid Form)		<u>2,259,486.65</u>	<u>2,259,486.65</u>

M
03/15/21

Tender # MI2764

AMENDMENT NO. 1

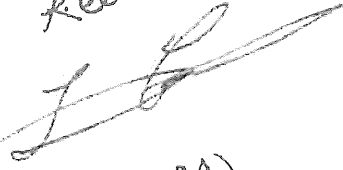
Owner: Town of Placentia

Project Name: Water System Upgrades

Project Number: 17-GI-20-00050 / 17-SCF-19-00129

Date Issued: January 25, 2021

Received



(3 PAGES)

1. This Amendment shall form an integral part of the specification to be read in conjunction therewith. This Amendment shall take precedence over all forms of the aforementioned specification with which it may prove to be at variance or may otherwise be qualified in writing by authorized personnel.
2. The General Conditions and all documents issued with this specification shall apply to govern all phases of the work covered by this Amendment.
3. The purpose of this Amendment is to inform bidders of clarifications to the contract documents.

To advise Contractors of the following changes:

1. Section 15 00 00 – Pumping / Control System
 - a. Singer and Cla-Valves are approved valves.
 - b. Siemens and Krohne Flow meters are approved providing they meet the upstream and downstream run distances.
2. Section 15 10 00 – PRV Stations
 - a. 2.4.1 – Flow meter size to be "...75mm (3") flanges..."
 - b. 2.7.2 The size of the enclosure to read "...The enclosure shall be approximately 3.658m x 3.658m."
3. Section 15 20 00 – Intake Screens
 - a. Intake screens by Elgin Separation Solutions is approved.
4. Section 15426 – Gas Chlorination System Title should read Section 15 30 00 Gas Chlorination System.
5. Section 15426 – Gas Chlorination System
 - a. 1.7.1.6 – Replace with "Supply and Installation of four (4) new chlorine valve regulators."
 - b. 1.7.1.7 – Replace with "Supply and Installation of new FEP tubing between chlorine regulators and chlorine gas manifolds."
 - c. Replace 2.6.2: Ejector selection shall be based on the following parameters.

Tender # MI2764

AMENDMENT NO. 2

Owner: Town of Placentia

Project Name: Water System Upgrades

Project Number: 17-GI-20-00050 / 17-SCF-19-00129

Date Issued: January 29, 2021

Received
(11 PAGES)
[Signature]

1. This Amendment shall form an integral part of the specification to be read in conjunction therewith. This Amendment shall take precedence over all forms of the aforementioned specification with which it may prove to be at variance or may otherwise be qualified in writing by authorized personnel.
2. The General Conditions and all documents issued with this specification shall apply to govern all phases of the work covered by this Amendment.
3. The purpose of this Amendment is to inform bidders of clarifications to the contract documents.

To advise Contractors of the following changes:

Clarifications

1. Note 2 on C10,11 And 12 indicates asbestos pipe is present. There is no unit price for the removal of Asbestos pipe in the contract.
 - a. Refer to attached revised unit price table.
2. Item 1005 in Part A and B indicates that the contractor must provide the town with Chlorinated water at all times during construction. This indicate the contractor must set up a temporary chlorination system, who will be responsible to perform the Chlorination test after the system is in place and operational.
 - a. The Town operations will perform chlorination test. Contractor is to work with the Town at all times and make adjustments as required to ensure that chlorine levels are adequate.
3. Can the consultant provide a concrete slab design for the PRV Enclosure?
 - a. Concrete slab to be 100mm thick with 15m rebar at 250 mm on centre each way. 100mm of Class 'A' to be placed under the slab and compacted to 100 % SPDD.
4. Is the piping the same diameter for both PRV's, drawing note indicate PRV #1 not 2?
 - a. Item 9 on drawing C13 of 22 should read:
150mm of 200mm dia Tee (PRV Building #1)
150mm of 150mm dia Tee (PRV Building #2)
5. Is the underground pipe for the PRV PVC or ductile Iron?
 - a. Underground pipe to be PVC pipe.

Tender # M12764

AMENDMENT NO. 3

Owner: Town of Placentia

Project Name: Water System Upgrades

Project Number: 17-GI-20-00050 / 17-SCF-19-00129

Date Issued: February 1, 2021

Received

(2 PAGES)

LG

1. This Amendment shall form an integral part of the specification to be read in conjunction therewith. This Amendment shall take precedence over all forms of the aforementioned specification with which it may prove to be at variance or may otherwise be qualified in writing by authorized personnel.
2. The General Conditions and all documents issued with this specification shall apply to govern all phases of the work covered by this Amendment.
3. The purpose of this Amendment is to inform bidders of clarifications to the contract documents.

To advise Contractors of the following changes:

Clarifications

1. Note 3&4 on MV-1 indicates magnetic starters to be explosion proof.
 - a. Magnetic starters are to be of standard construction.
2. EF-1 to be complete with explosion proof motor.
3. Louvers located in generator room to remain as is.



PERFORMANCE

No. 532,090

Bond Amount \$1,129,743.33

EDWARD COLLINS CONTRACTING LIMITED as Principal, hereinafter called the Principal, and **WESTERN SURETY COMPANY** a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in all provinces and territories of Canada, as Surety, hereinafter called the Surety, are held and firmly bound unto **TOWN OF PLACENTIA** as Obligor, hereinafter called the Obligor, in the amount of **ONE MILLION ONE HUNDRED AND TWENTY NINE THOUSAND SEVEN HUNDRED AND FORTY THREE** -----33/100 DOLLARS (\$1,129,743.33) lawful money of Canada, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal has entered into a written contract with the Obligor, dated 3rd day of March, in the year 2021 for **WATER SYSTEM UPGRADES 17-GI-20-00050 / 17-SCF-19-00129, PLACENTIA, NEWFOUNDLAND AND LABRADOR** including One(1) year maintenance from the date of substantial completion hereinafter referred to as the Contract.

The condition of this obligation is such that if the Principal shall promptly and faithfully perform the Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever the Principal shall be, and declared by the Obligor to be, in default under the Contract, the Obligor having performed the Obligor's obligations thereunder, the Surety shall promptly:

- 1) remedy the default, or;
- 2) complete the Contract in accordance with its terms and conditions or;
- 3) obtain a bid or bids for submission to the Obligor for completing the Contract in accordance with its terms and conditions and upon determination by the Obligor and the Surety of the lowest responsible bidder, arrange for a contract between such bidder and the Obligor and make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to pay to complete the Principal's obligations in accordance with the terms and conditions of the Contract and to pay those expenses incurred by the Obligor as a result of the Principal's default relating directly to the performance of the work under the Contract, less the balance of the Contract price; but not exceeding the Bond Amount. The balance of the Contract price is the total amount payable by the Obligor to the Principal under the Contract, less the amount properly paid by the Obligor to the Principal, or;
- 4) pay the Obligor the lesser of (1) the Bond Amount or (2) the Obligor's proposed cost of completion, less the balance of Contract price.

It is a condition of this bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of (1) the date of Substantial Performance of the Contract as defined in the lien legislation where the work under the Contract is taking place, or, if no such definition exists, the date when the work is ready for use or is being used for the purpose intended, or (2) the date on which the Principal is declared in default by the Obligor.

The Surety shall not be liable for a greater sum than the Bond Amount.

No right of action shall accrue on this Bond, to or for the use of, any person or corporation other than the Obligor named herein, or the heirs, executors, administrators or successors of the Obligor.

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond dated 10th day of March, in the year 2021

SIGNED and SEALED
in the presence of

EDWARD COLLINS CONTRACTING LIMITED
Principal
Signature: Francis Collins
1974
Francis Collins
Name of person signing
WESTERN SURETY COMPANY
Signed electronically by
Dianne Buckle
pr 2021-03-10 16:59:18 GMT
Signature
Dianne Buckle, Attorney at Law
Name of person signing



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Canadian Construction Documents Committee

(CCDC 221 - 2002 has been approved by the Surety Association of Canada)

To verify hardcopy, click on SignatureMaster™ website "Verify Document" link, enter Document Key: 0E4D4733-C7254D64-8855951D-79DC439D-136F93E7



LABOUR & MATERIAL PAYMENT BOND (Trustee Form)

Standard Construction Document

DC 222 - 2002

No. 532,090

Bond Amount \$1,129,743.33

EDWARD COLLINS CONTRACTING LIMITED as Principal, hereinafter called the Principal, and WESTERN SURETY COMPANY a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in all provinces and territories of Canada, as Surety, hereinafter called the Surety, are held and firmly bound unto TOWN OF PLACENTIA as Obligor, hereinafter called the Obligor, in the amount of ONE MILLION ONE HUNDRED AND TWENTY NINE THOUSAND SEVEN HUNDRED AND FORTY THREE ———— 33/100 DOLLARS (\$1,129,743.33) lawful money of Canada, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal has entered into a written contract with the Obligor, dated 3rd day of March, in the year 2021 for WATER SYSTEM UPGRADES 17-GI-20-00050 / 17-SCF-19-00129, PLACENTIA, NEWFOUNDLAND AND LABRADOR in accordance with the Contract Documents submitted, and which are by reference made part hereof and are hereinafter referred to as the Contract.

The Condition of this obligation is such that, if the Principal shall make payment to all Claimants for all labour and material used or reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material, or both, used or reasonably required for use in the performance of the Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Contract provided that a person, firm or corporation who rents equipment to the Principal to be used in the performance of the Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof, shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Contract. The prevailing industrial rental value of equipment shall be determined, insofar as it is practical to do so, by the prevailing rates in the equipment marketplace in which the work is taking place.
2. The Principal and the Surety, hereby jointly and severally agree with the Obligor, as Trustee, that every Claimant who has not been paid as provided for under the terms of its contract with the Principal, before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of its contract with the Principal and have execution thereon. Provided that the Obligor is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants, or any of them, to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Obligor or by joining the Obligor as a party to such proceeding, then such act, action or proceeding, shall be taken on the understanding and basis that the Claimants, or any of them, who take such act, action or proceeding shall indemnify and save harmless the Obligor against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Obligor by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them may use the name of the Obligor to sue on and enforce the provisions of this Bond.
3. It is a condition precedent to the liability of the Surety under this Bond that such Claimant shall have given written notice as hereinafter set forth to each of the Principal, the Surety and the Obligor, stating with substantial accuracy the amount claimed, and that such Claimant shall have brought suit or action in accordance with this Bond, as set out in sub-clauses 3 (b) and 3 (c) below. Accordingly, no suit or action shall be commenced hereunder by any Claimant:
 - a) unless such notice shall be served by mailing the same by registered mail to the Principal, the Surety and the Obligor, at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or Territory in which the subject matter of the Contract is located. Such notice shall be given.
 - i) in respect of any claim for the amount or any portion thereof, required to be held back from the Claimant by the Principal, under either the terms of the Claimant's contract with the Principal, or under the lien Legislation applicable to the Claimant's contract with the Principal, whichever is the greater, within one hundred and twenty (120) days after such Claimant should have been paid in full under the Claimant's contract with the Principal;
 - ii) in respect of any claim other than for the holdback, or portion thereof, referred to above, within one hundred and twenty (120) days after the date upon which such Claimant did, or performed, the last of the work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract with the Principal;
 - b) after the expiration of one (1) year following the date on which the Principal ceased work on the Contract, including work performed under the guarantees provided in the Contract;
 - c) other than in a Court of competent jurisdiction in the Province or Territory in which the work described in the Contract is to be installed or delivered as the case may be and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such Court.
4. The Surety agrees not to take advantage of Article 2365 of the Civil Code of the Province of Quebec in the event that, by an act or an omission of a Claimant, the Surety can no longer be subrogated in the rights, hypothec and privileges of said Claimant.

5. Any material change in the contract between the Principal and the Obligor shall not prejudice the rights or interest of any Claimant under this Bond, who is not instrumental in bringing about or has not caused such change.
6. The amount of this Bond shall be reduced by, and to the extent of any payment or payments made in good faith, and in accordance with the provisions hereof, inclusive of the payment by the Surety of claims made under the applicable lien legislation or legislation relating to legal hypothecs, whether or not such claim is presented under and against this Bond.
7. The Surety shall not be liable for a greater sum than the Bond Amount.

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond dated 10th day of March, in the year 2021.

SIGNED and SEALED

In the presence of

EDWARD COLLINS CONTRACTING LIMITED

Signed electronically by Principal
Francis Collins
 on 2021-03-10 14:50:18 GMT
 Signature
 Francis Collins
 Name of person signing

WESTERN SURETY COMPANY LIMITED

Signed electronically by Surety
Dianne Buckle
 on 2021-03-10 14:50:18 GMT
 Signature
 Dianne Buckle, Attorney-in-Fact
 Name of person signing



**AGREEMENT BETWEEN OWNER AND CONTRACTOR
for use when a Bid Price forms the
basis of payment and to be used only
with the Contract Documents of the Contract**

THIS AGREEMENT made on the 19th day of March in the year two thousand and twenty one.

BY AND BETWEEN

Town of Placentia

hereinafter called the "Owner"

AND

Edward Collins Contracting Ltd

hereinafter called the "Contractor"

WITNESSETH: that the Owner and Contractor undertake and agree as follows:

ARTICLE 1: THE WORK

The Contractor shall:

- (a) perform all the Work required by the Contract Documents for Town of Placentia – Water System Upgrades. (See Bid Form for Description) which have been signed by both the parties.
- (b) do and fulfil everything indicated by this Agreement, and
- (c) commence the Work by the 5th day of April, 2021 and substantially perform the Work of this Contract as certified by the Owner's Representative by the 10th day of September, 2021.

ARTICLE 2: CONTRACT DOCUMENTS

The following is an exact list of the Contract Documents referred to in Article A-1: (SEE INDEX FOR LIST OF DOCUMENTS AND DRAWINGS). **See Attached**

ARTICLE 3: CONTRACT PRICE

The Owner shall pay to the contractor in lawful money of Canada for the performance of the contract, the amounts determined for each of the items of work completed at the unit price stated in the unit price table, subject to the adjustments provided herein and in the General Conditions of the contract. The quantities contained in the unit price table are approximate only, and the final payment shall be made for the actual quantities that are incorporated in or made necessary by the work covered by the Contract.

THE CONTRACT PRICE IS

\$Two Million Two Hundred and Fifty Nine Thousand Four Hundred and Eighty Six dollars (\$2,259,486.65) (HST INCLUDED) Canadian funds which price shall be subject to adjustments as may be required in accordance with the General Conditions of the Contract.

ARTICLE 4: PAYMENT

- (a) Subject to applicable legislation and, where such legislation does not exist or apply, in accordance with such prescribed regulations or industry practice respecting holdback percentages and in accordance with the provisions of the General Conditions of the Contract, the Owner shall:
 - (1) make monthly payments to the Contractor on account of the Contract Price. The amounts of such payments shall be as certified by the Owner; and
 - (2) upon Substantial Performance of the work as certified by the Owner pay to the contractor any unpaid balance of holdback monies then due; and
 - (3) upon Total Performance of the Work as certified by the Owner pay to the contractor any unpaid balance of the Contract Price then due.
- (b) If the Owner fails to make payments to the Contractor as they become due under the terms of this Contract or in any award by a court, interest at the rate and in the manner specified in GC21-Certificates and Payments, shall become due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.

ARTICLE 5: ADDRESSES FOR NOTICES

All communications in writing between the parties or between them and the Owner shall be deemed to have been received by the addressee if delivered to the individual or to a member of the firm or to an officer of the Corporation for whom they are intended or if sent by post addressed as follows:

The Owner at: Town of Placentia
 P.O. Box 99
 Placentia, NL
 A0B 2V0

The Contractor at: Edward Collins Contracting Ltd
 P.O. Box 51
 Jerseyside, NL
 A0B 2G0

ARTICLE 6: SUCCESSION

The General Conditions of the Contract hereto annexed, and all other aforesaid Contract Documents, are all to be read into and form part of this Agreement and the whole shall constitute the Contract between the parties and subject to law and the provisions of the Contract Documents shall ensure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

AGREEMENT

IN WITNESS WHEREOF the parties hereto have executed this Agreement under their respective corporate seals and by the hands of their proper officers hereunto duly authorized.

SIGNED, SEALED AND DELIVERED

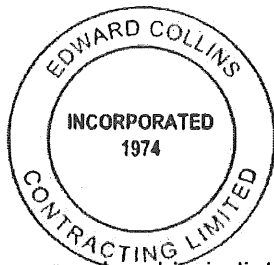
in the presence of:

OWNER:

signed

name and title

date



CONTRACTOR

[Signature]
signed

Josh Collins - Vice President
name and title

[Signature]
signed / witnessed

Karen Whittle - Office Manager
name and title

March 23, 2021
date

N.B. Where any legal jurisdiction, local practice or client requirement calls for proof of authority to execute this document, proof of such authority in the form of a certified copy of a resolution naming the person or persons in question as authorized to sign the Agreement for and on behalf of the Corporation or Partnership, should be attached.

Assessment Services Department

MARCH 11 2021

EDWARD COLLINS CONTRACTING LIMITED
EDWARD COLLINS CONTRACTING LTD
P O BOX 51
JERSEYSIDE NL A0B 2G0

Clearance Letter
Confirmation Number: 0596790

TO: TOWN OF PLACENTIA

RE: EDWARD COLLINS CONTRACTING LIMITED
T/A EDWARD COLLINS CONTRACTING LTD

Request Purpose: Contract Work – Current Year

This confirms that the above referenced employer is in good standing with WorkplaceNL as of today's date for contract work. This clearance is provided for the purposes of Section 120 of the *Workplace Health, Safety and Compensation Act* only, which indicates that a person using a contractor or subcontractor to perform work may be responsible for unpaid assessments of the contractor or subcontractor.

This clearance letter expires 45 days from the date of issue. If the contract work has not been completed by that date, we recommend that you request another clearance letter to protect your business from any potential assessment liability related to this employer.

If you have any questions, please call us at 709.778.2902 or you may use our toll free number 1.800.563.9000 (ext. 2902) if calling within Newfoundland and Labrador.

Sincerely,

Assessment Services Department

To alter this document constitutes fraud

WL1

N L C S A



NEWFOUNDLAND
& LABRADOR
CONSTRUCTION
SAFETY
ASSOCIATION

Letter of Good Standing

Certificate of Recognition™ Program

November 4, 2020

Edward Collins Contracting Limited

P.O. Box 51

Jerseyside, NL, A0B 2G0

Based upon a review of NLCSA records

Edward Collins Contracting Limited

is an active participant in the Certificate of Recognition™ (COR™) Program. This letter is issued to the above noted company based on information available as of the date listed above. The current state of the company is noted below.

Commencement Date:

October 23, 1997

Expiry Date: October 25, 2021

Certificate of Recognition™



Audit Pending



Note: NLCSA's records are compiled from information gathered during a firm's participation in NLCSA programs, which information is believed to be correct. This letter is based on information currently available to the NLCSA, and is not certified or warranted for accuracy. NLCSA assumes no responsibility or liability for the information contained in this letter.

To alter this document constitutes fraud.

NLCSA Representative

80 GLENCOE DRIVE, DONOVAN'S INDUSTRIAL PARK, MOUNT PEARL, NL A1N 4S9
T: 709 739 7000 F: 709 739 7001 TOLL FREE 1 888 681 SAFE (7233)
INFO@NLCSA.COM WWW.NLCSA.COM

CERTIFICATE OF INSURANCE

DESCRIPTION & LOCATION OF WORK: Town of Placentia – Water System Upgrades - 17-GI-20-00050 / 17-SCF-19-00129				
PROJECT NO: 17-GI-20-00050 / 17-SCF-19-00129		AWARD DATE: March 3 rd , 2021		VALUE: \$2,300,000 (Excl HST)
INSURER: Northbridge General Insurance Corporation (Section 1.1 – Section 2A - Section 3)				
INSURER ADDRESS: 1801 Hollis Street, Suite 900, Halifax, NS B3J 3N4				
BROKER: AON Reed Stenhouse Inc.				
BROKER ADDRESS: 125 Kelsey Drive, Suite 100, St. John's, NL A1B 0L2				
INSURED NAME OF CONTRACTOR: Edward Collins Contracting Ltd.				
CONTRACTOR ADDRESS: P O Box 51, Jerseyside, NL A0B 2G0				
ADDITIONAL INSURED (Excluding Automobile Liability Policy) ✓ The OWNER: Town of Placentia ✓ "Her Majesty the Queen in Right of the Province of NL as represented by the Minister of Transportation & Infrastructure. Dept. of Transportation & Infrastructure, P.O. Box 8700, St. John's, NL., A1B 4J6, Attn: Tendering & Contracts ✓ The Occupant/Operator of the Property: ✓ Project Consultants of the OWNER: Meridian Engineering Inc. (excluding professional liabilities)				
This document certifies that the following policies of insurance and indicated coverage are at present in force subject to the terms, conditions and exclusions as contained therein covering the operations of the insured in connection with the above noted contract made between the named insured and the Owner.				
POLICY TYPE	NUMBER	INCEPTION DATE	EXPIRY DATE Y/M/D	LIMITS OF LIABILITY
1.1 COMMERCIAL GENERAL LIABILITY or 1.2 WRAP-UP LIABILITY (including where indicated) A. BLASTING B. PILE DRIVING OR CAISSON WORK C. REMOVAL OR WEAKENING OF SUPPORT	CBC 0912261	2020/08/15	2021/08/15	\$2,000,000 Minimum
2A. BUILDERS' RISK "BROAD FORM" or 2B. INSTALLATION FLOATER "BROAD FORM" or 2C. PIERS, WHARVES, & DOCKS RIDER	TBA	2021/04/05	2021/11/05	\$2,300,000.00
3. AUTOMOBILE LIABILITY INSURANCE	CBC 0912261	2020/08/15	2021/08/15	\$2,000,000 Minimum
4. AIRCRAFT AND/OR WATERCRAFT WATERCRAFT LIABILITY (IF APPLICABLE)	Not required			\$2,000,000 Minimum
5. AIRPORT CONTRACTORS LIABILITY	Not required			\$5,000,000.00 Minimum
6. ENVIRONMENTAL IMPAIRMENT LIABILITY	Not required			
The Insurer will endeavour to notify the Owner and Her Majesty, as defined above, in writing, thirty (30) days prior to cancellation, termination or material change of any policy.				
NAME OF INSURER'S OFFICER or AUTHORIZED REPRESENTATIVE : Dianne Buckle		SIGNATURE: <i>Aon Reed Stenhouse Inc</i>		Date: March 17 th , 2021 Tel.: 709-739-1040 Email: dianne.buckle@aon.ca
Issuance of this certificate shall not limit or restrict the right of the Owner to request at any time duplicate certified copies of said insurance policies.				

CONSTRUCTION SCHEDULE FORM

ITEM	DESCRIPTION	MONTHS				APRIL				MAY				JUNE				JULY				AUG.				SEPT			
		WEEK				1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4				
1	MOB TO SITE																												
2	INSTALL W.L FROM HWY 100 - PUMPHOUSE EAST.																												
3.	BUILD EXTENSION ON EXISTING PUMPHOUSE.																												
4	INSTALL EQUIPMENT IN PUMPHOUSE																												
5.	INSTALL W.L HWY/100 NEAR CHURCH IN DUNWILLE.																												
6.	INSTALL W.L HWY/100 ABOVE TRAILER PARK																												
7.	CONNECT TO W.L FOR PRV BUDGET HWY/100 NEAR T.P.																												
8.	CONNECT TO W.L FOR PRV BUDGET OFF LOWER ROAD,																												
9.	INSTALL W.L ON HARDEN DRIVE																												
10.	INSTALL PRV BUDGET & EQUIPMENT HWY/100 NEAR T.P.																												
11.	INSTALL PRV BUDGET & EQUIPMENT OFF LOWER ROAD,																												
12.	CONNECT GULF POND - CLARKE'S POND.																												
13.	ASPHALT PATCHING.																												
14.	CLEAN-UP																												
15.	DEMOL.																												

Project Name TOWN OF PLACENTA WATER SYSTEM UPGRADES (17-GI-20-00050/17-XLF-19-00124

Contractor EDWARD COLLINS CONTRACTORS LTD.

Address PO BOX 51 JERVISBURG, N.L. AOB 2G0

Signature [Signature]

PERMIT TO CONSTRUCT

Pursuant to the *Water Resources Act*, SNL 2002 cW-4.01, specifically Section(s) 37, 39, 48

Date: JANUARY 06, 2021

File No: 844.073.001A
Permit No: WS11546-2021

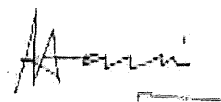
Permit Holder: Town of Placentia
PO Box 99
Placentia NL A0B 2Y0
mgreene@placentia.ca

Attention: Ms. Mary Greene

Re: Placentia - Water System Upgrades

Permission is hereby given for : the installation of 490 m of 300 mm PVC watermain, 400 m of 150 mm PVC watermain, an extension to existing Clarke's Pond Pump house to service the Dunville area to include new submersible pumps, VFDs, flowmeters, gas chlorination system, two new PRV stations in the Dunville distribution system with hypochlorination systems, the interconnection of Gull Pond-Barron Pond-Little Barron Pond-Clarke's Pond to include stainless steel wedge wire screens, intake pipes, 3050 m of 300 mm HDPE watermain, and all related appurtenances as described in the drawings and specification titled, "Town of Placentia Water System Upgrades" as received from Meridian Engineering Inc. on October 6, 2020; 17-GI-20-00050/17-SCF-19-00129.

- This Permit does not release the Permit Holder from the obligation to obtain appropriate approvals from other concerned municipal, provincial and federal agencies.
- The Permit Holder must obtain the approval of the Crown Lands Administration Division if the project is being carried out on Crown Land.
- This Permit is subject to the terms and conditions indicated in Appendices A and B (attached).
- It should be noted that prior to any significant changes in the design or installation of the proposed works, or in event of changes in ownership or management of the project, an amendment to this Permit must be obtained from the Department of Environment, Climate Change and Municipalities under Section 49 of the *Water Resources Act*.



(for) MINISTER

TAB C

This is **Exhibit "C"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

31 CLYDE AVENUE MOUNT PEARL, NL
A1N 4R8**QUOTATION**

TEL: 709-747-7510

FAX: 709-747-7795

QUOTATION NO.

398394-10

PAGE 1 of 6

QUOTED TO

SHIP TO

EDWARD COLLINS CONTRACTING LTD

SAME

P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD
A0B 2G0

Customer Fax 227-3704

QUOTATION DATE	QUOTATION EXPIRATION DATE	WRITER	SALES REP.	BRANCH	WEIGHT
01/27/2021	02/26/2021	PT	PGT	0019	139065.76

NOTE**TOWN OF PLACENTIA WATER UPGRADES**

LINE	QTY ORDERED	U/M	DESCRIPTION	PRICE	DISCOUNT	NET	EXTENDED AMOUNT
1			"PART A"				
2							
3							
4	12	EA	METALLIC WATER TAPE P/N 3WTAPE-D METTAP	89.000	NET	89.000	1068.00
5	60	M	450MM HDPE 320 KPA STORM PIPE 450HDPE320	74.000	NET	74.000	4440.00
6	400	M	6 CLASS 150 (SDR-18) C-900 PVC WTR PIP W/GAKT CAPPED 6C900CAPP	46.000	NET	46.000	18400.00
7	190	M	12 CLASS 150 (SDR-18) C-900 PVC WTR PIP W/GAKT CAPPED 12-C900CAPP	152.000	NET	152.000	28880.00
8	3050	M	300MM DR 17 HDPE P/E PIPE B398394*2894822 *	68.000	NET	68.000	207400.00
9	6	EA	300MM DR 17 HDPE BEND FLG X FLG B398394*2894823 *	396.000	NET	396.000	2376.00
10							
11							
12	3	EA	6 DUCTILE IRON MECH JT TEE LESS ACC 6DITLA	318.000	NET	318.000	954.00
13			C/W MEGALUGS				
14							
15							
16	3	EA	12 DUCTILE IRON MECH JT TEE LESS ACC 12-DITLA	851.000	NET	851.000	2553.00
17			C/W MEGALUGS				
18							
19							
20	1	EA	8X6 DUCTILE IRON MECH JT REDUCER LESS ACC 8.6DIREDLA	222.000	NET	222.000	222.00
21			C/W MEGALUGS				
22							
23							
24	1	EA	12X6 DUCTILE IRON MECH JT REDUCER LESS ACC 12-6DIREDLA	345.000	NET	345.000	345.00
25			C/W MEGALUGS				
26							
27							

TERMS OF PAYMENT

SUB TOTAL

TOTAL

* CONTINUED *

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.
CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Reg. by Paul Trevise

CUBSLOOE (9809)

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

31 CLYDE AVENUE MOUNT PEARL, NL
A1N 4R8**QUOTATION**

TEL: 709-747-7510

FAX: 709-747-7795

QUOTATION NO.

398394-10

PAGE 2 of 6

QUOTED TO

EDWARD COLLINS CONTRACTING LTD

SHIP TO

SAME

P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD
A0B 2G0

Customer Fax 227-3704

QUOTATION DATE	QUOTATION EXPIRATION DATE	WRITER	SALES REP.	BRANCH	WEIGHT
01/27/2021	02/26/2021	PT	PGT	0019	139065.76

NOTE

TOWN OF PLACENTIA WATER UPGRADES

LINE	QTY ORDERED	U/M	DESCRIPTION	PRICE	DISCOUNT	NET	EXTENDED AMOUNT
28	6	EA	150MM DI MJ BEND C/W MEGALUGS B398394*2894825 *	220.000	NET	220.000	1320.00
29							
30							
31	7	EA	150MM ROBAR TRANSITION CPLG B398394*2894826 *	171.000	NET	171.000	1197.00
32	1	EA	200MM ROBAR TRANSITION CPLG MOD:1406 B398394*2894827 *	215.000	NET	215.000	215.00
33	3	EA	12" #1406 ROBR TRANSITION CPLG B398394*2894828 *	410.000	NET	410.000	1230.00
34							
35							
36	5	EA	6 #20075-R RESILIENT SEATED MJ END AWWA GATE VALVE OL 6.20075ROL C/W VALVE BOX & MEGALUGS	1400.000	NET	1400.000	7000.00
37							
38							
39							
40	3	EA	12 #20075-R RESILIENT SEATED MJ END AWWA GATE VALVE OL 12-20075ROL C/W VALVE BOX & MEGALUGS	3900.000	NET	3900.000	11700.00
41							
42							
43							
44	6	EA	MUELLER POST INDICATOR VALVE FLG X FLG B398394*2894829 *	6250.000	NET	6250.000	37500.00
45							
46							
47							
48							
49							
50	1	EA	7FT M67 MCAVITY SAFETY HYDRANT WITH PUMPER CONN M67.7FT C/W HYDRANT MARKER & MEGALUG	3500.000	NET	3500.000	3500.00
51							
52							
53	1	EA	8X6 DUCTILE IRON MECH JT RED TEE LESS ACC 8.6DITLA C/W MEGALUGS	395.000	NET	395.000	395.00
54							
55							

TERMS OF PAYMENT

SUB TOTAL

TOTAL

* CONTINUED *

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.
CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Rev. by Paul Travers

CURSIOODE (9809)

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

31 CLYDE AVENUE MOUNT PEARL, NL
A1N 4R8**QUOTATION**

TEL: 709-747-7510

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QUOTATION NO.

398394-10

PAGE 3 of 6

QUOTED TO

SHIP TO

EDWARD COLLINS CONTRACTING LTD

SAME

P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD
A0B 2G0

Customer Fax 227-3704

QUOTATION DATE		QUOTATION EXPIRATION DATE		WRITER	SALES REP.	BRANCH	WEIGHT
01/27/2021		02/26/2021		PT	PGT	0019	139065.76
NOTE							
TOWN OF PLACENTIA WATER UPGRADES							
LINE	QTY ORDERED	U/M	DESCRIPTION	PRICE	DISCOUNT	NET	EXTENDED AMOUNT
56	1	EA	6 #5B BARE SWAB	25.000	NET	25.000	25.00
57	1	EA	12 #5B BARE SWAB	95.000	NET	95.000	95.00
58							
59							
60							
61	2	EA	ARI AIR RLEASE VALVE MOD:D-90-02-7	8600.000	NET	8600.000	17200.00
62			B398394*2894830 *				
63			7' LGTH C/W ISOLATION VALVE				
64			& WATERPROOF CHAMBER				
65			12" X 3" TAPPING SLEEVE				
66			3" BRASS FLANGE				
67							
68							
69							
70	1	EA	INTAKE AT GULL POND WEDGEWIRE INTAKE SCREEN 24" OD X APP. 122" OVERALL LGTH	12000.000	NET	12000.000	12000.00
71			B398394*2894831 *				
72			FAB. USING #60 WRAP WIRE &				
73			#130 SUPPORT ROD C/W 0.100"				
74			SLOT OPENING. STD WOUND FOR				
75			OUTSIDE/ INSIDE FLOW DIRECTION				
76			SUPPLIED C/W 12" CENTER TEE				
77			SECT. WITH 12" FAB. PLATE FLG				
78			DRILLED TO 12" AWWA CLASS D				
79			BOLT PATTERN, AND SOLID CAP ON				
80			EACH END. INC. INTERNAL FLOW				
81			MODULATOR, FAB. FROM 316 S/S				
82			BASED ON IND. MAX FLOW RATE OF				
83			5250 US GPM SCREEN WILL OFFER				
84			EST. VELOCITY OF 0.36 FT P/S				
85			SCREEN OFFERS 62.5 PERCENT				
86			OPEN AREA, INSTALL DEPTH OF				
87			1.8M				
88			*PENDING SHOP DRAWING APPROVAL				
89	30	M	300MM DR 17 HDPE P/E PIPE	68.000	NET	68.000	2040.00
90	1	EA	300MM HDPE DR 17 FLG ADAPTER C/W B/U RING	208.000	NET	208.000	208.00
91			B398394*2894833 *				
92							

TERMS OF PAYMENT

SUB TOTAL

TOTAL

* CONTINUED *

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.
CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Rev. by Paul Travers

CURSIODE (9809)

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

31 CLYDE AVENUE MOUNT PEARL, NL
A1N 4R8**QUOTATION**

TEL: 709-747-7510

FAX: 709-747-7795

QUOTATION NO.

398394-10

PAGE 4 of 6

QUOTED TO

SHIP TO

EDWARD COLLINS CONTRACTING LTD

SAME

P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD
A0B 2G0

Customer Fax 227-3704

QUOTATION DATE		QUOTATION EXPIRATION DATE		WRITER	SALES REP.	BRANCH	WEIGHT
01/27/2021		02/26/2021		PT	PGT	0019	139065.76
NOTE							
TOWN OF PLACENTIA WATER UPGRADES							
LINE	QTY ORDERED	U/M	DESCRIPTION	PRICE	DISCOUNT	NET	EXTENDED AMOUNT
93							
94							
95	30	M	DISCHARGE INTO BARRON POND 300MM HDPE DR 17 PIPE P/E B398394*2894834 *	68.000	NET	68.000	2040.00
96			-----				
97							
98							
99			-----				
100							
101							
102	1	EA	INTAKE INTO BARRON POND WEDGE WIRE INTAKE SCREEN [SAME AS GULL POND] B398394*2894835 *	12000.000	NET	12000.000	12000.00
103	30	M	300MM DR 17 HDPE P/E PIPE B398394*2894836 *	68.000	NET	68.000	2040.00
104	1	EA	300MM HDPE DR17 FLG ADAPTER C/W B/U RING B398394*2894837 *	208.000	NET	208.000	208.00
105			-----				
106							
107							
108							
109							
110			DISCHARGE INTO LITTLE BARRON POND				
111	30	M	300MM DR 17 HDPE P/E PIPE B398394*2894838 *	68.000	NET	68.000	2040.00
112			-----				
113							
114							
115							
116	1	EA	INTAKE AT LITTLE BARRON POND WEDGE WIRE INTAKE SCREEN [SAME AS GULL POND] B398394*2894839 *	12000.000	NET	12000.000	12000.00
117	30	EA	300MM DR 17 HDPE P/E PIPE B398394*2894840 *	68.000	NET	68.000	2040.00
118	1	EA	300MM DR 17 HDPE FKLANGE ADAPT C/W B/U RING B398394*2894841 *	208.000	NET	208.000	208.00
119			-----				
120							
121							
122							
123	30	M	DISCHARGE INTO CLARKES POND 300MM DR 17 HDPE P/E PIPE B398394*2894842 *	68.000	NET	68.000	2040.00
124			-----				
125							

TERMS OF PAYMENT

SUB TOTAL

TOTAL

* CONTINUED *

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.
CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Rec'd by Paul Travers

CUBS1000E (5809)

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

31 CLYDE AVENUE MOUNT PEARL, NL
A1N 4R8**QUOTATION**

TEL: 709-747-7510

FAX: 709-747-7795

QUOTATION NO.

398394-10

PAGE 5 of 6

QUOTED TO

SHIP TO

EDWARD COLLINS CONTRACTING LTD

SAME

P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD
A0B 2G0

Customer Fax 227-3704

QUOTATION DATE	QUOTATION EXPIRATION DATE	WRITER	SALES REP.	BRANCH	WEIGHT
01/27/2021	02/26/2021	PT	PGT	0019	139065.76

NOTE**TOWN OF PLACENTIA WATER UPGRADES**

LINE	QTY ORDERED	U/M	DESCRIPTION	PRICE	DISCOUNT	NET	EXTENDED AMOUNT
126			"PART B"				
127							
128							
129	1	EA	METALLIC WATER TAPE P/N 3WTAPE-D METTAP	89.000	NET	89.000	89.00
130	300	M	12 CLASS 150 (SDR-18) C-900 PVC WTR PIP W/GAKT CAPPED 12-C900CAPP	152.000	NET	152.000	45600.00
131							
132							
133	2	EA	10 DUCTILE IRON MECH JT TEE LESS ACC 10DITLA C/W MEGALUGS	715.000	NET	715.000	1430.00
134							
135							
136							
137	2	EA	12X10 DUCTILE IRON MECH JT REDUCER LESS ACC 12-10DIREDLA C/W MEGALUGS	445.000	NET	445.000	890.00
138							
139							
140							
141	1	EA	12 DUCTILE IRON MECH JT(90) 1/4 BEND LESS ACC 12-DILLA C/W MEGALUGS	588.000	NET	588.000	588.00
142							
143							
144							
145	4	EA	12 DUCTILE IRON MECH JT(45) 1/8 BEND LESS ACC 12-DI45LA C/W MEGALUGS	535.000	NET	535.000	2140.00
146							
147							
148							
149	2	EA	300MM TRANSITION CPLG B398394*2894843 *	410.000	NET	410.000	820.00
150							
151							
152	3	EA	10 #20075-R RESILIENT SEATED MJ END ANWA GATE VALVE OL 10.20075ROL C/W VALVE BOX & MEGALUGS	3050.000	NET	3050.000	9150.00
153							
154							
155							

TERMS OF PAYMENT

SUB TOTAL

TOTAL

* CONTINUED *

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.
CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Req. By Paul Traverso

CURS100DE 19099

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

31 CLYDE AVENUE MOUNT PEARL, NL
A1N 4R8**QUOTATION**TEL: 709-747-7510
FAX: 709-747-7795

QUOTATION NO.

398394-10

PAGE 6 of 6

QUOTED TO

SHIP TO

EDWARD COLLINS CONTRACTING LTD

SAME

P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD
A0B 2G0

Customer Fax 227-3704

QUOTATION DATE		QUOTATION EXPIRATION DATE		WRITER	SALES REP.	BRANCH	WEIGHT
01/27/2021		02/26/2021		PT	PGT	0019	139065.76
NOTE							
TOWN OF PLACENTIA WATER UPGRADES							
LINE	QTY ORDERED	U/M	DESCRIPTION	PRICE	DISCOUNT	NET	EXTENDED AMOUNT
156	1	EA	12 #5B BARE SWAB	95.000	NET	95.000	95.00
157	24	EA	1 KG PVC PIPE LUBRICANT	5.750	NET	5.750	138.00
158							
159							
160							
161							
			*ALL FLG CONNECTION BOLTS & *GASKETS EXTRA				
			Quantities shown represent our interpretation of material covered by plans and specifications. We do not guarantee quantities to represent complete material supplied. ALL SPECIAL ORDERS NON-CANCELABLE & NON-RETURNABLE				
			* Items are subject to cancellation and restocking charges.				
TERMS OF PAYMENT				SUB TOTAL		457,819.00	
NET 60 DAYS				H.S.T.		68,672.85	
THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.				TOTAL		CAN \$526,491.85	

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.
CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

09:58:55 04 FEB 2021

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

31 CLYDE AVENUE MOUNT PEARL, NL
A1N 4R8**QUOTATION**TEL: 709-747-7510
FAX: 709-747-7795

QUOTATION NO.

473668-03

PAGE 1 of 1

QUOTED TO

EDWARD COLLINS CONTRACTING LTD

SHIP TO

SAME

P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD
A0B 2G0

Customer Fax 227-3704

QUOTATION DATE	QUOTATION EXPIRATION DATE	WRITER	SALES REP.	BRANCH	WEIGHT
05/26/2021	05/31/2021	PT	PGT	0019	15300.00

NOTE

12" HDPE PIPE

LINE	QTY ORDERED	UOM	DESCRIPTION	PRICE	DISCOUNT	NET	EXTENDED AMOUNT
1							
2							
3							
4	900	FT	12" DR 17 HDPE P/E PIPE B473668*2937525 *	37.600	NET	37.600	33840.00
5							
6							
7							

FOB:TRUCK JOB SITE
DEL:10-15 WORKING DAYS

Quantities shown represent our interpretation of material covered by plans and specifications. We do not guarantee quantities to represent complete material supplied.

ALL SPECIAL ORDERS NON-CANCELABLE & NON-RETURNABLE

* Items are subject to cancellation and restocking charges.

TERMS OF PAYMENT	SUB TOTAL	H.S.T.	TOTAL
NET 60 DAYS	33,840.00	5,076.00	CAN \$38,916.00

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

11:34:30 27 MAY 2021

Quotation



Rodco Mechanical (2014) Ltd.
257 Conception Bay Highway
Holyrood, NL A0A 2R0 - (P.O. Box 169)
709-231-2399
steve@rodco-mechanical.com
HST # 824615371RT0001

Date: 2021-02-09

Quote # 2021-004

****Quotation valid for 30 days**

PROJECT

Town of Placentia - Water System Upgrades

SCOPE OF WORK

Supply and install of the items described in attached unit price table

NOTES AND EXCEPTIONS

- Unit pricing provided is for bidding purposes only. Items cannot be deleted from quote without being discussed with RODCO
- All piping above concrete slabs is included, any piping under concrete slabs is not included
- All concrete work (i.e. slabs, foundations, etc.), construction of mason block building, interior walls and water main stubs through slab to be completed by others. Rodco to connect to water mains 12" above finished floor
- Maintaining of existing water and/or chlorine to the town is for our scope only
- Any costs from NL Power and/or new electrical poles required are not included. GC to provide excavation/backfill and bedding for any electrical services
- 1 day on-site allowed for commissioning/training of systems at pumphouse. Additional time can be provided at an extra cost
- 1 day on-site allowed for commissioning/training at both PRV stations (i.e. 5hr each station). Additional time can be provided at an extra cost
- The Payment Term is 30 days after receipt of invoice. Interest at 2% per 30 days and 24% per annual will be charged on overdue accounts

Part A
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

4	Supply and Install New Fire Hydrant	each	1		
5	Swabbing of Water Lines	m	555		
6	Flush HDPE Water Line	m	3,050		
7	Locate & Connect to Existing System	each	5		
8	Supply and Install Rigid Insulation (thk as identified on the attached drawings)	m ²	6		
9	Supply & Install Air Release Valves				
1	50mm dia Air Release Valve (ARI-D-090)	each	2		
<u>15 10 00</u>	<u>Pressure Reducing Valve Station</u>				
1	Includes the supply, installation and commissioning of the PRV station as detailed in the specifications. Includes all valves, piping, fittings, flow meters, civil work and pre-fabricated enclosure. To include all valves and fittings required to connect to main line. No extra payment will be made for locate and connect to existing piping.				
		LS	2	100,000.00	200,000.00
<u>15 20 00</u>	<u>Intake at Gull Pond</u>				
1	Supply and Install Timber Crib	LS	1		
2	Supply and Install Concrete Pipe Anchors	ea	10		
3	Supply and Install Wedgewire Screen	ea	1		
4	300mm HDPE DR17 Intake Pipe	m	30		
5	End of pipe flange fitting to accept new screen	ea	1		
<u>15 20 00</u>	<u>Discharge into Barron Pond</u>				
1	Supply and Install Concrete Pipe Anchors	ea	10		
2	300mm HDPE DR17 Intake Pipe	m	30		
<u>15 20 00</u>	<u>Intake at Barron Pond</u>				
1	Supply and Install Timber Crib	LS	1		
2	Supply and Install Concrete Pipe Anchors	ea	10		

NO CIVIL WORK
OR CONCRETE INCLUDED

Part A
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

	3	Supply and Install Wedgewire Screen	ea	1		
	4	300mm HDPE DR17 Intake Pipe	m	30		
	5	End of pipe flange fitting to accept new screen	ea	1		
<u>15 20 00</u>		<u>Discharge into Little Barron Pond</u>				
	1	Supply and Install Concrete Pipe Anchors	ea	10		
	2	300mm HDPE DR17 Intake Pipe	m	30		
<u>15 20 00</u>		<u>Intake at Little Barron Pond</u>				
	1	Supply and Install Timber Crib	LS	1		
	2	Supply and Install Concrete Pipe Anchors	ea	10		
	3	Supply and Install Wedgewire Screen	ea	1		
	4	300mm HDPE DR17 Intake Pipe	m	30		
	5	End of pipe flange fitting to accept new screen	ea	1		
<u>15 20 00</u>		<u>Discharge into Clarkes Pond</u>				
	1	Supply and Install Concrete Pipe Anchors	ea	12		
	2	300mm HDPE DR17 Intake Pipe	m	30		
<u>15 40 00</u>		<u>Hypo - Chlorination System</u>				
	1	The supply, installation and commissioning of a new hypo chlorination system including emergency eye / shower unit for the PRV Station as detailed on the drawings and specifications.	LS	2	<u>8,000.00</u>	<u>16,000.00</u>

a. Sub-Total:

216,000.00

b. HST @ 15%

32,400.00

c. PART A Total:

248,400.00

Part B
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
<u>01005</u>	<u>Maintain Existing Services</u> FOR OUR SCOPE ONLY				
1	Maintain Existing Water Systems (Contractor to is required to ensure that the Town has a supply of Chlorinated water at all times).	L.S.	Unit	<u>5,000.00</u>	<u>5,000.00</u>
<u>01010</u>	<u>Mobilization & Demobilization</u> (not greater than 5% if on the Island and 10% if in Labrador, or 16% north of Cartwright of Item e. "sub-total" on last page)	L.S.	Unit		
<u>01020</u>	<u>Cash Allowances</u>				
1	Contribution In Aid of Hydro	Allow.	Unit	<u>\$20,000.00</u>	<u>\$20,000.00</u>
<u>01500</u>	<u>Temporary Facilities</u>				
1	Engineers Site Office	L.S.	Unit		
<u>01570</u>	<u>Traffic Regulations</u>				
1	Flagpersons Wages	hour	200		
<u>01580</u>	<u>Protect Sign</u>				
1	Project Sign	LS	1		
<u>DIVISION #2</u>					
<u>02070</u>	<u>Sitework, Demolition & Removal of Structures</u>				
1	Removal of existing piping, walls, roof truss, shingles, etc as required to complete the new pumphouse extension. Any materials that are deemed useable are to be turned over to the Town.	LS	1		
2	Removal of 300mm dia End Cap	ea	1		
3	Remove existing valve and reconnect piping (outside the pumphouse)	LS	1		

Part B
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

	.3	300mm dia 90 deg bend	each	1		
	.4	300mm dia 45 deg bend	each	4		
	.5	300mm Ø Sleeve Type Coupling	each	2		
	3	Supply & install Valves including valve boxes				
	.2	250mm Ø	each	3		
	5	Swabbing of Water Lines	m	300		
	7	Locate & Connect to Existing System	each	2		
		<u>Pumphouse Extension</u>				
<u>06000</u>	1	Includes but not limited to all excavation and backfill required to supply and install the concrete foundation and floor slab. Includes building construction including but not limited to, all interior and exterior finishes. Includes all work within 1.5m perimeter of the building.	LS	1		
	2	Includes but not limited to all building mechanical and electrical items. Includes but not limited to lighting, heating, electrical panels, exhaust fans, intake fans, electrical upgrades, plumbing and emergency eyewash / shower units.	LS	1	<u>120,000.00</u>	<u>120,000.00</u>
<u>15 00 00</u>		<u>Pumping / Control System</u>				
	1	Includes but not limited to the supply, installation and commissioning of all piping, fittings, valves, P3 submersible pump assembly, VFD's, flow meters, etc to provide and fully operational system.	LS	1	<u>100,000.00</u>	<u>100,000.00</u>
	2	Includes the supply, installation and commissioning of the pressure reducing solenoid - controlled control valve going to Dunville System as detailed in the specifications.	LS	1	<u>19,000.00</u>	<u>19,000.00</u>
	3	Includes the supply, installation and commissioning of the solenoid - controlled control valve going to Argenta System as detailed in the specifications.	LS	1	<u>16,000.00</u>	<u>16,000.00</u>

Part B
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

- 4 Includes the design, supply, installation and commissioning of the pump / system control panel. Includes programming, equipment, level sensors at the Wyse's Pond reservoir and required communication equipment. Minimum requirements for the control system and sequence is outlined in the specifications.

LS .1 70,000.00 70,000.00

15 30 00

Gas Chlorination System

- 1 The supply, installation and commissioning of a new gas chlorination system as detailed on the drawings and specifications. Includes, but not limited to, new booster pumps, piping, gauges, valves, fittings and gas detection system.

LS 1 90,000.00 90,000.00

a. Sub-Total: 420,000.00

b. HST @ 15%: 63,000.00

c. Part B Total: 483,000.00

1 PART A TOTAL 248,400.00

2 PART B TOTAL 483,000.00

3 BID TOTAL (carry forward to Appendix 'A' of the Bid Form) 731,400.00

TAB D

This is **Exhibit "D"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.


A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan



LABOUR & MATERIAL PAYMENT BOND (Trustee Form)

Standard Construction Document

DC 222 - 2002

No. 532,090

Bond Amount \$1,129,743.33

EDWARD COLLINS CONTRACTING LIMITED as Principal, hereinafter called the Principal, and WESTERN SURETY COMPANY a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in all provinces and territories of Canada, as Surety, hereinafter called the Surety, are held and firmly bound unto TOWN OF PLACENTIA as Obligor, hereinafter called the Obligor, in the amount of ONE MILLION ONE HUNDRED AND TWENTY NINE THOUSAND SEVEN HUNDRED AND FORTY THREE 33/100 DOLLARS (\$1,129,743.33) lawful money of Canada, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal has entered into a written contract with the Obligor, dated 3rd day of March, in the year 2021 for WATER SYSTEM UPGRADES 17-GI-20-00050 / 17-SCF-19-00129, PLACENTIA, NEWFOUNDLAND AND LABRADOR in accordance with the Contract Documents submitted, and which are by reference made part hereof and are hereinafter referred to as the Contract.

The Condition of this obligation is such that, if the Principal shall make payment to all Claimants for all labour and material used or reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material, or both, used or reasonably required for use in the performance of the Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Contract provided that a person, firm or corporation who rents equipment to the Principal to be used in the performance of the Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof, shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Contract. The prevailing industrial rental value of equipment shall be determined, insofar as it is practical to do so, by the prevailing rates in the equipment marketplace in which the work is taking place.
2. The Principal and the Surety, hereby jointly and severally agree with the Obligor, as Trustee, that every Claimant who has not been paid as provided for under the terms of its contract with the Principal, before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of its contract with the Principal and have execution thereon. Provided that the Obligor is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants, or any of them, to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Obligor or by joining the Obligor as a party to such proceeding, then such act, action or proceeding, shall be taken on the understanding and basis that the Claimants, or any of them, who take such act, action or proceeding shall indemnify and save harmless the Obligor against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Obligor by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them may use the name of the Obligor to sue on and enforce the provisions of this Bond.
3. It is a condition precedent to the liability of the Surety under this Bond that such Claimant shall have given written notice as hereinafter set forth to each of the Principal, the Surety and the Obligor, stating with substantial accuracy the amount claimed, and that such Claimant shall have brought suit or action in accordance with this Bond, as set out in sub-clauses 3 (b) and 3 (c) below. Accordingly, no suit or action shall be commenced hereunder by any Claimant:
 - a) unless such notice shall be served by mailing the same by registered mail to the Principal, the Surety and the Obligor, at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or Territory in which the subject matter of the Contract is located. Such notice shall be given.
 - i) in respect of any claim for the amount or any portion thereof, required to be held back from the Claimant by the Principal, under either the terms of the Claimant's contract with the Principal, or under the lien Legislation applicable to the Claimant's contract with the Principal, whichever is the greater, within one hundred and twenty (120) days after such Claimant should have been paid in full under the Claimant's contract with the Principal;
 - ii) in respect of any claim other than for the holdback, or portion thereof, referred to above, within one hundred and twenty (120) days after the date upon which such Claimant did, or performed, the last of the work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract with the Principal;
 - b) after the expiration of one (1) year following the date on which the Principal ceased work on the Contract, including work performed under the guarantees provided in the Contract;
 - c) other than in a Court of competent jurisdiction in the Province or Territory in which the work described in the Contract is to be installed or delivered as the case may be and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such Court.
4. The Surety agrees not to take advantage of Article 2365 of the Civil Code of the Province of Quebec in the event that, by an act or an omission of a Claimant, the Surety can no longer be subrogated in the rights, hypothec and privileges of said Claimant.

5. Any material change in the contract between the Principal and the Obligor shall not prejudice the rights or interest of any Claimant under this Bond, who is not instrumental in bringing about or has not caused such change.
6. The amount of this Bond shall be reduced by, and to the extent of any payment or payments made in good faith, and in accordance with the provisions hereof, inclusive of the payment by the Surety of claims made under the applicable lien legislation or legislation relating to legal hypothecs, whether or not such claim is presented under and against this Bond.
7. The Surety shall not be liable for a greater sum than the Bond Amount.

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond dated 10th day of March, in the year 2021.

SIGNED and SEALED

In the presence of

EDWARD COLLINS CONTRACTING LIMITED

Signed electronically by Principal
Francis Collins
 on 2021-03-10 14:50:38 GMT
 1974
 Francis Collins
 Name of person signing

WESTERN SURETY COMPANY

Signed electronically by Surety
Dianne Buckle
 on 2021-03-10 14:50:38 GMT
 Dianne Buckle, Attorney-in-Fact
 Name of person signing



TAB E

This is **Exhibit "E"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan



WESTERN SURETY COMPANY

LABOUR AND MATERIAL BOND NO. 532,090

PRINCIPAL: Edward Collins Contracting Limited

OBLIGEE: Town of Placentia

PROJECT: Water System Upgrades

PROOF OF CLAIM

1. CLAIMANT'S NAME: CRANE Supply
ADDRESS: 145 English DR, Moncton, NB E1E 3X3
PHONE NO. 506 853-8469
CONTACT PERSON: RITA LESLIE
2. Total Claim: \$251635.00
3. NATURE OF WORK, SERVICES OR MATERIALS SUPPLIED: Pipe, Fitting, Hydrants & Valves
4. LAST DATE WORKED OR DATE OF LAST SUPPLY: August 11, 2021
5. WORK, SERVICES OR MATERIALS SUPPLIED PURSUANT TO:
SUBCONTRACT PURCHASE ORDER OTHER
OTHER (SPECIFY): as per our quotation (see attached)
(Copy or copies of subcontracts or purchase orders to be attached)
6. COPIES OF PROGRESS CLAIMS OR INVOICES MUST BE ATTACHED.

7. PARTICULARS OF ALL PAYMENTS RECEIVED (AMOUNTS AND DATES)

See attached cheque # 34246
310,164.24 paying invoices for April

STATUTORY DECLARATION

CANADA

PROVINCE OF NEW BRUNSWICK

I, Rita LESLIE, OF Dieppe IN THE PROVINCE OF,

New Brunswick DO SOLEMNLY DECLARE:

1. THAT I am Rita LESLIE of CRANE Supply the within Claimant and
as such have a personal knowledge of the matters herein deposed to.

2. THAT all facts and information contained in the within Proof of Claim are true in substance and in fact.

DECLARED before me at Moncton

in the Province of New Brunswick

this 8th day of September, 2021

Rita Leslie

COMMISSIONER FOR OATHS

NOTARY PUBLIC

CRANE**CRANE SUPPLY**

Division of Crane Carrels Co.

31 CLYDE AVENUE MOUNT PEARL, NL
A1N 4R8**QUOTATION**

TEL: 709-747-7510

FAX: 709-747-7795

QUOTATION NO.

398394-10

PAGE 1 of 6

QUOTED TO

SHIP TO

EDWARD COLLINS CONTRACTING LTD

SAME

P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD
A0B 2G0

Customer Fax 227-3704

QUOTATION DATE		QUOTATION EXPIRATION DATE		WRITER	SALES REP.	BRANCH	WEIGHT
01/27/2021		02/26/2021		PT	PGT	0019	139065.76
NOTE							
TOWN OF PLACENTIA WATER UPGRADES							
LINE	QTY ORDERED	U/M	DESCRIPTION	PRICE	DISCOUNT	NET	EXTENDED AMOUNT
1			"PART A"				
2							
3							
4	12	EA	METALLIC WATER TAPE P/N 3WTAPE-D	89.000	NET	89.000	1068.00
5	60	M	450MM HDPE 320 KPA STORM PIPE	74.000	NET	74.000	4440.00
6	400	M	450HDPE320 6 CLASS 150 (SDR-18) C-900 PVC WTR PIP W/GAKT CAPPED	46.000	NET	46.000	18400.00
7	190	M	6C900CAPP 12 CLASS 150 (SDR-18) C-900 PVC WTR PIP W/GAKT CAPPED	152.000	NET	152.000	28880.00
8	3050	M	12-C900CAPP 300MM DR 17 HDPE P/E PIPE	68.000	NET	68.000	207400.00
9	6	EA	B398394*2894822 * 300MM DR 17 HDPE BEND FLG X FLG	396.000	NET	396.000	2376.00
10			B398394*2894823 *				
11							
12	3	EA	6 DUCTILE IRON MECH JT TEE LESS ACC	318.000	NET	318.000	954.00
13			6DITLA				
14			C/W MEGALUGS				
15							
16	3	EA	12 DUCTILE IRON MECH JT TEE LESS ACC	851.000	NET	851.000	2553.00
17			12-DITLA				
18			C/W MEGALUGS				
19							
20	1	EA	8X6 DUCTILE IRON MECH JT REDUCER LESS ACC	222.000	NET	222.000	222.00
21			8.6DIREDLA				
22			C/W MEGALUGS				
23							
24	1	EA	12X6 DUCTILE IRON MECH JT REDUCER LESS ACC	345.000	NET	345.000	345.00
25			12-6DIREDLA				
26			C/W MEGALUGS				
27							
TERMS OF PAYMENT				SUB TOTAL			
				* CONTINUED *			
				TOTAL			

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.
CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Rep. by Paul Travers

CUBS1000E (9809)

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

31 CLYDE AVENUE MOUNT PEARL, NL
A1N 4R8**QUOTATION**

TEL: 709-747-7510

FAX: 709-747-7795

QUOTATION NO.

398394-10

PAGE 2 of 6

QUOTED TO

SHIP TO

EDWARD COLLINS CONTRACTING LTD

SAME

P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD
A0B 2G0

Customer Fax 227-3704

QUOTATION DATE		QUOTATION EXPIRATION DATE		WRITER	SALES REP.	BRANCH	WEIGHT
01/27/2021		02/26/2021		PT	PGT	0019	139065.76
NOTE							
TOWN OF PLACENTIA WATER UPGRADES							
LINE	QTY ORDERED	U/M	DESCRIPTION	PRICE	DISCOUNT	NET	EXTENDED AMOUNT
28	6	EA	150MM DI MJ BEND C/W MEGALUGS B398394*2894825 *	220.000	NET	220.000	1320.00
29							
30							
31	7	EA	150MM ROBAR TRANSITION CPLG B398394*2894826 *	171.000	NET	171.000	1197.00
32	1	EA	200MM ROBAR TRANSITION CPLG MOD:1406	215.000	NET	215.000	215.00
33	3	EA	B398394*2894827 * 12" #1406 ROBR TRANSITION CPLG B398394*2894828 *	410.000	NET	410.000	1230.00
34							
35							
36	5	EA	6 #20075-R RESILIENT SEATED MJ END AWWA GATE VALVE OL 6.20075ROL C/W VALVE BOX & MEGALUGS	1400.000	NET	1400.000	7000.00
37							
38							
39							
40	3	EA	12 #20075-R RESILIENT SEATED MJ END AWWA GATE VALVE OL 12-20075ROL C/W VALVE BOX & MEGALUGS	3900.000	NET	3900.000	11700.00
41							
42							
43							
44	6	EA	MUELLER POST INDICATOR VALVE FLG X FLG B398394*2894829 *	6250.000	NET	6250.000	37500.00
45			C/W POST INDICATOR &				
46			300MM HDPE FLG ADPT C/W B/U				
47			RINGS				
48							
49							
50	1	EA	7FT M67 MCAVITY SAFETY HYDRANT WITH PUMPER CONN M67.7FT C/W HYDRANT MARKER & MEGALUG	3500.000	NET	3500.000	3500.00
51							
52							
53	1	EA	8X6 DUCTILE IRON MECH JT RED TEE LESS ACC 8.6DITLA C/W MEGALUGS	395.000	NET	395.000	395.00
54							
55							
TERMS OF PAYMENT				SUB TOTAL			
				* CONTINUED *			
				TOTAL			

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.
CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Reg. by Paul Taversa

CURSIODE (9809)

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

31 CLYDE AVENUE MOUNT PEARL, NL
A1N 4R8**QUOTATION**

TEL: 709-747-7510

FAX: 709-747-7795

QUOTATION NO.

398394-10

PAGE 3 of 6

QUOTED TO

SHIP TO

EDWARD COLLINS CONTRACTING LTD

SAME

P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD
A0B 2G0

Customer Fax 227-3704

QUOTATION DATE		QUOTATION EXPIRATION DATE		WRITER	SALES REP.	BRANCH	WEIGHT
01/27/2021		02/26/2021		PT	PGT	0019	139065.76
NOTE							
TOWN OF PLACENTIA WATER UPGRADES							
LINE	QTY ORDERED	U/M	DESCRIPTION	PRICE	DISCOUNT	NET	EXTENDED AMOUNT
56	1	EA	6 #5B BARE SWAB	25.000	NET	25.000	25.00
57	1	EA	12 #5B BARE SWAB	95.000	NET	95.000	95.00
58							
59							
60							
61	2	EA	ARI AIR RLEASE VALVE MOD:D-90-02-7	8600.000	NET	8600.000	17200.00
62			B398394*2894830 *				
63			7' LGTH C/W ISOLATION VALVE				
64			& WATERPROOF CHAMBER				
65			12" X 3" TAPPING SLEEVE				
66			3" BRASS FLANGE				
67							
68							
69							
70	1	EA	INTAKE AT GULL POND WEDGEWIRE INTAKE SCREEN 24" OD X APP. 122" OVERALL LGTH.	12000.000	NET	12000.000	12000.00
71			B398394*2894831 *				
72			FAB. USING #60 WRAP WIRE &				
73			#130 SUPPORT ROD C/W 0.100"				
74			SLOT OPENING. STD WOUND FOR				
75			OUTSIDE/ INSIDE FLOW DIRECTION				
76			SUPPLIED C/W 12" CENTER TEE				
77			SECT. WITH 12" FAB. PLATE FLG				
78			DRILLED TO 12" AWWA CLASS D				
79			BOLT PATTERN, AND SOLID CAP ON				
80			EACH END. INC. INTERNAL FLOW				
81			MODULATOR, FAB. FROM 316 S/S				
82			BASED ON IND. MAX FLOW RATE OF				
83			5250 US GPM SCREEN WILL OFFER				
84			EST. VELOCITY OF 0.36 FT P/S				
85			SCREEN OFFERS 62.5 PERCENT				
86			OPEN AREA, INSTALL DEPTH OF				
87			1.8M				
88			*PENDING SHOP DRAWING APPROVAL				
89	30	M	*PENDING SHOP DRAWING APPROVAL 300MM DR 17 HDPE P/E PIPE	68.000	NET	68.000	2040.00
90	1	EA	B398394*2894832 * 300MM HDPE DR 17 FLG ADAPTER C/W B/U RING	208.000	NET	208.000	208.00
91			B398394*2894833 *				
92							
TERMS OF PAYMENT				SUB TOTAL			
				* CONTINUED *			
THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.				TOTAL			

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.
CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Req. by Paul Traversa

CURSLOODE (8809)

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

31 CLYDE AVENUE MOUNT PEARL, NL
A1N 4R8**QUOTATION**

TEL: 709-747-7510

FAX: 709-747-7795

QUOTATION NO.

398394-10

PAGE 4 of 6

QUOTED TO

EDWARD COLLINS CONTRACTING LTD

SHIP TO

SAME

P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD
A0B 2G0

Customer Fax 227-3704

QUOTATION DATE		QUOTATION EXPIRATION DATE		WRITER	SALES REP.	BRANCH	WEIGHT
01/27/2021		02/26/2021		PT	PGT	0019	139065.76
NOTE							
TOWN OF PLACENTIA WATER UPGRADES							
LINE	QTY ORDERED	U/M	DESCRIPTION	PRICE	DISCOUNT	NET	EXTENDED AMOUNT
93							
94			DISCHARGE INTO BARRON POND				
95	30	M	300MM HDPE DR 17 PIPE P/E B398394*2894834 *	68.000	NET	68.000	2040.00
96			-----				
97							
98							
99			-----				
100							
101			INTAKE INTO BARRON POND				
102	1	EA	WEDGE WIRE INTAKE SCREEN [SAME AS GULL POND] B398394*2894835 *	12000.000	NET	12000.000	12000.00
103	30	M	300MM DR 17 HDPE P/E PIPE B398394*2894836 *	68.000	NET	68.000	2040.00
104	1	EA	300MM HDPE DR17 FLG ADAPTER C/W B/U RING B398394*2894837 *	208.000	NET	208.000	208.00
105			-----				
106							
107							
108							
109			DISCHARGE INTO LITTLE BARRON				
110			POND				
111	30	M	300MM DR 17 HDPE P/E PIPE B398394*2894838 *	68.000	NET	68.000	2040.00
112			-----				
113							
114							
115			INTAKE AT LITTLE BARRON POND				
116	1	EA	WEDGE WIRE INTAKE SCREEN [SAME AS GULL POND] B398394*2894839 *	12000.000	NET	12000.000	12000.00
117	30	EA	300MM DR 17 HDPE P/E PIPE B398394*2894840 *	68.000	NET	68.000	2040.00
118	1	EA	300MM DR 17 HDPE FKLANGE ADAPT C/W B/U RING B398394*2894841 *	208.000	NET	208.000	208.00
119			-----				
120							
121							
122			DISCHARGE INTO CLARKES POND				
123	30	M	300MM DR 17 HDPE P/E PIPE B398394*2894842 *	68.000	NET	68.000	2040.00
124			-----				
125							
TERMS OF PAYMENT				SUB TOTAL			
				* CONTINUED *			
				TOTAL			

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.
CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Rec. By Paul Travers

CLBS1000E (9809)

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

31 CLYDE AVENUE MOUNT PEARL, NL
A1N 4R8**QUOTATION**

TEL: 709-747-7510

FAX: 709-747-7795

QUOTATION NO.

398394-10

PAGE 5 of 6

QUOTED TO

SHIP TO

EDWARD COLLINS CONTRACTING LTD

SAME

P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD
A0B 2G0

Customer Fax 227-3704

QUOTATION DATE		QUOTATION EXPIRATION DATE		WRITER	SALES REP.	BRANCH	WEIGHT
01/27/2021		02/26/2021		PT	PGT	0019	139065.76
NOTE							
TOWN OF PLACENTIA WATER UPGRADES							
LINE	QTY ORDERED	U/M	DESCRIPTION	PRICE	DISCOUNT	NET	EXTENDED AMOUNT
126			"PART B"				
127							
128							
129	1	EA	METALLIC WATER TAPE P/N 3WTAPE-D	89.000	NET	89.000	89.00
			METTAP				
130	300	M	12 CLASS 150 (SDR-18) C-900 PVC WTR PIP W/GAKT CAPPED 12-C900CAPP	152.000	NET	152.000	45600.00
131							
132							
133	2	EA	10 DUCTILE IRON MECH JT TEE LESS ACC 10DITLA	715.000	NET	715.000	1430.00
134			C/W MEGALUGS				
135							
136							
137	2	EA	12X10 DUCTILE IRON MECH JT REDUCER LESS ACC 12-10DIREDLA	445.000	NET	445.000	890.00
138			C/W MEGALUGS				
139							
140							
141	1	EA	12 DUCTILE IRON MECH JT(90) 1/4 BEND LESS ACC 12-DILLA	588.000	NET	588.000	588.00
142			C/W MEGALUGS				
143							
144							
145	4	EA	12 DUCTILE IRON MECH JT(45) 1/8 BEND LESS ACC 12-DI45LA	535.000	NET	535.000	2140.00
146			C/W MEGALUGS				
147							
148							
149	2	EA	300MM TRANSITION CPLG B398394*2894843 *	410.000	NET	410.000	820.00
150							
151							
152	3	EA	10 #20075-R RESILIENT SEATED MJ END AWWA GATE VALVE OL 10.20075ROL	3050.000	NET	3050.000	9150.00
153			C/W VALVE BOX & MEGALUGS				
154							
155							
TERMS OF PAYMENT				SUB TOTAL			
				* CONTINUED *			
				TOTAL			

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.
CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Reg. by Paul Travers

CURS1000E (9909)

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

31 CLYDE AVENUE MOUNT PEARL, NL
A1N 4R8**QUOTATION**TEL: 709-747-7510
FAX: 709-747-7795

QUOTATION NO.

398394-10

PAGE 6 OF 6

QUOTED TO

SHIP TO

EDWARD COLLINS CONTRACTING LTD

SAME

P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD
A0B 2G0

Customer Fax 227-3704

QUOTATION DATE		QUOTATION EXPIRATION DATE		WRITER	SALES REP.	BRANCH	WEIGHT
01/27/2021		02/26/2021		PT	PGT	0019	139065.76
NOTE							
TOWN OF PLACENTIA WATER UPGRADES							
LINE	QTY ORDERED	U/M	DESCRIPTION	PRICE	DISCOUNT	NET	EXTENDED AMOUNT
156	1	EA	12 #5B BARE SWAB	95.000	NET	95.000	95.00
157	24	EA	1 KG PVC PIPE LUBRICANT	5.750	NET	5.750	138.00
158							
159							
160							
161							
			*ALL FLG CONNECTION BOLTS & *GASKETS EXTRA				
			Quantities shown represent our interpretation of material covered by plans and specifications. We do not guarantee quantities to represent complete material supplied. ALL SPECIAL ORDERS NON-CANCELABLE & NON-RETURNABLE				
			* Items are subject to cancellation and restocking charges.				
TERMS OF PAYMENT				SUB TOTAL		457,819.00	
NET 60 DAYS				H.S.T.		68,672.85	
THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.				TOTAL		CAN	\$526,491.85

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT.
CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

09:58:55 04 FEB 2021

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

31 CLYDE AVENUE MOUNT PEARL, NL
A1N 4R8**QUOTATION**

TEL: 709-747-7510

FAX: 709-747-7795

QUOTATION NO.

473668-03

PAGE 1 of 1

QUOTED TO

SHIP TO

EDWARD COLLINS CONTRACTING LTD

SAME

P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD
A0B 2G0

Customer Fax 227-3704

QUOTATION DATE	QUOTATION EXPIRATION DATE	WRITER	SALES REP.	BRANCH	WEIGHT
05/26/2021	05/31/2021	PT	PGT	0019	15300.00

NOTE

12" HDPE PIPE

LINE	QTY ORDERED	U/M	DESCRIPTION	PRICE	DISCOUNT	NET	EXTENDED AMOUNT
1							
2							
3							
4	900	FT	12" DR 17 HDPE P/E PIPE B473668*2937525 *	37.600	NET	37.600	33840.00
5							
6							
7							

FOB: TRUCK JOB SITE
DEL: 10-15 WORKING DAYS

Quantities shown represent our interpretation of material covered by plans and specifications. We do not guarantee quantities to represent complete material supplied.

ALL SPECIAL ORDERS NON-CANCELABLE & NON-RETURNABLE

* Items are subject to cancellation and restocking charges.

TERMS OF PAYMENT		SUB TOTAL	
NET 60 DAYS			33,840.00
		H.S.T.	5,076.00
		TOTAL	CAN \$38,916.00

THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

11:34:30 27 MAY 2021

CRANE

CRANE SUPPLY

Division of Crane Canada Co.

145 ENGLISH DRIVE, MONCTON, NB E1E 3X3
TEL: 506 853 0150 FAX: 506 859 0340

STATEMENT OF ACCOUNT

Account **22677-01**

as of **2021-09-30**

EDWARD COLLINS CONTRACTING LTD
P.O.BOX 51 JERSEYSIDE
PLACENTIA, NFLD A0B 2G0

ACCOUNT SUMMARY

PAST DUE AMOUNTS			CURRENT	TOTAL AMOUNT	TOTAL DISCOUNT	NET AMOUNT	# IF PAID BY
91 +	91 - 90	31 - 90					
210,587.09	38,562.04			249,149.13		249,149.13	2021-10-15

DATE	CODE	REFERENCE	PURCHASE ORDER NUMBER	AMOUNT	CASH DISCOUNT	NET AMOUNT	COMMENTS
		** EDWCOL		**			
		** EDWARD	COLLINS PROJECT	**			
2021-05-03		07-491738	JOSH COLLINS	47,817.00		47,817.00	
2021-05-03		07-491739	JOHN MCARTHY	457.13		457.13	
2021-05-03		07-491740	JOSH	2,312.65		2,312.65	
2021-05-05		07-492155	JOHN MCARTHY	1,733.28		1,733.28	
2021-05-05		07-492156		133.40		133.40	
2021-05-11		07-492941		562.70		562.70	
2021-05-12		07-493111	PLACENTIA EXTRA	1,673.48		1,673.48	
2021-05-14		07-493507	JOSH COLLINS	19,221.10		19,221.10	
2021-05-18		07-493918	JOSH COLLINS	47,817.00		47,817.00	
2021-05-19		07-494101	JOSH COLLINS	172.50		172.50	
2021-05-20		07-494860	JOSH COLLINS	38,336.40		38,336.40	
2021-05-26		07-494861	PLACENTIA EXTRA	455.40		455.40	
2021-06-01		07-495734	TRAILER PARK TIE IN	7,945.35		7,945.35	
2021-06-08		07-496715	PLACENTIA PROJECT	3,666.20		3,666.20	
2021-06-09		07-496926	PLACENTIA PROJECT	426.65		426.65	
2021-06-09		07-496927	PLACENTIA PROJECT	506.00		506.00	
2021-06-14		07-497555	TOWN OF PLACENTIA PR	34,592.00		34,592.00	
2021-06-17		07-498130	PLACENTIA PROJECT	1,401.85		1,401.85	
2021-06-21		07-498514	JOSH	1,357.00		1,357.00	
2021-07-02		07-500129	JOSH COLLINS	38,424.38		38,424.38	
2021-07-13		07-501533	TOWN OF PLACENTIA PR	137.66		137.66	

pg 1 of 2

ADJ - ADJUSTMENT DI - DISCOUNT NET - NET PD - PAID ON ACCOUNT SC - SERVICE CHARGE
CM - CREDIT MEMO DM - DEBIT MEMO OP - OVERPAYMENT RP - RETURN PAY UP - UNDERPAYMENT

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

145 ENGLISH DRIVE, MONCTON, NB E1E 3X3
TEL: 506 853 0150 FAX: 506 859 0340**STATEMENT OF ACCOUNT**Account **22677**as of **2021-09-30**EDWARD COLLINS CONTRACTING LTD
P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD A0B 2G0**ACCOUNT SUMMARY**

PAST DUE AMOUNTS			CURRENT	TOTAL AMOUNT	TOTAL DISCOUNT	NET AMOUNT	# IF PAID BY
91 +	61 - 90	31 - 60					
243.75	1,080.04	1,162.08		2,485.87		2,485.87	2021-10-15

DATE	CODE	REFERENCE	PURCHASE ORDER NUMBER	AMOUNT	CASH DISCOUNT	NET AMOUNT	COMMENTS
2021-05-19		07-494102	-	243.75		243.75	
2021-07-09		07-501169	.S	62.28		62.28	
2021-07-26		07-503222	PLACENTIA	1,017.76		1,017.76	
2021-08-04		07-504399	PLACENTIA JOB	91.43		91.43	
2021-08-10		07-505099	PLACENTIA JOB	466.90		466.90	
2021-08-11		07-505302	PLACENTIA JOB	603.75		603.75	

Pg 2 of 2

ADJ - ADJUSTMENT

DI - DISCOUNT

NET - NET

PD - PAID ON ACCOUNT

SG - SERVICE CHARGE

CM - CREDIT MEMO

DM - DEBIT MEMO

OP - OVERPAYMENT

RP - RETURN PAY

UP - UNDERPAYMENT

Page 1 of 1

Req. by Rita Leslie

CUBS6000E (9/11)

CRANE

CRANE SUPPLY

Division of Crane Canada Co.
145 ENGLISH DRIVE MONCTON, NB
E1E 3X3

INVOICE

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INV. NO	07-491738	PAGE	1 of 2
BRANCH	S. JOHN'S	CUST. NO.	22677
PKG SLIP #	596734-5	DATE	05/03/2021

SOLD TO

EDWARD COLLINS CONTRACTING LTD
P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD A0B 2G0

SHIP TO
EDWCOL
EDWARD COLLINS PROJECT
TOWN OF PLACENTIA
WATER SYSTEM UPGRADE
PLACENTIA, NL
A0B 2V0

Reg. by Air 12345

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
03/10/2021		JOSH COLLINS		1003609487-TO0018		R101190213					
LINE	DESCRIPTION		QUANTITY			U / M	LIST	DISCOUNT	NET PRICE		
			ORDERED	R/O	SHIPPED						
1											
2	ATT:JOSH 227-9105										
3	PART A										
4											
5	300MM DR 17 HDPE P/E PIPE	2909989	7250	4450	2800	FT	14.850	NET	41,580.00		
6											
7											
8											
9											
10											
11											
12											
13	ARI AIR RELEASE VALVE	2910195	2	2	0	EA	8600.000	NET	0.00		
14	MOD:D-90-02-6'LGTH										
15	C/W ISOLATION CHAMBER	2910199	2	2	0	EA	0.001	NET	0.00		
16	6606- 12" X 3" - 12.95										
17	TAPPING SLEEVE										
18											
19	INTAKE AT GULL POND										
20	AS PER QUOTE 6765										
21	WEDGEWIRE INTAKE SCREEN	2910200	1	1	0	EA	12000.000	NET	0.00		
22	24" OD X APP 122" OVERALL LGTH										
23	12" DR 17 HDPE P/E PIPE	2910211	100	100	0	FT	14.850	NET	0.00		
24											
25	12" DR 17 HDPE P/E PIPE	2910215	100	100	0	FT	14.850	NET	0.00		
26											
27											
28	INTAKE INTO BARREN POND										
29											
30	WEDGEWIRE INTAKE SCREEN	2910216	1	1	0	EA	12000.000	NET	0.00		
31	24" OD X APP. 122" OVERALL LGT										
32	12" DR 17 HDPE P/E PIPE	2910218	100	100	0	FT	14.850	NET	0.00		
33											
34											
35	12" DR 17 HDPE P/E PIPE	2910222	100	100	0	FT	14.850	NET	0.00		
36											
37											
38	INTAKE AT LITTLE BARREN										
39	POND										
40	WEDGEWIRE INTAKE SCREEN	2910225	1	1	0	EA	12000.000	NET	0.00		
	24" X APP 122" OVERALL LGT										
TERMS OF DELIVERY			FREIGHT			S.T. INCL. P.S.T.			SUB-TOTAL		
INSTRUCTIONS			SHIP VIA			DATE SHIPPED					
TERMS OF PAYMENT			PAYMENT DUE BY			CASH DISCOUNT					
TOTAL									** CONTINUED **		

UBS400CE (9809)

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT, CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

CRANE

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145 ENGLISH DRIVE MONCTON, NB
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INV.NO	07-491738	PAGE	2 of 2
BRANCH	S'JOHN'S	CUST.NO	22677
PKG SLIP #	596734-5	DATE	05/03/2021

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P.O.BOX 51 JERSEYSIDE
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EDWARD COLLINS PROJECT
TOWN OF PLACENTIA
WATER SYSTEM UPGRADE
PLACENTIA, NL
AOB 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
03/10/2021		JOSH COLLINS		1003609487-T00018		R101190213					
LINE	DESCRIPTION		QUANTITY			U / M	LIST	DISCOUNT	NET PRICE		
			ORDERED	B/O	SHIPPED						
41	12" DR 17 HDPE P/E PIPE	2910234	100	100		0 FT	14.850	NET	0.00		
42											
43											
44	12" DR 17 HDPE P/E PIPE	2910237	100	100		0 FT	14.850	NET	0.00		
45											
46											
47											
48	PART "B"										
49											
50											
51											
52											
										=====	\$41,580.00
New direct line to Rita Leslie (Credit Manager)											
1 (506) 853-8469											

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Req. by Rita Leslie

CLBS4000E (9803)

CRANE

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INVT.NO	07-491739	PAGE	1 of 1
BRANCH	S 'JOHN' S	CUST.NO	22677
PKG SLIP #	603809-1	DATE	05/03/2021

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WATER SYSTEM UPGRADE
PLACENTIA, NL
AOB 2VO

REL BY RITA LESLIE

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
04/30/2021		JOHN MCARTHY		1003609487-TO0018		R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	B/O	SHIPPED							
1											
2	CALL NEWHOOKS FOR P/U										
3											
4	LSCS-410 LINK SEAL	2928731	15	0	15 EA	26.500	NET	397.50			
								=====			
								\$397.50			
New direct line to Rita Leslie (Credit Manager)											
1 (506) 853-8469											
									</		

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT, CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

CRANE

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INV.NO	07-491740	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST.NO	22677
PKG SLIP #	604053	DATE	05/03/2021

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EDWARD COLLINS PROJECT
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WATER SYSTEM UPGRADE
PLACENTIA, NL
A0B 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		F.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
05/03/2021		JOSH		1003609487-T00018		R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	B/O	SHIPPED							
1	8X6 DUCTILE IRON MECH JT RED TEE LESS ACC	8.6DITLA	1	0	1 EA	208.000	NET	208.00			
2	8 CLASS 150 (SDR-18) C-900 PVC WTR PIP W/GAKT CAPPED	8C900CAPP	6	0	6 M	89.000	NET	534.00			
3	8" PVC MEGALUG AND KIT	8.4000P	2	0	2 EA	68.000	NET	136.00			
4	6" PVC MEGALUG AND KIT	6.4000P	1	0	1 EA	51.000	NET	51.00			
5	8" 441 945900 ROCKWELL CPLG 9.05-9.45 OD	5900.905.945	2	0	2 EA	541.000	NET	1,082.00			
								=====	\$2,011.00		
New direct line to Rita Leslie (Credit Manager) 1 (506) 853-8469											

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Req. by Rita Leslie

CUES4000E (9803)

CRANE

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145 ENGLISH DRIVE MONCTON, NB
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INV.NO	07-492155	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST.NO	22677
PKG SLIP #	604071	DATE	05/05/2021

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WATER SYSTEM UPGRADE
PLACENTIA, NL
AOB 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
05/03/2021		JOHN MCARTHY		1003609487-T00018		R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	B/O	SHIPPED							
1											
2	CALL NEWHOOKS FOR P/U										
3											
4	7/8" X 6" B7 STUD BOLT	2929457	192	0	192 EA	3.250	NET	624.00			
5	7/8 REG HEX NUTS	78NUT	384	0	384 EA	125.000	NET	480.00			
6	7/8 BOLT-SIZE PLATE WASHER	78WSH	384	0	384 EA	PER 30.000	NET	115.20			
7	12 125# 1/8 TK RED RUBBER	2-18RRFFGSKT	16	0	16 EA	PER 18.000	NET	288.00			
	FULL FACE GASKET W/BOLT HOLES										
									=====		
									\$1,507.20		
New direct line to Rita Leslie (Credit Manager)											
1 (506) 853-8469											
</											

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Req. by Rita Leslie

CUBSAC00E 198091

CRANE**CRANE SUPPLY**

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145 ENGLISH DRIVE MONCTON, NB
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INV. NO	07-492156	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST. NO	22677
PKG SLIP #	604515	DATE	05/05/2021

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WATER SYSTEM UPGRADE
PLACENTIA, NL
AOB 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
05/05/2021				1003609487-T00018		R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	R/O	SHIPPED							
1	1X3/4 H15403N.25.20 MUELLER 15403N.25.20 110X110 COMP CORP COUPLING	2	0		2 EA	29.000	NET	58.00			
2	3/4"X1/2" H15403N.20.12 15403N.20.12 MUELLER COMPRESSION COUPLING	2	0		2 EA	29.000	NET	58.00			
								=====	\$116.00		
New direct line to Rita Leslie (Credit Manager)											
1 (506) 853-8469											

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Req. By Rita Leslie

CURS-0000E (9809)

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INV.NO	07-492941	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST.NO	22677
PKG SLIP #	605099-1	DATE	05/11/2021

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EDWARD COLLINS PROJECT
TOW OF PLACENTIA
WATER SYSTEM UPGRADE
PLACENTIA, NL
A0B 2V0

Reg. By Rita Leslie

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
05/10/2021				1003609487-TO0018		R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	B/O	SHIPPED							
1											
2	CALL NEWHOOKS FOR P/U										
3	THIS AFTERNOON										
4											
5	12" R/R RI NG GASKET	2931769	6	0	6 EA	19.950	NET	119.70			
6	7/8" X 8" STUD BOLTS	2932289	96	0	96 EA	3.850	NET	369.60			
								=====			
								\$489.30			
New direct line to Rita Leslie (Credit Manager)											
1 (506) 853-8469											
TERMS OF DELIVERY		FREIGHT		S.T. INCL. P.S.T.		SUB-TOTAL					
COLLECT		COLLECT		DATE SHIPPED		T.V.H./H.S.T.					
INSTRUCTIONS		SHIP VIA		CASH DISCOUNT		T.V.P./P.S.T.					
TERMS OF PAYMENT		PAYMENT DUE BY				TOTAL CAN					
NET 60 DAYS		07/10/2021		\$0.00		\$489.30					
		NEWHOOKS				73.40					
						0.00					
						\$562.70					

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CRANE

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INV.NO	07-493111	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST.NO	22677
PKG SLIP #	605301	DATE	05/12/2021

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PLACENTIA, NFLD A0B 2G0

SHIP TO
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EDWARD COLLINS PROJECT
TOW OF PLACENTIA
WATER SYSTEM UPGRADE
PLACENTIA, NL
A0B 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
05/11/2021		PLACENTIA EXTRA		1003609487-T00018		R101190213					
LINE	DESCRIPTION	QUANTITY		U / M		LIST	DISCOUNT	NET PRICE			
		ORDERED	B/O								
1	CALL NEWHOOKS FOR P/U										
2	CALL NEWHOOKS FOR P/U										
3											
4											
5	12X1 AWWA S/S SERVICE SADDLE 12-1SSSAD	4	3	1	EA	132.000	NET		132.00		
6	1 B25008N.25 MUELLER 110 B25008N.25 COMP JT BALL TYPE MAIN STOP	4	0	4	EA	67.750	NET		271.00		
7											
8											
9	1 B15219N.25 (W27) MUELLER B15219N.25 ORISEAL110 COMP VALVE W/DRAIN	4	0	4	EA	132.050	NET		528.20		
10	A726 6' SERVICE BOX L/ROD 6A726	4	0	4	EA	41.000	NET		164.00		
11	88036 MUELLER 35" SS ROD 35-88036 TYPE 316	4	0	4	EA	18.000	NET		72.00		
12	1 #504385.25 MUELLER S.S. 504385.25 INSERT FOR POLYETHYLENE PIPE	12	0	12	EA	5.250	NET		63.00		
13	1" MUNICIPEX X 100' COIL 1.100MUNPEX	100	0	100	FT	2.250	NET		225.00		
										=====	
										\$1,455.20	
New direct line to Rita Leslie (Credit Manager) 1 (506) 853-8469											
TERMS OF DELIVERY		FREIGHT		S.T. INCL. P.S.T.							
COLLECT		COLLECT									
INSTRUCTIONS		SHIP VIA		DATE SHIPPED		SUB-TOTAL		\$1,455.20			
		NEWHOOKS		05/12/2021		T.V.H./H.S.T.		218.28			
TERMS OF PAYMENT		PAYMENT DUE BY		CASH DISCOUNT		T.V.P./P.S.T.		0.00			
NET 60 DAYS		07/11/2021		\$0.00		TOTAL CAN		\$1,673.48			

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Req. by Rita Leslie

CUBS4000E 198091

CRANE

CRANE SUPPLY

Division of Crane Canada Co.
145 ENGLISH DRIVE MONCTON, NB
E1E 3X3

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INV. NO	07-493507	PAGE	1 of 2
BRANCH	S'JOHN'S	CUST. NO	22677
PKG SLIP #	596734-6	DATE	05/14/2021

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P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD AOB 2G0

SHIP TO
EDWCOL
EDWARD COLLINS PROJECT
TOWN OF PLACENTIA
WATER SYSTEM UPGRADE
PLACENTIA, NL
AOB 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
03/10/2021		JOSH COLLINS		1003609487-T00018		R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	B/O	SHIPPED							
1											
2	PART A										
3											
4	300MM DR 17 HDPE P/E PIPE	2909989	4450	4450	0 FT	14.850	NET	0.00			
5											
6											
7											
8											
9											
10	ARI AIR RELEASE VALVE	2910195	2	0	2 EA	7507.000	NET	15,014.00			
	MOD:D-90-02-6'LGTH										
11	C/W ISOLATION CHAMBER										
12	6606- 12" X 3" - 12.95	2910199	2	0	2 EA	850.000	NET	1,700.00			
	TAPPING SLEEVE										
13	3" X 2" DI FLG X FLG REDUCER	2929811	2	2	0 EA	75.000	NET	0.00			
14	375MM HDPE 320 KPA STORM PIPE	375HDPE320	6	6	0 M	56.000	NET	0.00			
15											
16											
17	INTAKE AT GULL POND										
18	AS PER QUOTE 6765										
19	WEDGEWIRE INTAKE SCREEN	2910200	1	1	0 EA	11000.000	NET	0.00			
	24" OD X APP 122" OVERALL LGTH										
20	12" DR 17 HDPE P/E PIPE	2910211	100	100	0 FT	14.850	NET	0.00			
21											
22											
23											
24	12" DR 17 HDPE P/E PIPE	2910215	100	100	0 FT	14.850	NET	0.00			
25											
26											
27	INTAKE INTO BARREN POND										
28											
29	WEDGEWIRE INTAKE SCREEN	2910216	1	1	0 EA	11000.000	NET	0.00			
	24" OD X APP. 122" OVERALL LGT										
30	12" DR 17 HDPE P/E PIPE	2910218	100	100	0 FT	14.850	NET	0.00			
31											
32											
33											
34	12" DR 17 HDPE P/E PIPE	2910222	100	100	0 FT	14.850	NET	0.00			
35											
36											
37	INTAKE AT LITTLE BARREN										
38	POND										
39	WEDGEWIRE INTAKE SCREEN	2910225	1	1	0 EA	11000.000	NET	0.00			
	24" X APP 122" OVERALL LGT										
TERMS OF DELIVERY		FREIGHT		S.T. INCL. P.S.T.		SUB-TOTAL					
INSTRUCTIONS		SHIP VIA		DATE SHIPPED							
TERMS OF PAYMENT		PAYMENT DUE BY		CASH DISCOUNT		TOTAL ** CONTINUED **					

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

CRANE

CRANE SUPPLY
Division of Crane Canada Co.
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INV. NO	07-493507	PAGE	2 of 2
BRANCH	S'JOHN'S	CUST. NO	22677
PKG SLIP #	596734-6	DATE	05/14/2021

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EDWARD COLLINS PROJECT
TOWN OF PLACENTIA
WATER SYSTEM UPGRADE
PLACENTIA, NL
A0B 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
03/10/2021		JOSH COLLINS		1003609487-T00018		R101190213					
LINE	DESCRIPTION		QUANTITY			U / M	LIST	DISCOUNT	NET PRICE		
			ORDERED	R/O	SHIPPED						
40	12" DR 17 HDPE P/E PIPE	2910234	100	100		0 FT	14.850	NET	0.00		
41											
42											
43	12" DR 17 HDPE P/E PIPE	2910237	100	100		0 FT	14.850	NET	0.00		
44											
										=====	
										\$16,714.00	
New direct line to Rita Leslie (Credit Manager)											
1 (506) 853-8469											

CRANE

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Division of Crane Canada Co.
145 ENGLISH DRIVE MONCTON, NB
E1E 3X3

INVOICE

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INV. NO	07-493918	PAGE	1 of 2
BRANCH	S'JOHN'S	CUST. NO	22677
PKG SLIP #	596734-7	DATE	05/18/2021

SOLD TO

EDWARD COLLINS CONTRACTING LTD
P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD A0B 2G0

SHIP TO
EDWCOL
EDWARD COLLINS PROJECT
TOWN OF PLACENTIA
WATER SYSTEM UPGRADE
PLACENTIA, NL
A0B 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
03/10/2021		JOSH COLLINS		1003609487-T00018		R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	B/O	SHIPPED							
1											
2	PART A										
3											
4	300MM DR 17 HDPE P/E PIPE	2909989	4450	1650	2800	FT	14.850	NET	41,580.00		
5											
6											
7											
8											
9											
10	3" X 2" DI FLG X FLG REDUCER	2929811	2	2	0	EA	75.000	NET	0.00		
11	375MM HDPE 320 KPA STORM PIPE	375HDPE320	6	6	0	M	56.000	NET	0.00		
12											
13											
14	INTAKE AT GULL POND										
15	AS PER QUOTE 6765										
16	WEDGEWIRE INTAKE SCREEN	2910200	1	1	0	EA	11000.000	NET	0.00		
	24" OD X APP 122" OVERALL LGTH										
17	12" DR 17 HDPE P/E PIPE	2910211	100	100	0	FT	14.850	NET	0.00		
18											
19											
20											
21	12" DR 17 HDPE P/E PIPE	2910215	100	100	0	FT	14.850	NET	0.00		
22											
23											
24	INTAKE INTO BARREN POND										
25											
26	WEDGEWIRE INTAKE SCREEN	2910216	1	1	0	EA	11000.000	NET	0.00		
	24" OD X APP. 122" OVERALL LGT										
27	12" DR 17 HDPE P/E PIPE	2910218	100	100	0	FT	14.850	NET	0.00		
28											
29											
30											
31	12" DR 17 HDPE P/E PIPE	2910222	100	100	0	FT	14.850	NET	0.00		
32											
33											
34	INTAKE AT LITTLE BARREN										
35	POND										
36	WEDGEWIRE INTAKE SCREEN	2910225	1	1	0	EA	11000.000	NET	0.00		
	24" X APP 122" OVERALL LGT										
37	12" DR 17 HDPE P/E PIPE	2910234	100	100	0	FT	14.850	NET	0.00		
38											
39											
TERMS OF DELIVERY		FREIGHT			S.T. INCL. P.S.T.			SUB-TOTAL			
INSTRUCTIONS		SHIP VIA			DATE SHIPPED						
TERMS OF PAYMENT		PAYMENT DUE BY			CASH DISCOUNT			TOTAL ** CONTINUED **			

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

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INV.NO	07-493918	PAGE	2 of 2
BRANCH	S'JOHN'S	CUST.NO	22677
PKG SLIP #	596734-7	DATE	05/18/2021

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DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
03/10/2021		JOSH COLLINS		1003609487-TO0018		R101190213					
LINE	DESCRIPTION			QUANTITY		U / M	LIST	DISCOUNT	NET PRICE		
40	12" DR 17 HDPE P/E PIPE	2910237	ORDERED	100	B/O	100	SHIPPED	0 FT	14.850	NET	0.00
41											
New direct line to Rita Leslie (Credit Manager)											=====
1 (506) 853-8469											\$41,580.00

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INV.NO	07-494101	PAGE	1 of 2
BRANCH	S'JOHN'S	CUST.NO	22677
PKG SLIP #	596734-8	DATE	05/19/2021

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PLACENTIA, NL
A0B 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
03/10/2021		JOSH COLLINS		1003609487-TQ0018		R101190213					
LINE	DESCRIPTION		QUANTITY			U / M	LIST	DISCOUNT	NET PRICE		
			ORDERED	B/O	SHIPPED						
1											
2	PART A										
3											
4	300MM DR 17 HDPE P/E PIPE	2909989	1650	1650	0	FT	14.850	NET	0.00		
5											
6											
7											
8	CALL NEWHOKS FOR P/U										
9											
10											
11	3" X 2" DI FLG X FLG REDUCER	2929811	2	0	2	EA	75.000	NET	150.00		
12	375MM HDPE 320 KPA STORM PIPE	375HDPE320	6	6	0	M	56.000	NET	0.00		
13											
14											
15	INTAKE AT GULL POND										
16	AS PER QUOTE 6765										
17	WEDGEWIRE INTAKE SCREEN	2910200	1	1	0	EA	11000.000	NET	0.00		
	24" OD X APP 122" OVERALL LGTH										
18	12" DR 17 HDPE P/E PIPE	2910211	100	100	0	FT	14.850	NET	0.00		
19											
20											
21											
22	12" DR 17 HDPE P/E PIPE	2910215	100	100	0	FT	14.850	NET	0.00		
23											
24											
25	INTAKE INTO BARREN POND										
26											
27	WEDGEWIRE INTAKE SCREEN	2910216	1	1	0	EA	11000.000	NET	0.00		
	24" OD X APP. 122" OVERALL LGT										
28	12" DR 17 HDPE P/E PIPE	2910218	100	100	0	FT	14.850	NET	0.00		
29											
30											
31											
32	12" DR 17 HDPE P/E PIPE	2910222	100	100	0	FT	14.850	NET	0.00		
33											
34											
35	INTAKE AT LITTLE BARREN										
36	POND										
37	WEDGEWIRE INTAKE SCREEN	2910225	1	1	0	EA	11000.000	NET	0.00		
	24" X APP 122" OVERALL LGT										
38	12" DR 17 HDPE P/E PIPE	2910234	100	100	0	FT	14.850	NET	0.00		
39											
40											
TERMS OF DELIVERY			FREIGHT			S.T. INCL. P.S.T.			SUB-TOTAL		
INSTRUCTIONS			SHIP VIA			DATE SHIPPED					
TERMS OF PAYMENT			PAYMENT DUE BY			CASH DISCOUNT					
									TOTAL ** CONTINUED **		

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Req. by Rita Leslie

CUBS4000E (9809)

CRANE

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INV. NO	07-494101	PAGE	2 of 2
BRANCH	S'JOHN'S	CUST. NO	22677
PKG SLIP #	596734-8	DATE	05/19/2021

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WATER SYSTEM UPGRADE
PLACENTIA, NL
AOB 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		Q.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
03/10/2021		JOSH COLLINS		1003609487-T00018		R101190213					
LINE	DESCRIPTION		QUANTITY			U / M	LIST	DISCOUNT	NET PRICE		
			ORDERED	B/G	SHIPPED						
41	12" DR 17 HDPE P/E PIPE	2910237	100	100		0 FT	14.850	NET	0.00		
42									=====		
									\$150.00		
	New direct line to Rita Leslie (Credit Manager)										
	1 (506) 853-8469										
REG. BY RITA LESLIE											
TERMS OF DELIVERY			FREIGHT			S.T. INCL. P.S.T.					
COLLECT			COLLECT						SUB-TOTAL \$150.00		
INSTRUCTIONS			SHIP VIA			DATE SHIPPED			T.V.H./H.S.T. 22.50		
			NEWHOOKS			05/19/2021			T.V.P./P.S.T. 0.00		
TERMS OF PAYMENT			PAYMENT DUE BY			CASH DISCOUNT			TOTAL CAN \$172.50		
NET 60 DAYS			07/18/2021			\$0.00					

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INV. NO	07-494102	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST. NO	22677
PKG SLIP #	606490	DATE	05/19/2021

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DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
05/19/2021		-		1003609487-T00018		R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	B/O	SHIPPED							
1											
2	SHIP WITH OTHER ORDER										
3	CALL NEWHOOKS FOR P/U										
4	CALL NEWHOOKS FOR P/U										
5											
6	1X6 STD BLK WS NIPPLE	1.6NIP	3	0	3 EA	2.200	NET	6.60			
7	1 F9202 CRANE BRASS FULL	1F9202	3	0	3 EA	11.050	NET	33.15			
	PORT BALL VALVE SCREWED										
8	1-1/2X6 STD BLK WS NIPPLE	112.6NIP	4	0	4 EA	3.350	NET	13.40			
9	1-1/2 F9202 CRANE BRASS FULL	112F9202	5	0	5 EA	23.650	NET	118.25			
	PORT BALL VALVE SCREWED										
10	2 F9202 CRANE BRASS FULL	2F9202	1	0	1 EA	36.100	NET	36.10			
	PORT BALL VALVE SCREWED										
11	2X6 STD BLK WS NIPPLE	2.6NIP	1	0	1 EA	4.450	NET	4.45			
									=====		
									\$211.95		
New direct line to Rita Leslie (Credit Manager)											
1 (506) 853-8469											
TERMS OF DELIVERY		FREIGHT		S.T. INCL. P.S.T.		SUB-TOTAL		\$211.95			
COLLECT		COLLECT		DATE SHIPPED		T.V.H./H.S.T.		31.80			
INSTRUCTIONS		SHIP VIA		05/19/2021		T.V.P./P.S.T.		0.00			
TERMS OF PAYMENT		NEWHOOKS		CASH DISCOUNT		TOTAL CAN		\$243.75			
NET 60 DAYS		PAYMENT DUE BY		\$0.00							
		07/18/2021									

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Req. by Rita Leslie

CUBS4000E (9809)

CRANE

CRANE SUPPLY

Division of Crane Canada Co.
145 ENGLISH DRIVE MONCTON, NB
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INV.NO	07-494860	PAGE	1 of 2
BRANCH	S'JOHN'S	CUST.NO	22677
PKG SLIP #	596734-9	DATE	05/20/2021

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EDWARD COLLINS PROJECT
TOWN OF PLACENTIA
WATER SYSTEM UPGRADE
PLACENTIA, NL
A0B 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
03/10/2021		JOSH COLLINS		1003609487-T00018		R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	B/O	SHIPPED							
1											
2	PART A										
3											
4	300MM DR 17 HDPE P/E PIPE	2909989	1650	1650	0 FT	14.850	NET	0.00			
5											
6											
7											
8	CALL NEWHOKS FOR P/U										
9											
10											
11	375MM HDPE 320 KPA STORM PIPE	375HDPE320	6	0	6 M	56.000	NET	336.00			
12											
13											
14	INTAKE AT GULL POND										
15	AS PER QUOTE 6765										
16	WEDGEWIRE INTAKE SCREEN	2910200	1	0	1 EA	11000.000	NET	11,000.00			
17	24" OD X APP 122" OVERALL LGTH										
17	12" DR 17 HDPE P/E PIPE	2910211	100	100	0 FT	14.850	NET	0.00			
18											
19											
20											
21	12" DR 17 HDPE P/E PIPE	2910215	100	100	0 FT	14.850	NET	0.00			
22											
23											
24	INTAKE INTO BARREN POND										
25											
26	WEDGEWIRE INTAKE SCREEN	2910216	1	0	1 EA	11000.000	NET	11,000.00			
27	24" OD X APP. 122" OVERALL LGT										
27	12" DR 17 HDPE P/E PIPE	2910218	100	100	0 FT	14.850	NET	0.00			
28											
29											
30											
31	12" DR 17 HDPE P/E PIPE	2910222	100	100	0 FT	14.850	NET	0.00			
32											
33											
34	INTAKE AT LITTLE BARREN										
35	POND										
36	WEDGEWIRE INTAKE SCREEN	2910225	1	0	1 EA	11000.000	NET	11,000.00			
37	24" X APP 122" OVERALL LGT										
37	12" DR 17 HDPE P/E PIPE	2910234	100	100	0 FT	14.850	NET	0.00			
38											
39											
40	12" DR 17 HDPE P/E PIPE	2910237	100	100	0 FT	14.850	NET	0.00			
TERMS OF DELIVERY		FREIGHT		S.T. INCL. P.S.T.		SUB-TOTAL					
INSTRUCTIONS		SHIP VIA		DATE SHIPPED							
TERMS OF PAYMENT		PAYMENT DUE BY		CASH DISCOUNT							
						TOTAL		** CONTINUED **			

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

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INV.NO	07-494860	PAGE	2 of 2
BRANCH	S'JOHN'S	CUST.NO	22677
PKG SLIP #	596734-9	DATE	05/20/2021

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WATER SYSTEM UPGRADE
PLACENTIA, NL
A0B 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
03/10/2021		JOSH COLLINS		1003609487-TO0018		R101190213					
LINE	DESCRIPTION			QUANTITY			U / M	LIST	DISCOUNT	NET PRICE	
41				ORDERED	B/O	SHIPPED					
New direct line to Rita Leslie (Credit Manager)											
1 (506) 853-8469											
=====											
\$33,336.00											
TERMS OF DELIVERY				FREIGHT				S.T. INCL. P.S.T.			
COLLECT				COLLECT				DATE SHIPPED			
INSTRUCTIONS				SHIP VIA				05/26/2021			
TERMS OF PAYMENT				NEWHOOKS				CASH DISCOUNT			
NET 60 DAYS				PAYMENT DUE BY				\$0.00			
				07/19/2021							

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INV.NO	07-494861	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST.NO	22677
PKG SLIP #	605301-2	DATE	05/26/2021

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WATER SYSTEM UPGRADE
PLACENTIA, NL
AOB 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		Q.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
05/11/2021		PLACENTIA EXTRA		1003609487-T00018		R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	B/O	SHIPPED							
1											
2	SHIP WITH OTHER ORDER										
3											
4	12X1 AWWA S/S SERVICE SADDLE 12-1SSSAD	3	0	3	EA	132.000	NET	396.00			
5											
6											
								=====			
								\$396.00			
New direct line to Rita Leslie (Credit Manager)											
1 (506) 853-8469											
</											

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BRANCH	S'JOHN'S	CUST NO	22677
PKG SLIP #	607926	DATE	06/01/2021

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WATER SYSTEM UPGRADE
PLACENTIA, NL
A0B 2V0

Req. By Rita Leslie

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
05/31/2021		TRAILER PARK TIE IN		1003609487-TQ0018		R101190213					
LINE	DESCRIPTION		QUANTITY			U / M	LIST	DISCOUNT	NET PRICE		
			ORDERED	B/O	SHIPPED						
1	8X6 DUCTILE IRON MECH JT RED TEE LESS ACC	8.6DITLA	2	0	2	EA	208.000	NET	416.00		
2											
3											
4	8 #20075-RRESILIENT SEATED MJ END AWWA GATE VALVE OL	8.20075ROL	1	0	1	EA	1440.000	NET	1,440.00		
5	MVB DUCTILE IRON LID AJBV-4C WATER	AJBV-4CW	1	0	1	EA	33.000	NET	33.00		
6	MVB BOTTOM SECTION 7FT MVB070	MVB070	1	0	1	EA	206.000	NET	206.00		
7	MVB DUCTILE IRON ADJUST TOP AJBV-4D-27	AJBV-4D-27	1	0	1	EA	200.000	NET	200.00		
8	MVB875 MUELLER GUIDE PLATE FOR VALVE BOX	MVB875	1	0	1	EA	18.000	NET	18.00		
9											
10											
11	6 #20075-R RESILIENT SEATED MJ END AWWA GATE VALVE OL	6.20075ROL	2	0	2	EA	841.000	NET	1,682.00		
12	MVB DUCTILE IRON LID AJBV-4C WATER	AJBV-4CW	2	0	2	EA	33.000	NET	66.00		
13	MVB BOTTOM SECTION 7FT MVB070	MVB070	2	0	2	EA	206.000	NET	412.00		
14	MVB DUCTILE IRON ADJUST TOP AJBV-4D-27	AJBV-4D-27	2	0	2	EA	200.000	NET	400.00		
15	MVB875 MUELLER GUIDE PLATE FOR VALVE BOX	MVB875	2	0	2	EA	18.000	NET	36.00		
16											
17											
18	8" PVC MEGALUG AND KIT	8.4000P	6	0	6	EA	68.000	NET	408.00		
19	6" PVC MEGALUG AND KIT	6.4000P	10	0	10	EA	51.000	NET	510.00		
20	8" #421 TOP BOLT CPLG	8.421TB	2	0	2	EA	541.000	NET	1,082.00		
									=====		
									\$6,909.00		
New direct line to Rita Leslie (Credit Manager) 1 (506) 853-8469											
TERMS OF DELIVERY			FREIGHT			S.T. INCL. P.S.T.					
COLLECT			COLLECT						SUB-TOTAL \$6,909.00		
INSTRUCTIONS			SHIP VIA			DATE SHIPPED			T.V.H./H.S.T. 1,036.35		
						06/01/2021			T.V.P./P.S.T. 0.00		
TERMS OF PAYMENT			CALL FOR			CASH DISCOUNT					
NET 60 DAYS			PAYMENT DUE BY						TOTAL CAN \$7,945.35		
			07/31/2021			\$0.00					

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Reg. by Rita Leslie

CUBS4000E (9809)

CRANE

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INV. NO	07-496715	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST. NO	22677
PKG SLIP #	609047	DATE	06/08/2021

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PLACENTIA, NFLD A0B 2G0

SHIP TO
EDWCOL
EDWARD COLLINS PROJECT
TOW OF PLACENTIA
WATER SYSTEM UPGRADE
PLACENTIA, NL
A0B 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
06/08/2021		PLACENTIA PROJECT		1003609487-TO0018		R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	B/O	SHIPPED							
1	6 CLASS 150 (SDR-18) C-900 PVC WTR PIP W/GAKT CAPPED	6C900CAPP	31	0	31	M	81.000	NET	2,511.00		
2	6 DUCTILE IRON MECH JT(90) 1/4 BEND LESS ACC	6DILLA	2	0	2	EA	124.000	NET	248.00		
3	6" PVC MEGALUG AND KIT	6.4000P	8	0	8	EA	51.000	NET	408.00		
4	4 PVC GASKETED SEWER SR 90 ELL BXB	VCSEWGSKTSRL	1	0	1	EA	21.000	NET	21.00		
									=====		
									\$3,188.00		
New direct line to Rita Leslie (Credit Manager) 1 (506) 853-8469											
</											

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Req. by Rita Leslie

CUBS4000E (9809)

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

145 ENGLISH DRIVE MONCTON, NB
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INV NO	07-496926	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST NO	22677
PKG SLIP #	607495-1	DATE	06/09/2021

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PLACENTIA, NL
A0B 2V0

Reg. by Rita Leslie

DATE OF ENTRY	CUSTOMER PURCHASE ORDER NO.	P.S.T. REG. NO.	G.S.T. REG. NO.	PROVINCIAL LIC. NO.	QUOTATION NO.			
05/27/2021	PLACENTIA PROJECT	1003609487-TQ0018	R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE
		ORDERED	D/O	SHIPPED				
1								
2	THEY WILL STOP BY FOR P/U							
3								
4	6MM [1/4"] ADHESIVE BACK CLOSE CELL NEOPRENE SPONGE RUBBER	2938053	60	46	14 EA	26.500	NET	371.00
5	13" WIDE X 41" LONG							=====
								\$371.00
	New direct line to Rita Leslie (Credit Manager) 1 (506) 853-8469							
TERMS OF DELIVERY		FREIGHT		S.T. INCL. P.S.T.		SUB-TOTAL		
COLLECT		COLLECT				\$371.00		
INSTRUCTIONS		SHIP VIA		DATE SHIPPED		T.V.H./H.S.T.		
				06/09/2021		55.65		
TERMS OF PAYMENT		CALL FOR		CASH DISCOUNT		T.V.P./P.S.T.		
NET 60 DAYS		PAYMENT DUE BY		08/08/2021		0.00		
						TOTAL CAN		
						\$426.65		

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Reg. By Rita Leslie

CURS4000E (9809)

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INV. NO	07-496927	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST. NO	22677
PKG SLIP #	609275-1	DATE	06/09/2021

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TOW OF PLACENTIA
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PLACENTIA, NL
A0B 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL L.S. NO.		QUOTATION NO.	
06/09/2021		PLACENTIA PROJECT		1003609487-T00018		R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	B/O	SHIPPED							
1	SHIP WITH GASKET ORDER										
3											
4	12" DR 17 FLG ADPT	2941712	2	0	2 EA	125.000	NET	250.00			
5	12" D.I. B/W RING	2941714	2	0	2 EA	95.000	NET	190.00			
								=====			
								\$440.00			
New direct line to Rita Leslie (Credit Manager) 1 (506) 853-8469											

TERMS OF DELIVERY

COLLECT

INSTRUCTIONS

TERMS OF PAYMENT

NET 60 DAYS

FREIGHT

COLLECT

SHIP VIA

CALL FOR

PAYMENT DUE BY

08/08/2021

S.T. INCL. P.S.T.

DATE SHIPPED

06/09/2021

CASH DISCOUNT

\$0.00

SUB-TOTAL

\$440.00

T.V.H./H.S.T.

66.00

T.V.P./P.S.T.

0.00

TOTAL CAN

\$506.00

DATE OF ENTRY

06/09/2021

CUSTOMER PURCHASE ORDER NO.

PLACENTIA PROJECT

P.S.T. REG. NO.

1003609487-T00018

G.S.T. REG. NO.

R101190213

PROVINCIAL L.S. NO.

QUOTATION NO.

LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE
		ORDERED	B/O	SHIPPED				
1	SHIP WITH GASKET ORDER							
3								
4	12" DR 17 FLG ADPT	2941712	2	0	2 EA	125.000	NET	250.00
5	12" D.I. B/W RING	2941714	2	0	2 EA	95.000	NET	190.00
								=====
								\$440.00
New direct line to Rita Leslie (Credit Manager) 1 (506) 853-8469								

TERMS OF DELIVERY

COLLECT

INSTRUCTIONS

TERMS OF PAYMENT

NET 60 DAYS

FREIGHT

COLLECT

SHIP VIA

CALL FOR

PAYMENT DUE BY

08/08/2021

S.T. INCL. P.S.T.

DATE SHIPPED

06/09/2021

CASH DISCOUNT

\$0.00

SUB-TOTAL

\$440.00

T.V.H./H.S.T.

66.00

T.V.P./P.S.T.

0.00

TOTAL CAN

\$506.00

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Req. by Rita Leslie

CU854000E (9809)

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INV.NO	07-497555	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST.NO	22677
PKG SLIP #	607762	DATE	06/14/2021

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 EDWARD COLLINS PROJECT
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 WATER SYSTEM UPGRADE
 PLACENTIA, NL
 AOB 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
05/28/2021		TOWN OF PLACENTIA PROJE 1003609487-TQ0018				R101190213					
LINE	DESCRIPTION		QUANTITY			U / M	LIST	DISCOUNT	NET PRICE		
			ORDERED	B/O	SHIPPED						
1	12" DR 17 HDPE PIPE P/E	2938510	800	0	800	FT	37.600	NET	30,080.00		
									=====		
									\$30,080.00		
New direct line to Rita Leslie (Credit Manager)											
1 (506) 853-8469											

CRANE

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INV.NO	07-498130	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST.NO	22677
PKG SLIP #	607495-2	DATE	06/17/2021

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PLACENTIA, NL
A0B 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
05/27/2021		PLACENTIA PROJECT		1003609487-TQ0018		R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	B/O	SHIPPED							
1											
2	CALL NEWHOOKS FOR P/U										
3	CALL NEWHOOKS FOR P/U										
4											
5	6MM [1/4"] ADHESIVE BACK CLOSE CELL NEOPRENE SPONGE RUBBER	2938053	46	0	46 EA	26.500	NET	1,219.00			
6	13" WIDE X 41" LONG							=====			
								\$1,219.00			
	New direct line to Rita Leslie (Credit Manager)										
	1 (506) 853-8469										
TERMS OF DELIVERY		FREIGHT		S.T. INCL. P.S.T.		SUB-TOTAL		\$1,219.00			
COLLECT		COLLECT		DATE SHIPPED		T.V.H./H.S.T.		182.85			
INSTRUCTIONS		SHIP VIA		06/17/2021		T.V.P./P.S.T.		0.00			
TERMS OF PAYMENT		NEWHOOKS		CASH DISCOUNT		TOTAL CAN		\$1,401.85			
NET 60 DAYS		PAYMENT DUE BY		\$0.00							
		08/16/2021									

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Reg. by Rita Leslie

CURS-0006 198091

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INV.NO	07-498514	PAGE	1 of 1
BRANCH	S 'JOHN' S	CUST.NO	22677
PKG SLIP #	610164-1	DATE	06/21/2021

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WATER SYSTEM UPGRADE
PLACENTIA, NL
AOB 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
06/15/2021		JOSH		1003609487-TO0018		R101190213					
LINE	DESCRIPTION	2943700	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE		
			ORDERED	B/O	SHIPPED						
1	12" HDPE DR17 FLANGE ADAPTER	2943700	4	0		4 EA	157.500	NET	630.00		
2											
3	12" DUCTILE IRON BACK UP RINGS	2943703	4	0		4 EA	137.500	NET	550.00		
									=====		
									\$1,180.00		
New direct line to Rita Leslie (Credit Manager) 1 (506) 853-8469											
</											

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

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INV.NO	07-500129	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST.NO	22677
PKG SLIP #	596734-10	DATE	07/02/2021

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WATER SYSTEM UPGRADE
PLACENTIA, NL
A0B 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
03/10/2021		JOSH COLLINS		1003609487-TQ0018		R101190213					
LINE	DESCRIPTION		QUANTITY			U / M	LIST	DISCOUNT	NET PRICE		
			ORDERED	B/O	SHIPPED						
1											
2	PART A										
3											
4	300MM DR 17 HDPE P/E PIPE	2909989	1650	0	1650	FT	14.850	NET	24,502.50		
5											
6											
7											
8	CALL NEWHOKS FOR P/U										
9											
10											
11											
12											
13	12" DR 17 HDPE P/E PIPE	2910211	100	0	100	FT	14.850	NET	1,485.00		
14											
15											
16											
17	12" DR 17 HDPE P/E PIPE	2910215	100	0	100	FT	14.850	NET	1,485.00		
18											
19											
20	INTAKE INTO BARREN POND										
21											
22	12" DR 17 HDPE P/E PIPE	2910218	100	0	100	FT	14.850	NET	1,485.00		
23											
24											
25											
26	12" DR 17 HDPE P/E PIPE	2910222	100	0	100	FT	14.850	NET	1,485.00		
27											
28											
29	INTAKE AT LITTLE BARREN										
30	POND										
31	12" DR 17 HDPE P/E PIPE	2910234	100	0	100	FT	14.850	NET	1,485.00		
32											
33											
34	12" DR 17 HDPE P/E PIPE	2910237	100	0	100	FT	14.850	NET	1,485.00		
35											
										=====	
										\$33,412.50	
New direct line to Rita Leslie (Credit Manager) 1 (506) 853-8469											
TERMS OF DELIVERY			FREIGHT			S.T. INCL. P.S.T.					
COLLECT			COLLECT						SUB-TOTAL \$33,412.50		
INSTRUCTIONS			SHIP VIA			DATE SHIPPED			T.V.H./H.S.T. 5,011.88		
			NEWHOOKS			07/02/2021			T.V.P./P.S.T. 0.00		
TERMS OF PAYMENT			PAYMENT DUE BY			CASH DISCOUNT			TOTAL CAN \$38,424.38		
NET 60 DAYS			08/31/2021			\$0.00					

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Req. by Rita Leslie

CUBS4000E (9809)

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INV.NO	07-501169	PAGE	1 of 1
BRANCH	C'BROOK	CUST.NO	22677
PKG SLIP #	613664	DATE	07/09/2021

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DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
07/09/2021		.S		1003609487-TO0018		R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	B/O	SHIPPED							
1	2-1/2XCLOSE STD GAL WS NIPPLE 212CLGNIP	1	0		1 EA	11.610	NET	11.61			
2	2-1/2 STD GAL MI 90 ELBOW 212GALVMIL	1	0		1 EA	24.630	NET	24.63			
3	2-1/2X6 STD GAL WS NIPPLE 212.6GNIP	1	0		1 EA	17.920	NET	17.92			
								=====			
								\$54.16			
New direct line to Rita Leslie (Credit Manager)											
1 (506) 853-8469											

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Req. by Rita Leslie

CUBS4000E (9809)

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INV. NO	07-501533	PAGE	1 of 1
BRANCH	S. JOHN'S	CUST. NO	22677
PKG SLIP #	613933-1	DATE	07/13/2021

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WATER SYSTEM UPGRADE
PLACENTIA, NL
AOB 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
07/13/2021		TOWN OF PLACENTIA PROJE 1003609487-TQ0018		R101190213							
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	R/O	SHIPPED							
1											
2	CALL NEWHOOKS FOR P/U										
3	CALL NEWHOOKS FOR P/U										
4											
5	12" R/R RING GASKET AS PER DRAWING	2952018	6	0	6 EA	19.950	NET	119.70			
								=====			
								\$119.70			
New direct line to Rita Leslie (Credit Manager) 1 (506) 853-8469											

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Reg. By Rita Leslie

CUBS4000E (9809)

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INV. NO	07-503222	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST. NO	22677
PKG SLIP #	614888-1	DATE	07/26/2021

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WATER SYSTEM UPGRADE
PLACENTIA, NL
A0B 2V0

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
07/20/2021		PLACENTIA		1003609487-T00018		R101190213					
LINE	DESCRIPTION		ORDERED	QUANTITY		U / M	LIST	DISCOUNT	NET PRICE		
				B/O	SHIPPED						
1	12" DR17 FLANGE ADAPTER	2953776	3	0	3	EA	157.500	NET	472.50		
2	12" DR17 BACK UP RINGS	2953777	3	0	3	EA	137.500	NET	412.50		
									=====		
									\$885.00		
New direct line to Rita Leslie (Credit Manager)											
1 (506) 853-8469											

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Req. by Rita Leslie

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INV.NO	07-504399	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST.NO	22677
PKG SLIP #	616848	DATE	08/04/2021

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Reg. by Rita Leslie

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
08/04/2021		PLACENTIA JOB		1003609487-TQ0018		R101190213					
LINE	DESCRIPTION	QUANTITY			U / M	LIST	DISCOUNT	NET PRICE			
		ORDERED	B/O	SHIPPED							
1											
2	CALL NEWHOOKS FOR PICK UP										
3	SHIP COLLECT										
4											
5	4 ZN-415BP ZURN CI FLOOR DRAI 4ZN415P	1	0	1	EA	69.000	NET	69.00			
	NW/5" TP.B STRAINER MJ										
6	56-44 4X4 CAST IRON TO 4CIPLACPLG	1	0	1	EA	10.500	NET	10.50			
	PLASTIC COUPLING ADAPTOR										
								=====			
								\$79.50			

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT, CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

CRANE SUPPLY
BILL OF LADING
MOUNT PEARL, NL



Name of Carrier: NEWHOOK'S TRANSPORTATION

Ship Date

BOL #

SHIPPER

CONSIGNEE

08/04/2021

19-045190

CRANE SUPPLY
31 CLYDE AVENUE
MOUNT PEARL, NL
A1N 4R8

EDWCOL
EDWARD COLLINS PROJECT
WATER SYSTEM UPGRADES
PLACENTIA, NL
AOB 2V0

COLLECT
Affix Carrier Stamp

Phone 709-747-7510

Description of Material	Weight (lbs)	Customer Name	T XFR/SO PS#	Cust PO#
PLUMBING PRODUCTS FITTINGS	8.3 1.2	EDWARD COLLINS CONTR	616849	PLACENTIA JO+
Total Material Weight	9.5			

Total Shipping Packages (Dimensions in inches, Weight in lbs.)

TYPE	Qty	Length	Width	Height	Weight	Tot Wt
BOX	1				0.0	0.0
Total Packages	1				Total Package Weight	0.0
					Total Material Weight	9.5
					Total Ship Weight	9.5

Shipper DAVID CONCHAN
Signature

Driver
Signature

Consignee
Signature

Date

Date

Date

09:49:06 04 AUG 2021

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PAGE 1 OF 1

CRANE

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INV. NO	07-505099	PAGE	1 of 1
BRANCH	S. JOHN'S	CUST. NO	22677
PKG SLIP #	617537	DATE	08/10/2021

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PLACENTIA, NFLD
A0B 2G0

REQ. BY RITA LESLIE

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		P.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
08/10/2021		PLACENTIA JOB		1003609487-T00018		R101190213					
LINE	DESCRIPTION		QUANTITY			U / M	LIST	DISCOUNT	NET PRICE		
			ORDERED	B/O	SHIPPED						
1	1056-33 3" FERNCO COUPLING	3.105633	2	2		0 EA	15.210	NET	0.00		
2	56-44 4X4 CAST IRON TO PLASTIC COUPLING ADAPTOR	4CIPLACPLG	6	2		4 EA	10.500	NET	42.00		
3	3 ZN415BF ZURN FUNNEL FLOOR DRAIN	3ZN415BF	2	2		0 EA	153.000	NET	0.00		
4	4 ZN-415BP ZURN CI FLOOR DRAIN	4ZN415P	2	2		0 EA	90.000	NET	0.00		
5	NW/5" TP.B STRAINER MJ										
5	4 PVC GASKETED SEWER 45 ELL BXB	PVCSEWGSKT45	2	0		2 EA	32.000	NET	64.00		
6	4 DR35 22-1/2 GASKET ELBOW	4G2212	2	0		2 EA	32.000	NET	64.00		
7	4 PVC GASKETED SEWER TEE BXB	4PVCSEWGSKTT	2	0		2 EA	38.000	NET	76.00		
8	4 PVC GASKETED SEWER SLEEVE COUPLING BXB	CSEWGSKTCOUP	2	0		2 EA	31.000	NET	62.00		
9	2 PVC SCH.40 DWV PIPE 12 FT LEN PE	2PVCWV	12	0		12 FT	150.000	NET	18.00		
10	3 PVC SCH.40 DWV PIPE 12 FT LEN PE	3PVCWV	12	0		12 FT	300.000	NET	36.00		
11	4X2 PVC DWV BUSHING SPXH	.2PVCWVBUSH	2	0		2 EA	7.500	NET	15.00		
12	4X3 PVC DWV BUSHING SPXH	PVCWVBUSHSP	2	0		2 EA	7.500	NET	15.00		
13	2 PVC DWV 90 ELL HXH	2PVCWVL	2	0		2 EA	2.100	NET	4.20		
14	3 PVC DWV 90 ELL HXH DL233	3PVCWVL	2	0		2 EA	4.900	NET	9.80		
										=====	
										\$406.00	
New direct line to Rita Leslie (Credit Manager) 1 (506) 853-8469											
TERMS OF DELIVERY			FREIGHT			S.T. INCL. P.S.T.					
COLLECT			COLLECT								
INSTRUCTIONS			SHIP VIA			DATE SHIPPED					
			NEWHOOKS			08/10/2021					
TERMS OF PAYMENT			PAYMENT DUE BY			CASH DISCOUNT					
NET 60 DAYS			10/09/2021			\$0.00					
									SUB-TOTAL		\$406.00
									T.V.H./H.S.T.		60.90
									T.V.P./P.S.T.		0.00
									TOTAL CAN		\$466.90

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT. CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

CRANE SUPPLY
BILL OF LADING
MOUNT PEARL, NL



Name of Carrier: NEWHOOK'S TRANSPORTATION

Ship Date

BOL #

SHIPPER

CONSIGNEE

08/10/2021

19-045247

CRANE SUPPLY
31 CLYDE AVENUE
MOUNT PEARL, NL
A1N 4R8

EDWARD COLLINS CONTRACTING LTD

COLLECT
Affix Carrier Stamp

P.O.BOX 51 JERSEYSIDE
PLACENTIA, NFLD
A0B 2G0

Phone 709-747-7510

Phone 709 227 5509

Description of Material	Weight (lbs)	Customer Name	T XFR/SO PS#	Cust PO#
FITTINGS PIPE	23.5 25.2	EDWARD COLLINS CONTR	617537	PLACENTIA JO+
Total Material Weight	48.7			

Total Shipping Packages (Dimensions in inches, Weight in lbs.)

TYPE	Qty	Length	Width	Height	Weight	Tot Wt
BAG	2				0.0	0.0
LENGTH	2				0.0	0.0
Total Packages	4					
					Total Package Weight	0.0
					Total Material Weight	48.7
					Total Ship Weight	48.7

Shipper DAVID CONOHAN
Signature

Driver
Signature

Consignee
Signature

Date

Date

Date

09:46:23 10 AUG 2021

CRANE COPY
PAGE 1 OF 1

CRANE

CRANE SUPPLY
 Division of Crane Canada Co.
 145 ENGLISH DRIVE MONCTON, NB
 E1E 3X3

INVOICE

TEL: 506 853 0150
 FAX: 506 859 0340

CUSTOMER COPY

INV.NO	07-505302	PAGE	1 of 1
BRANCH	S'JOHN'S	CUST.NO	22677
PKG SLIP #	617537-2	DATE	08/11/2021

SOLD TO

EDWARD COLLINS CONTRACTING LTD
 P.O.BOX 51 JERSEYSIDE
 PLACENTIA, NFLD A0B 2G0

SHIP TO
 EDWARD COLLINS CONTRACTING LTD
 P.O.BOX 51 JERSEYSIDE
 PLACENTIA, NFLD
 A0B 2G0

REQ. BY THE LESSEE

DATE OF ENTRY		CUSTOMER PURCHASE ORDER NO.		F.S.T. REG. NO.		G.S.T. REG. NO.		PROVINCIAL LIC. NO.		QUOTATION NO.	
08/10/2021		PLACENTIA JOB		1003609487-T00018		R101190213					
LINE	DESCRIPTION		QUANTITY			U / M	LIST	DISCOUNT	NET PRICE		
			ORDERED	B/O	SHIPPED						
1	1056-33 3" FERNCO COUPLING	3.105633	2	0	2	EA	9.000	NET	18.00		
2	56-44 4X4 CAST IRON TO PLASTIC COUPLING ADAPTOR	4CIPLACPLG	2	0	2	EA	10.500	NET	21.00		
3	3 ZN415BF ZURN FUNNEL FLOOR DRAIN	3ZN415BF	2	0	2	EA	153.000	NET	306.00		
4	4 ZN-415BP ZURN CI FLOOR DRAI NW/5" TP.B STRAINER MJ	4ZN415P	2	0	2	EA	90.000	NET	180.00		
									=====		
									\$525.00		
New direct line to Rita Leslie (Credit Manager) 1 (506) 853-8469											

THIS SALE IS SUBJECT TO THE TERMS AND CONDITIONS STATED IN THE CUSTOMER CREDIT AGREEMENT, CANCELLATION AND RESTOCKING CHARGES APPLICABLE.

Reg. by Rita Leslie

CUES4000E (9809)

CRANE SUPPLY
BILL OF LADING
MOUNT PEARL, NL



Name of Carrier: NEWHOOK'S TRANSPORTATION

Ship Date

BOL #

SHIPPER

CONSIGNEE

08/11/2021

19-045270

CRANE SUPPLY
31 CLYDE AVENUE
MOUNT PEARL, NL
AIN 4R8

EDWARD COLLINS CONTRACTING LTD

COLLECT
Affix Carrier Stamp

P.O. BOX 51 JERSEYSIDE
PLACENTIA, Nfld
A0B 2G0

Phone 709-747-7510

Phone 709 227 5509

Description of Material	Weight (lbs)	Customer Name	T XFR/SO PS#	Cust PO#
FITTINGS PLUMBING PRODUCTS	3.8 24.6	EDWARD COLLINS CONTR	617537	PLACENTIA JO+
Total Material Weight	28.4			

Total Shipping Packages (Dimensions in inches, Weight in lbs.)

TYPE BOX	Qty	Length	Width	Height	Weight	Tot Wt
	1				0.0	0.0
Total Packages	1				Total Package Weight Total Material Weight Total Ship Weight	0.0 28.4 28.4

Shipper DAVID CONOHAN
Signature

Driver
Signature

Consignee
Signature

Date

Date

Date

11:56:27 11 AUG 2021

CRANE COPY
PAGE 1 OF 1

EDWARD COLLINS CONTRACTING LTD.

CHEQUE

34246

Crane Supply

30.07.21

34246

07-487591..... 94,640.40
07-487778..... 86,972.20
07-487779..... 252.54
07-488001..... 47,817.00
07-488002..... 480.41
07-488003..... 151.40
07-488413..... 178.25
07-488598..... 163.42
07-488788..... 925.35
07-489159..... 262.20
07-489373..... 5,189.95
07-489605..... 28,272.75

07-489606..... 12,650.00
07-489607..... 6,144.45
07-489608..... 253.00
07-489798..... 217.35
07-489797..... 336.95
07-490006..... 457.13
07-490005..... 1,263.00
07-490232..... 586.50
07-490233..... 4,383.06
07-490234..... 461.15
07-490235..... 21.74
07-490393..... 78.20

07-490394..... 161.12
07-490599..... 5,716.88
07-490775..... 6,001.85
07-490776..... 1,851.50
07-490777..... 2,479.40
07-490956..... 1,120.16
07-490957..... 59.97
07-490958..... 614.96

Total

310,164.24

CRANE**CRANE SUPPLY**

Division of Crane Canada Co.

145 ENGLISH DRIVE, MONCTON, NB E1E 3X3

TEL: 506 853 0150 FAX: 506 859 0340

STATEMENT OF ACCOUNT

Account 22677

as of 2021-06-30

EDWARD COLLINS CONTRACTING LTD
P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD AOB 2G0

*paid # 310164.24
CK# 34246
July 30/21*

ACCOUNT SUMMARY

PAST DUE AMOUNTS			CURRENT	TOTAL AMOUNT	TOTAL DISCOUNT	NET AMOUNT	* IF PAID BY
91 +	61 - 90	31 - 60					
	310,164.26	160,935.79	49,895.05	520,995.10		520,995.10	2021-07-15

DATE	CODE	REFERENCE	PURCHASE ORDER NUMBER	AMOUNT	CASH DISCOUNT	NET AMOUNT	COMMENTS
2021-04-01		07-487591	JOSH COLLINS	94,640.40		94,640.40	
2021-04-05		07-487778	JOSH COLLINS	86,972.20		86,972.20	
2021-04-05		07-487779	PLACENTIA WATER SYST	252.54		252.54	
2021-04-06		07-488001	JOSH COLLINS	47,817.00		47,817.00	
2021-04-06		07-488002	PLACENTIA W&S UPGRAD	480.41		480.41	
2021-04-06		07-488003	BOB BARTLETT	151.40		151.40	
2021-04-08		07-488413	JOSH COLLINS	178.25		178.25	
2021-04-09		07-488598		163.42		163.42	
2021-04-12		07-488788	BOB	925.34		925.34	
2021-04-14		07-489159	JOSH	262.20		262.20	
2021-04-15		07-489373	JOSH COLLINS	5,189.95		5,189.95	
2021-04-16		07-489605	JOSH COLLINS	28,272.75		28,272.75	
2021-04-16		07-489606	EXTRA AS PER BOB BAR	12,650.00		12,650.00	
2021-04-16		07-489607	TOWN OF PLACENTIA EX	6,144.45		6,144.45	
2021-04-16		07-489608	BOB BARTLETT	253.00		253.00	
2021-04-19		07-489797	TOWN OF PLACENTIA EX	336.95		336.95	
2021-04-19		07-489798	JOHN MCARTHY	217.35		217.35	
2021-04-20		07-490005	JOHN MCARTHY	1,263.00		1,263.00	
2021-04-20		07-490006	JOHN MCARTHY	457.13		457.13	
2021-04-21		07-490232	JOHN MCARTHY	586.50		586.50	
2021-04-21		07-490233	JOSH	4,383.07		4,383.07	
2021-04-21		07-490234	PLACENTIA	461.15		461.15	
2021-04-21		07-490235	JOSH	21.74		21.74	
2021-04-22		07-490393	HARBOUR MAIN	78.20		78.20	
2021-04-22		07-490394	PLACENTIA	161.13		161.13	
2021-04-23		07-490599	JOSH	5,716.88		5,716.88	
2021-04-26		07-490775	JOSH	6,001.85		6,001.85	
2021-04-26		07-490776	JOSH	1,851.51		1,851.51	
2021-04-26		07-490777	JOSH MCCARTHY	2,479.40		2,479.40	
2021-04-27		07-490956	JOSH	1,120.16		1,120.16	
2021-04-27		07-490957	JOSH	59.97		59.97	
2021-04-27		07-490958	JOSH	614.96		614.96	
2021-05-03		07-491738	JOSH COLLINS	47,817.00		47,817.00	
2021-05-03		07-491739	JOHN MCARTHY	457.13		457.13	
2021-05-03		07-491740	JOSH	2,312.65		2,312.65	
2021-05-05		07-492155	JOHN MCARTHY	1,733.28		1,733.28	
2021-05-05		07-492156		133.40		133.40	
2021-05-11		07-492941		562.70		562.70	
2021-05-12		07-493111	PLACENTIA EXTRA	1,673.48		1,673.48	
2021-05-14		07-493507	JOSH COLLINS	19,221.10		19,221.10	
2021-05-18		07-493918	JOSH COLLINS	47,817.00		47,817.00	
2021-05-19		07-494101	JOSH COLLINS	172.50		172.50	
2021-05-19		07-494102	-	243.75		243.75	
2021-05-20		07-494860	JOSH COLLINS	38,336.40		38,336.40	
2021-05-26		07-494861	PLACENTIA EXTRA	455.40		455.40	
2021-06-01		07-495734	TRAILER PARK TIE IN	7,945.35		7,945.35	
2021-06-08		07-496715	PLACENTIA PROJECT	3,666.20		3,666.20	
2021-06-09		07-496926	PLACENTIA PROJECT	426.65		426.65	
2021-06-09		07-496927	PLACENTIA PROJECT	506.00		506.00	

ADJ - ADJUSTMENT

DI - DISCOUNT

NET - NET

PD - PAID ON ACCOUNT

SC - SERVICE CHARGE

CM - CREDIT MEMO

DM - DEBIT MEMO

OP - OVERPAYMENT

RP - RETURN PAY

UP - UNDERPAYMENT

Page 1 of 2

CRANE

CRANE SUPPLY

Division of Crane Canada Co.

145 ENGLISH DRIVE, MONCTON, NB E1E 3X3

TEL: 506 853 0150 FAX: 506 859 0340

STATEMENT OF ACCOUNT

Account **22677**

as of **2021-06-30**

EDWARD COLLINS CONTRACTING LTD
P.O. BOX 51 JERSEYSIDE
PLACENTIA, NFLD A0B 2G0

ACCOUNT SUMMARY

FAST DUE AMOUNTS			CURRENT	TOTAL AMOUNT	TOTAL DISCOUNT	NET AMOUNT	* IF PAID BY
91 +	81 - 90	31 - 80					

DATE	CODE	REFERENCE	PURCHASE ORDER NUMBER	AMOUNT	CASH DISCOUNT	NET AMOUNT	COMMENTS
2021-06-14		07-497555	TOWN OF PLACENTIA PR	34,592.00		34,592.00	
2021-06-17		07-498130	PLACENTIA PROJECT	1,401.85		1,401.85	
2021-06-21		07-498514	JOSH	1,357.00		1,357.00	
	ON	CURRENT PURCHASES: H.S.T.				6,508.05	

ADJ - ADJUSTMENT

CM - CREDIT MEMO

DI - DISCOUNT

DM - DEBIT MEMO

NET - NET

OP - OVERPAYMENT

PD - PAID IN ACCOUNT

RP - RETURN PAY

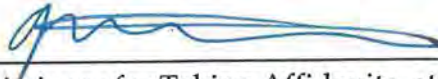
SC - SERVICE CHARGE

UP - UNDERPAYMENT

Page 2 of 2

TAB F

This is **Exhibit "F"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Duffy Law

IN THE MATTER OF the Mechanic's
Lien Act, Revised Statutes of Newfoundland
And Labrador, 1990, Ch. M-3, as amended

And

IN THE MATTER OF a Claim for Lien by
Crane Canada Co. against Edward Collins Contracting Limited and the Town of
Placentia, in the Province of Newfoundland and Labrador, to certain lands and premises
situate at Clarke's Pond Pumphouse, in the Dunville area, the town of Placentia,
Newfoundland and Labrador.

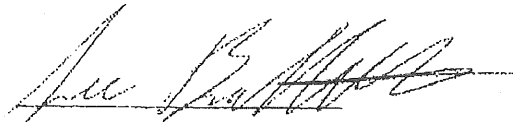
MECHANICS LIEN
No. 19909
Registered 9 day of September
20 21 at 1:45 O'Clock P m
Fee Paid \$ 24 Receipt No. 8000XNTT
Tom Tole
Registrar of Deeds

CLAIM FOR LIEN

Crane Canada Co. claims a lien upon the estate and interest of the Town of Placentia in respect of goods, materials and services delivered by Crane Canada Co. in connection with construction/upgrade operations to the water system of the Town of Placentia, contracted to Crane Canada Co. through Edward Collins Contracting Limited and the Town of Placentia to property situate at Clarke's Pond Pumphouse, in the Dunville area, Placentia, Newfoundland and Labrador, up to August 11, 2021.

1. The name and address for service of the lien claimant is:
Crane Canada Co.
c/o Duffy Law Offices
640 Torbay Road
St. John's, NL
A1A 5G9
2. The name and address for service of the person who the lien claimant believes to be the owner of the lands is:
The Town of Placentia
P.O. Box 99
Placentia, NL
A0B 2Y0
3. The amount claimed is Two-Hundred and Fifty-One Thousand Six Hundred and Thirty-Five dollars, inclusive of HST (\$251,635.00).
4. The lands to be charged is property situated at Clarke's Pond Pumphouse, route 100, in the Dunville area, in the town of Placentia, in the province of Newfoundland and Labrador, attached as Schedule "A" hereto.

DATED at the City of St. John's, Newfoundland and Labrador, this 9 day of
September, 2021.

A handwritten signature in dark ink, appearing to read 'Lee E. Ballett', is written over a horizontal line.

Lee E. Ballett
Duffy Law Office
Solicitor for the Lien Claimant
Whose address for Service is:
640 Torbay Road
St. John's, NL
A1A 5G9

3

IN THE MATTER OF the Mechanic's
Lien Act, Revised Statutes of Newfoundland
And Labrador, 1990, Ch. M-3, as amended

And

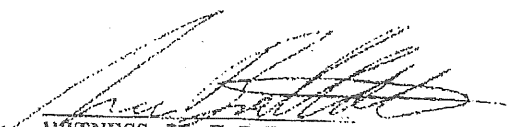
IN THE MATTER OF a Claim for Lien by
Crane Canada Co. against Edward Collins Contracting Limited and the Town of
Placentia, in the Province of Newfoundland and Labrador, to certain lands and premises
situate at Clarke's Pond Pumphouse, in the Dunville area, the town of Placentia,
Newfoundland and Labrador.

AFFIDAVIT

I, Paul Traverse, of St. John's, in the Province of Newfoundland and Labrador, make
oath and say as follows:

1. THAT I am the regional sale representative for the lien claimant in the
annexed Claim for Lien.
2. THAT I have personal knowledge of the matters contained in the annexed
Claim for Lien; and
3. THAT the facts contained in the said Claim for Lien are true.

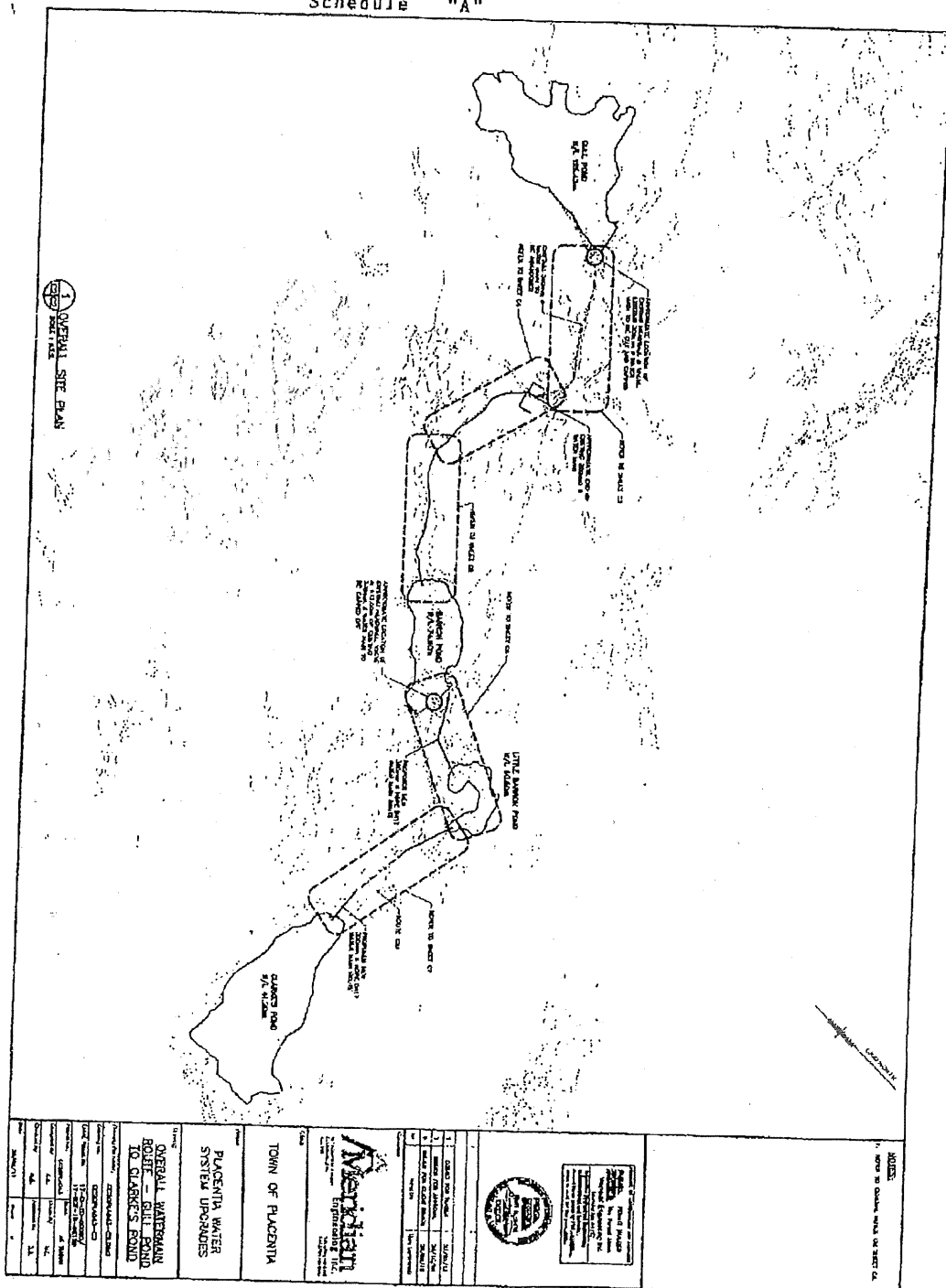
SWORN AT St. John's, Newfoundland and
Labrador, this 4 day of September, 2021,
before me:


WITNESS: Lee E. Ballett

A Barrister, NL

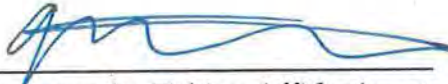

Paul Traverse

1 OVERALL SITE PLAN
DOCK 1 A12



TAB G

This is **Exhibit "G"** to the Affidavit of JAMES TOOTHILL of the City of Regina, in the Province of Saskatchewan, sworn before me at the City of Regina, in the Province of Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan



WESTERN SURETY COMPANY

LABOUR AND MATERIAL BOND NO. 532,090

PRINCIPAL: Edward Collins Contracting Ltd.

OBLIGEE: Town of Placentia

PROJECT: Water System Upgrades

PROOF OF CLAIM FORM

1. CLAIMANT'S NAME: Rodco Mechanical (2014) Ltd.
ADDRESS: 257 conception Bay highway holyrood, PO BOX 169 Holyrood A0A 2R0
PHONE NO. (709) 728-2155
CONTACT PERSON: Steve Puddicombe
2. TOTAL CLAIM: \$ \$508,271.50 (to date, work still ongoing to invoice for)
3. NATURE OF WORK, SERVICES OR MATERIALS SUPPLIED: Supplied / installed the electrical and mechanical in the clarkes pond pump house and also supplied the buildings, electrical and mechanical at the (2) PRV locations.
4. LAST DATE WORKED OR DATE OF LAST SUPPLY: still onsite working
5. INVOICE and PAYMENT HISTORY:

a) Please provide copies of; and a summary of all invoices related to the claim

amount, if they have been paid, partially paid, no payment received:

Progress claim # 1 dated july 26th - \$ 103,270.00

Progress Claim # 2 dated july 29th \$ 126,500.00

Progress Claim # 3 dated sept.3rd \$ 102,741.00

Progress claim # 4 dated oct 4th \$ 279,760.50

Received a payment oct 15th - \$ 104,000.00

AMOUNT DUE TO DATE

\$ 508,271.50

b) Are there any returns or credits pending that are related to these invoices?

NO

c) Does the total claim amount include holdbacks? If yes, please break out holdback amounts. Claim 1 HB \$8,980.00, Claim 2 HB \$11,000, Claim 3 HB, \$8,934.00, claim Claim 4 HB \$24,327.00

d) Are the payment amounts/invoice amounts being disputed by the Principal/Contractor? Y/N, Details:

There are no disputed amounts

6. WAS THE WORK, SERVICES OR MATERIALS SUPPLIED PURSUANT TO:

SUBCONTRACT X PURCHASE ORDER _____ OTHER _____

OTHER (SPECIFY): _____

(Copy or copies of subcontracts or purchase orders to be attached)

7. HAS A LIEN OR PUBLIC WORKS ACT CLAIM BEEN FILED RELATED TO THE UNPAID INVOICES? Y/N, COPY OF LIEN/PWA CLAIM, DATES OF FILING, LIEN DISCHARGED (Y/N),

DETAILS:

Yes a lien was placed for the amount of unpaid invoices, and it was discharged nov 1st after a verbal commitment was reached with (frank collins) Collins Contracting but Rodco Mechanical are still

Waiting to be Paid the long over due balance.

STATUTORY DECLARATION

CANADA

PROVINCE OF Newfoundland

I, Stephen Puddicombe, OF Rodco Mechanical (2014)Ltd. IN THE PROVINCE OF,
Newfoundland, DO SOLEMNLY DECLARE:

1. THAT I am President of Rodco mechanical(2014)Ltd. the within Claimant and
as such have a personal knowledge of the matters herein deposed to.
2. THAT all facts and information contained in the within Proof of Claim are true in sub-
stance and in fact.

DECLARED before me at Holyrood)

in the Province of Newfoundland)

this 2nd day of dec, 2021)

Stephen Puddicombe - Rodco Mechanical (2014) Ltd

Stephen Puddicombe
Stephen Puddicombe

Brad Leyte

COMMISSIONER FOR OATHS

NOTARY PUBLIC

C. BRAD LEYTE
"A BARRISTER" (NL)

Quotation



Rodco Mechanical (2014) Ltd.
257 Conception Bay Highway
Holyrood, NL A0A 2R0 - (P.O. Box 169)
709-231-2399
steve@rodco-mechanical.com
HST # 824615371RT0001

Date: 2021-02-09

Quote # 2021-004

***Quotation valid for 30 days*

PROJECT

Town of Placentia - Water System Upgrades

SCOPE OF WORK

Supply and install of the items described in attached unit price table

NOTES AND EXCEPTIONS

- Unit pricing provided is for bidding purposes only. Items cannot be deleted from quote without being discussed with RODCO
- All piping above concrete slabs is included, any piping under concrete slabs is not included
- All concrete work (i.e. slabs, foundations, etc.), construction of mason block building, interior walls and water main stubs through slab to be completed by others. Rodco to connect to water mains 12" above finished floor
- Maintaining of existing water and/or chlorine to the town is for our scope only
- Any costs from NL Power and/or new electrical poles required are not included. GC to provide excavation/backfill and bedding for any electrical services
- 1 day on-site allowed for commissioning/training of systems at pumphouse. Additional time can be provided at an extra cost
- 1 day on-site allowed for commissioning/training at both PRV stations (i.e. 5hr each station). Additional time can be provided at an extra cost
- The Payment Term is 30 days after receipt of invoice. Interest at 2% per 30 days and 24% per annual will be charged on overdue accounts

Part A
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

4	Supply and Install New Fire Hydrant	each	1		
5	Swabbing of Water Lines	m	555		
6	Flush HDPE Water Line	m	3,050		
7	Locate & Connect to Existing System	each	5		
8	Supply and Install Rigid Insulation (thk as identified on the attached drawings)	m ²	6		
9	Supply & Install Air Release Valves				
1	50mm dia Air Release Valve (ARI-D-090)	each	2		
<u>15 10 00</u>	<u>Pressure Reducing Valve Station</u>				
1	Includes the supply, installation and commissioning of the PRV station as detailed in the specifications. Includes all valves, piping, fittings, flow meters, civil work and pre - fabricated enclosure. To includes all valves and fittings required to connect to main line. No extra payment will be made for locate and connect to existing piping.				
		LS	2	<u>100,000.00</u>	<u>200,000.00</u>
<u>15 20 00</u>	<u>Intake at Gull Pond</u>				
1	Supply and Install Timber Crib	LS	1		
2	Supply and Install Concrete Pipe Anchors	ea	10		
3	Supply and Install Wedgewire Screen	ea	1		
4	300mm HDPE DR17 Intake Pipe	m	30		
5	End of pipe flange fitting to accept new screen	ea	1		
<u>15 20 00</u>	<u>Discharge into Barron Pond</u>				
1	Supply and Install Concrete Pipe Anchors	ea	10		
2	300mm HDPE DR17 Intake Pipe	m	30		
<u>15 20 00</u>	<u>Intake at Barron Pond</u>				
1	Supply and Install Timber Crib	LS	1		
2	Supply and Install Concrete Pipe Anchors	ea	10		

NO CIVIL WORK
OR CONCRETE INCLUDED

Part A
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

	3	Supply and Install Wedgewire Screen	ea	1		
	4	300mm HDPE DR17 Intake Pipe	m	30		
	5	End of pipe flange fitting to accept new screen	ea	1		
<u>15 20 00</u>		<u>Discharge into Little Barron Pond</u>				
	1	Supply and Install Concrete Pipe Anchors	ea	10		
	2	300mm HDPE DR17 Intake Pipe	m	30		
<u>15 20 00</u>		<u>Intake at Little Barron Pond</u>				
	1	Supply and Install Timber Crib	LS	1		
	2	Supply and Install Concrete Pipe Anchors	ea	10		
	3	Supply and Install Wedgewire Screen	ea	1		
	4	300mm HDPE DR17 Intake Pipe	m	30		
	5	End of pipe flange fitting to accept new screen	ea	1		
<u>15 20 00</u>		<u>Discharge into Clarkes Pond</u>				
	1	Supply and Install Concrete Pipe Anchors	ea	12		
	2	300mm HDPE DR17 Intake Pipe	m	30		
<u>15 40 00</u>		<u>Hypo - Chlorination System</u>				
	1	The supply, installation and commissioning of a new hypo chlorination system including emergency eye / shower unit for the PRV Station as detailed on the drawings and specifications.	LS	2	8,000.00	16,000.00

a. Sub-Total:

216,000.00

b. HST @ 15%

32,400.00

c. PART A Total:

248,400.00

Part B
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
<u>01005</u>	<u>Maintain Existing Services</u> FOR OUR SCOPE ONLY				
1	Maintain Existing Water Systems (Contractor to is required to ensure that the Town has a supply of Chlorinated water at all times).	L.S.	Unit	<u>5,000.00</u>	<u>5,000.00</u>
<u>01010</u>	<u>Mobilization & Demobilization</u> (not greater than 5% if on the Island and 10% if in Labrador, or 16% north of Cartwright of Item a. "sub-total" on last page)	L.S.	Unit	_____	_____
<u>01020</u>	<u>Cash Allowances</u>				
1	Contribution In Aid of Hydro	Allow.	Unit	<u>\$20,000.00</u>	<u>\$20,000.00</u>
<u>01500</u>	<u>Temporary Facilities</u>				
1	Engineers Site Office	L.S.	Unit	_____	_____
<u>01570</u>	<u>Traffic Regulations</u>				
1	Flagpersons Wages	hour	200	_____	_____
<u>01580</u>	<u>Project Sign</u>				
1	Project Sign	LS	1	_____	_____
<u>DIVISION #2</u>					
<u>02070</u>	<u>Sitework, Demolition & Removal of Structures</u>				
1	Removal of existing piping, walls, roof truss, shingles, etc as required to complete the new pumphouse extension. Any materials that are deemed useable are to be turned over to the Town.	LS	1	_____	_____
2	Removal of 300mm dia End Cap	ea	1	_____	_____
3	Remove existing valve and reconnect piping (outside the pumphouse)	LS	1	_____	_____

Part B
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

	.3	300mm dia 90 deg bend	each	1		
	.4	300mm dia 45 deg bend	each	4		
	.5	300mm Ø Sleeve Type Coupling	each	2		
	3	Supply & Install Valves including valve boxes				
	.2	250mm Ø	each	3		
	5	Swabbing of Water Lines	m	300		
	7	Locate & Connect to Existing System	each	2		
		<u>Pumphouse Extension</u>				
<u>06000</u>	1	Includes but not limited to all excavation and backfill required to supply and install the concrete foundation and floor slab. Includes building construction including but not limited to, all interior and exterior finishes. Includes all work within 1.5m perimeter of the building.	LS	1		
	2	Includes but not limited to all building mechanical and electrical items. Includes but not limited to lighting, heating, electrical panels, exhaust fans, intake fans, electrical upgrades, plumbing and emergency eyewash / shower units.	LS	1	<u>120,000.00</u>	<u>120,000.00</u>
<u>15 00 00</u>		<u>Pumping / Control System</u>				
	1	Includes but not limited to the supply, installation and commissioning of all piping, fittings, valves, P3 submersible pump assembly, VFD's, flow meters, etc to provide and fully operational system.	LS	1	<u>100,000.00</u>	<u>100,000.00</u>
	2	Includes the supply, installation and commissioning of the pressure reducing solenoid - controlled control valve going to Dunville System as detailed in the specifications.	LS	1	<u>19,000.00</u>	<u>19,000.00</u>
	3	Includes the supply, installation and commissioning of the solenoid - controlled control valve going to Argentinia System as detailed in the specifications.	LS	1	<u>16,000.00</u>	<u>16,000.00</u>

Part B
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

- 4 Includes the design, supply, installation and commissioning of the pump / system control panel. Includes programming, equipment, level sensors at the Wyes's Pond reservoir and required communication equipment. Minimum requirements for the control system and sequence is outlined in the specifications.

LS 1 70,000.00 70,000.00

15 30 00

Gas Chlorination System

- 1 The supply, installation and commissioning of a new gas chlorination system as detailed on the drawings and specifications. Includes, but not limited to, new booster pumps, piping, gauges, valves, fittings and gas detection system.

LS 1 90,000.00 90,000.00

a. Sub-Total:

420,000.00

b. HST @ 15%

63,000.00

c. Part B Total:

483,000.00**1 PART A TOTAL**248,400.00**2 PART B TOTAL**483,000.00**3 BID TOTAL** (carry forward to Appendix 'A' of the Bid Form)731,400.00



Nov 30th /21

Rodco Mechanical (2014) Ltd
PO Box 169
Holyrood, NL
AOA 2R0

Subject: Notice of Non-Payment to western Surety Company

General contractor : Edward Collins Contracting Ltd.
51 Jersey side , NL
AOA 2G0

BONDS ID #
Performance and Labor bond Number 532090

Owner: The Town of Placentia

Contract amount \$ 636,000.00 + HST
Change orders : \$ 34,300.-- + HST

Revised contract amount Contract amount \$ 670,300.00 + HST
HST charged on sales \$ 100,545.00 + HST

Total contract including HST ----- \$ 770,845.00 HST INCLUDED

Invoice / Payment details

Progress claim # 1 July 26th -- \$ 103,270.00 HST INCL
Progress claim # 2 July 29th -- \$ 126,500.00 HST INCL
Progress claim # 3 sept 3rd -- \$ 102,741.00 HST INCL
Progress Claim # 4 oct 20th -- \$ 279,760.50 HST INCL

Total billed to date -- \$ 612,271.50 HST INCLUDED

PAID TO DATE:

\$ 50,000 .00 cheque # 34355

\$ 54,000.00 Cheque # 34351

Total Payments to date: \$ 104,000 HST INCLUDED

Total amount billed to date \$ 612,271.50 HST INCLUDED

Total amount received to date \$ 104,000.00 HST INCLUDED

Amount owing as of NOV 30th/21 \$ 508,271.50 HST INCLUDED

Regards,
Stephen Puddicombe
Rodco Mechanical (2014) LTD – President.
Cell # (709) 728-2155



PERFORMANCE

No. 532,090

Bond Amount \$1,129,743.33

EDWARD COLLINS CONTRACTING LIMITED as Principal, hereinafter called the Principal, and WESTERN SURETY COMPANY a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in all provinces and territories of Canada, as Surety, hereinafter called the Surety, are held and firmly bound unto TOWN OF PLACENTIA as Obligor, hereinafter called the Obligor, in the amount of ONE MILLION ONE HUNDRED AND TWENTY NINE THOUSAND SEVEN HUNDRED AND FORTY THREE -----33/100 DOLLARS (\$1,129,743.33) lawful money of Canada, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal has entered into a written contract with the Obligor, dated 3rd day of March, in the year 2021 for WATER SYSTEM UPGRADES 17-GI-20-00050 / 17-SCF-19-00129, PLACENTIA, NEWFOUNDLAND AND LABRADOR including One(1) year maintenance from the date of substantial completion hereinafter referred to as the Contract.

The condition of this obligation is such that if the Principal shall promptly and faithfully perform the Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever the Principal shall be, and declared by the Obligor to be, in default under the Contract, the Obligor having performed the Obligor's obligations thereunder, the Surety shall promptly:

- 1) remedy the default, or;
- 2) complete the Contract in accordance with its terms and conditions; or;
- 3) obtain a bid or bids for submission to the Obligor for completing the Contract in accordance with its terms and conditions and upon determination by the Obligor and the Surety of the lowest responsible bidder, arrange for a contract between such bidder and the Obligor and make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to pay to complete the Principal's obligations in accordance with the terms and conditions of the Contract and to pay those expenses incurred by the Obligor as a result of the Principal's default relating directly to the performance of the work under the Contract, less the balance of the Contract price; but not exceeding the Bond Amount. The balance of the Contract price is the total amount payable by the Obligor to the Principal under the Contract, less the amount properly paid by the Obligor to the Principal, or;
- 4) pay the Obligor the lesser of (1) the Bond Amount or (2) the Obligor's proposed cost of completion, less the balance of Contract price.

It is a condition of this bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of (1) the date of Substantial Performance of the Contract as defined in the Hen legislation where the work under the Contract is taking place, or, if no such definition exists, the date when the work is ready for use or is being used for the purpose intended, or (2) the date on which the Principal is declared in default by the Obligor.

The Surety shall not be liable for a greater sum than the Bond Amount.

No right of action shall accrue on this Bond, to or for the use of, any person or corporation other than the Obligor named herein, or the heirs, executors, administrators or successors of the Obligor.

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond dated 10th day of March, in the year 2021

SIGNED and SEALED
in the presence of

EDWARD COLLINS CONTRACTING LIMITED
Signed electronically by
Principal
Signature
Francis Collins
10/20/2021 09:00:00
1974
Name of Principal
EDWARD COLLINS CONTRACTING LIMITED
WESTERN SURETY COMPANY
Signed electronically by
Surety
Signature
Dianne Buckle
10/20/2021 09:16:00
1974
Name of Surety



Copyright 2002
Canadian Construction Documents Committee

(CCDC 221 - 2002 has been approved by the Surety Association of Canada)



LABOUR & MATERIAL PAYMENT BOND (Trustee Form)

Standard Construction Document

DC 222 - 2002

No. 532,090

Bond Amount \$1,129,743.33

EDWARD COLLINS CONTRACTING LIMITED as Principal, hereinafter called the Principal, and WESTERN SURETY COMPANY a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in all provinces and territories of Canada, as Surety, hereinafter called the Surety, are held and firmly bound unto TOWN OF PLACENTIA as Obligor, hereinafter called the Obligor, in the amount of ONE MILLION ONE HUNDRED AND TWENTY NINE THOUSAND SEVEN HUNDRED AND FORTY THREE DOLLARS (\$1,129,743.33) lawful money of Canada, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal has entered into a written contract with the Obligor, dated 3rd day of March, in the year 2021 for WATER SYSTEM UPGRADES 17-GF-20-00050 / 17-SCF-19-00129, PLACENTIA, NEWFOUNDLAND AND LABRADOR in accordance with the Contract Documents submitted, and which are by reference made part hereof and are hereinafter referred to as the Contract.

The Condition of this obligation is such that, if the Principal shall make payment to all Claimants for all labour and material used or reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material, or both, used or reasonably required for use in the performance of the Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Contract provided that a person, firm or corporation who rents equipment to the Principal to be used in the performance of the Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof, shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Contract. The prevailing industrial rental value of equipment shall be determined, insofar as it is practical to do so, by the prevailing rates in the equipment marketplace in which the work is taking place.
2. The Principal and the Surety, hereby jointly and severally agree with the Obligor, as Trustee, that every Claimant who has not been paid as provided for under the terms of its contract with the Principal, before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of its contract with the Principal and have execution thereon. Provided that the Obligor is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants, or any of them, to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Obligor or by joining the Obligor as a party to such proceeding, then such act, action or proceeding, shall be taken on the understanding and basis that the Claimants, or any of them, who take such act, action or proceeding shall indemnify and save harmless the Obligor against all costs, charges and expenses or liabilities incurred therein and any loss or damage resulting to the Obligor by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them may use the name of the Obligor to sue on and enforce the provisions of this Bond.
3. It is a condition precedent to the liability of the Surety under this Bond that such Claimant shall have given written notice as hereinafter set forth to each of the Principal, the Surety and the Obligor, stating with substantial accuracy the amount claimed, and that such Claimant shall have brought suit or action in accordance with this Bond, as set out in sub-clauses 3 (b) and 3 (c) below. Accordingly, no suit or action shall be commenced hereunder by any Claimant:
 - a) unless such notice shall be served by mailing the same by registered mail to the Principal, the Surety and the Obligor, at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or Territory in which the subject matter of the Contract is located. Such notice shall be given.
 - i) in respect of any claim for the amount or any portion thereof, required to be held back from the Claimant by the Principal, under either the terms of the Claimant's contract with the Principal, or under the lien Legislation applicable to the Claimant's contract with the Principal, whichever is the greater, within one hundred and twenty (120) days after such Claimant should have been paid in full under the Claimant's contract with the Principal;
 - ii) in respect of any claim other than for the holdback, or portion thereof, referred to above, within one hundred and twenty (120) days after the date upon which such Claimant did, or performed, the last of the work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract with the Principal;
 - b) after the expiration of one (1) year following the date on which the Principal ceased work on the Contract, including work performed under the guarantees provided in the Contract;
 - c) other than in a Court of competent jurisdiction in the Province or Territory in which the work described in the Contract is to be installed or delivered as the case may be and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such Court.
4. The Surety agrees not to take advantage of Article 2365 of the Civil Code of the Province of Quebec in the event that, by an act or an omission of a Claimant, the Surety can no longer be subrogated in the rights, hypothec and privileges of said Claimant.

5. Any material change in the contract between the Principal and the Obligor shall not prejudice the rights or interest of any Claimant under this Bond, who is not instrumental in bringing about or has not caused such change.
6. The amount of this Bond shall be reduced by, and to the extent of any payment or payments made in good faith, and in accordance with the provisions hereof, inclusive of the payment by the Surety of claims made under the applicable lien legislation or legislation relating to legal hypothec, whether or not such claim is presented under and against this Bond.
7. The Surety shall not be liable for a greater sum than the Bond Amount.

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond dated 10th day of March, in the year 2021.

SIGNED and SEALED
in the presence of

EDWARD COLLINS CONTRACTING LIMITED
Signed electronically by Principal
Signature
Francis Collins
Name of person signing

WESTERN SURETY COMPANY
Signed electronically by Surety
Signature
Dianne Buckle, Attorney-in-Fact
Name of person signing



INVOICE



Rodco Mechanical (2014) Ltd.
 257 Conception Bay Highway
 Holyrood, NL A0A 2R0 - (P.O. Box 169)
 709-231-2399
accountspayable@rodco-mechanical.com
 HST # 824615371RT0001

Date: 2021-07-26

Invoice # 5072

Payment due in business 30 days

BILL TO
 Edward Collins Contracting Ltd.
 Contact: Josh Collins

SHIP TO
 Placenta, NL

DESCRIPTION	This Invoice	Pre Invoice	To Date	UNIT PRICE	TOTAL
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Placenta Water System Improvements

PART A

15 10 00 - PRV Stations	0.11	0.00	0.11	\$ 200,000.00	\$ 22,000.00
15 40 00 - Hypo Systems	0.00	0.00	0.00	\$ 16,000.00	\$ -

PART B

1005 - Maintain Water (for our scope only)	0.00	0.00	0.00	\$ 5,000.00	\$ -
6000 - Pumphouse Extension - Mech and Elec	0.00	0.00	0.00	\$ 120,000.00	\$ -
15 00 00 - Pumping / Control System					
- Pump #3, VFD's and flow meters	0.00	0.00	0.00	\$ 100,000.00	\$ -
- Dunville PRV	0.00	0.00	0.00	\$ 19,000.00	\$ -
- Argentia PRV	0.00	0.00	0.00	\$ 16,000.00	\$ -
- SCADA and Controls	0.00	0.00	0.00	\$ 70,000.00	\$ -
15 30 00 - Gas Chlorination System	0.00	0.00	0.00	\$ 90,000.00	\$ -

MATERIALS DELIVERED TO SITE

- all Superior gas chlorine equipment
- 2 sets of Force Flow cylinder scales
- 2 each 1-1/2" corp stop injection lances
- 2 each Wilo 5 HP booster pumps
- 2 each Krohne 10" mag flow meters
- 2 each Krohne 3" mag flow meters
- 7 each process pressure gauges

\$ 67,800.00

Remarks / Payment Instructions:

(1) The Payment Term is 30 days after receipt of invoice.
Interest at 2% per 30 days and 24% per annual will be
charged on overdue accounts.

SUBTOTAL \$ 89,800.00

PREVIOUS INVOICES \$ -

SUBTOTAL THIS INVOICE \$ 89,800.00

TAX RATE 15.00%

TOTAL TAX \$ 13,470.00

Balance Due \$ 103,270.00

INVOICE



Rodco Mechanical (2014) Ltd.
257 Conception Bay Highway
Holyrood, NL A0A 2R0 - (P.O. Box 169)
709-231-2399
accountspayable@rodco-mechanical.com
HST # 824615371RT0001

+ 12 weeks since
Submitted

Date: 2021-07-29

Invoice # 5075

Payment due in business 30 days

BILL TO

Edward Collins Contracting Ltd.
Contact: Josh Collins

SHIP TO

Placencia, NL

DESCRIPTION	This Invoice	Pre Invoice	To Date	UNIT PRICE	TOTAL
Placencia Water System Improvements					
PART A					
15 10 00 - PRV Stations	0.11	0.00	0.11	\$ 200,000.00	\$ 22,000.00
15 40 00 - Hypo Systems	0.00	0.00	0.00	\$ 16,000.00	\$ -
PART B					
1005 - Maintain Water (for our scope only)	0.00	0.00	0.00	\$ 5,000.00	\$ -
6000 - Pumphouse Extension - Mech and Elec	0.00	0.00	0.00	\$ 120,000.00	\$ -
15 00 00 - Pumping / Control System					
- Pump #3, VFD's and flow meters	0.00	0.00	0.00	\$ 100,000.00	\$ -
- Dunville PRV	0.00	0.00	0.00	\$ 19,000.00	\$ -
- Argentia PRV	0.00	0.00	0.00	\$ 16,000.00	\$ -
- SCADA and Controls	0.00	0.00	0.00	\$ 70,000.00	\$ -
15 30 00 - Gas Chlorination System	0.00	0.00	0.00	\$ 90,000.00	\$ -

MATERIALS DELIVERED TO SITE

- all Superior gas chlorine equipment
- 2 sets of Force Flow cylinder scales
- 2 each 1-1/2" corp stop Injection lances
- 2 each Wilo 5 HP booster pumps
- 2 each Krohne 10" mag flow meters
- 2 each Krohne 3" mag flow meters
- 7 each process pressure gauges

\$ 67,800.00

- PRV Enclosures (2 each)

\$ 110,000.00

Remarks / Payment Instructions:

(1) The Payment Term is 30 days after receipt of invoice.
Interest at 2% per 30 days and 24% per annual will be
charged on overdue accounts.

SUBTOTAL \$ 199,800.00

PREVIOUS INVOICES \$ 89,800.00

SUBTOTAL THIS INVOICE \$ 110,000.00

TAX RATE 15.00%

TOTAL TAX \$ 16,500.00

Balance Due \$ 126,500.00

INVOICE



Rodco Mechanical (2014) Ltd.
 257 Conception Bay Highway
 Holyrood, NL A0A 2R0 - (P.O. Box 169)
 709-231-2399
accounts payable@rodco-mechanical.com
 HST # 824615371RT0001

+ 7 weeks since
 Submitted

Date: 2021-09-03

Invoice # 5079

Payment due in business 30 days

BILL TO

Edward Collins Contracting Ltd.
 Contact: Josh Collins

SHIP TO

Placenta, NL

DESCRIPTION	This Invoice	Pre-Invoice	To Date	UNIT PRICE	TOTAL
Placenta Water System Improvements					
PART A					
15 10 00 - PRV Stations	0.75	0.11	0.86	\$ 200,000.00	\$ 172,000.00
15 40 00 - Hypo Systems	0.00	0.00	0.00	\$ 16,000.00	\$ -
PART B					
1005 - Maintain Water (for our scope only)	0.00	0.00	0.00	\$ 5,000.00	\$ -
6000 - Pumphouse Extension - Mech and Elec	0.05	0.00	0.05	\$ 120,000.00	\$ 6,000.00
15 00 00 - Pumping / Control System					
- Pump #3, VFD's and flow meters	0.00	0.00	0.00	\$ 100,000.00	\$ -
- Dunville PRV	0.00	0.00	0.00	\$ 19,000.00	\$ -
- Argentia PRV	0.00	0.00	0.00	\$ 16,000.00	\$ -
- SCADA and Controls	0.00	0.00	0.00	\$ 70,000.00	\$ -
15 30 00 - Gas Chlorination System	0.00	0.00	0.00	\$ 90,000.00	\$ -
CHANGE ORDERS					
- 3" butterfly valves for PRV buildings	4	0.00	4.00	\$ 385.00	\$ 1,540.00

MATERIALS DELIVERED TO SITE

- all Superior gas chlorine equipment
- 2 sets of Force Flow cylinder scales
- 2 each 1-1/2" corp stop injection lances
- 2 each Wilo 5 HP booster pumps
- 2 each Krohne 10" mag flow meters
- 2 each Krohne 3" mag flow meters
- 7 each process pressure gauges

0.00	1.00	1.00	\$	67,800.00	\$	67,800.00
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- eyewash/shower and thermostatic mixing valve for Pumpouse (2 sets)

1.00	0.00	1.00	\$	6,800.00	\$	6,800.00
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- Piping, valves and misc items for Pumpouse

1.00	0.00	1.00	\$	35,000.00	\$	35,000.00
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Remarks / Payment Instructions:

(1) The Payment Term is 30 days after receipt of invoice.
Interest at 2% per 30 days and 24% per annual will be charged on overdue accounts.

SUBTOTAL TO DATE	\$	289,140.00
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PREVIOUS INVOICES	\$	199,800.00
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SUBTOTAL THIS INVOICE	\$	89,340.00
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TAX RATE	15.00%
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TOTAL TAX	\$	13,401.00
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Balance Due	\$	102,741.00
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Rodco Mechanical (2014) Ltd.
 257 Conception Bay Highway
 Holyrood, NL A0A 2R0 - (P.O. Box 169)
 709-231-2399
accounts payable@rodco-mechanical.com
 HST # 824615371RT0001

Date: 2021-10-26

Invoice # 5081

Payment due in business 30 days

BILL TO
 Edward Collins Contracting Ltd.
 Contact: Josh Collins

SHIP TO
 Placencia, NL

DESCRIPTION	This Invoice	Pre Invoice	To Date	UNIT PRICE	TOTAL
Placencia Water System Improvements					
PART A					
15 10 00 - PRV Stations	0.04	0.86	0.90	\$ 200,000.00	\$ 180,000.00
15 40 00 - Hypo Systems	0.50	0.00	0.50	\$ 16,000.00	\$ 8,000.00
PART B					
1005 - Maintain Water (for our scope only)	0.00	0.00	0.00	\$ 5,000.00	\$ -
6000 - Pumphouse Extension - Mech and Elec	0.80	0.05	0.85	\$ 120,000.00	\$ 102,000.00
15 00 00 - Pumping / Control System					
- Pump #3, casing, VFD's and flow meters	0.79	0.00	0.79	\$ 100,000.00	\$ 79,000.00
- Dunville PRV	0.95	0.00	0.95	\$ 19,000.00	\$ 18,050.00
- Argentia PRV	0.95	0.00	0.95	\$ 16,000.00	\$ 15,200.00
- SCADA and Controls	0.80	0.00	0.80	\$ 70,000.00	\$ 56,000.00
15 30 00 - Gas Chlorination System	0.75	0.00	0.75	\$ 90,000.00	\$ 67,500.00
CHANGE ORDERS					
- 3" butterfly valves for PRV buildings	0	4.00	4.00	\$ 385.00	\$ 1,540.00
- disconnect switch for PRV station on Harbour Drive	1	0.00	1.00	\$ 1,320.00	\$ 1,320.00
- Increase pump casing pipe from 12" to 14"	1	0.00	1.00	\$ 3,800.00	\$ 3,800.00
- light fixture change in pumphouse	1	0.00	0.00	\$ 250.00	\$ -

Remarks / Payment Instructions:

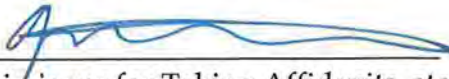
(1) The Payment Term is 30 days after receipt of invoice.
Interest at 2% per 30 days and 24% per annual will be
charged on overdue accounts.

SUBTOTAL TO DATE	\$	532,410.00
PREVIOUS INVOICES	\$	289,140.00
SUBTOTAL THIS INVOICE	\$	243,270.00
TAX RATE		15.00%
TOTAL TAX	\$	36,490.50

Balance Due	\$	279,760.50
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TAB H

This is **Exhibit "H"** to the Affidavit of JAMES TOOTHILL of the City of Regina, in the Province of Saskatchewan, sworn before me at the City of Regina, in the Province of Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'A. ...', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

IN THE MATTER of the *Mechanics' Lien Act*,
R.S.N.L. 1990, c.M-3, as amended;

AND IN THE MATTER of a claim by Rodco
Mechanical (2014) Ltd., a body corporate,
carrying on business in the Province of
Newfoundland and Labrador, against property
of the Town of Placentia, as Owner, and against
Edward Collins Contracting Limited, a body
corporate, of Jerseyside, in the Province
aforesaid, as General Contractor;

MECHANICS LIEN
No. 19963
Registered 3rd day of December
20 21 at 12:45 O'Clock P m
Fee Paid \$ 24 Receipt No. 8000437V
Jan 7th
Registrar of Deeds

CLAIM OF LIEN

Pursuant to the *Mechanics' Lien Act*, R.S.N.L. 1990, c.M-3, as amended, Rodco Mechanical (2014) Ltd., a body corporate, duly incorporated and carrying on business in the Province of Newfoundland and Labrador, with its registered office at 257 Conception Bay Highway, in the Town of Conception Bay South, in the Province of Newfoundland and Labrador, postal code A0A 2R0, hereby claims a Lien upon the property of the Town of Placentia, which property is situate at the Town of Placentia, in the Province of Newfoundland and Labrador (which lands and premises are generally identified and described in Paragraph Six (6) hereof) for labour and materials supplied to and in connection with Town of Placentia water system upgrades, performed at the aforementioned property, on or before the date of November 10, 2021.

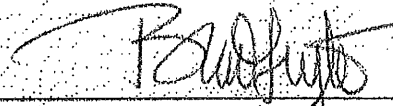
1. The amount claimed as due is as follows:

- (a) Outstanding balance for materials and labour in the amount of Five hundred and eight thousand, two hundred and seventy-one dollars and fifty cents (\$508,271.50), inclusive of HST;
- (b) Pre-judgment and post-judgment interest at the invoiced rate, or alternatively, pursuant to the *Judgment Interest Act*, R.S.N.L. 1990, c.J-2, as amended; and
- (d) Costs.

6. The land and structures upon which the Lien is claimed are generally described as:

- (a) Pressure reducing building and associated structures situate at the corner of Harbour Drive and Route 100, in the Town of Placentia, in the Province of Newfoundland and Labrador;
- (b) Pressure reducing building and associated structures situate at the corner of Fox Harbour Road and Route 100, in the Town of Placentia, in the Province of Newfoundland and Labrador; and
- (c) Clarkes Pond pump house and associated structures situate at the corner of Route 100 and the entrance to the Town of Placentia, in the Province of Newfoundland and Labrador.

DATED at the Town of Conception Bay South, in the Province of Newfoundland and Labrador,
this 3 day of December, A.D., 2021.



C.B.S. LEGAL SERVICES

Solicitors for the Lien Claimant

565 Conception Bay Highway

P.O. Box 17004, Stn Kelligrews

Conception Bay South, NL, A1X 3H1

IN THE MATTER of the *Mechanics' Lien Act*,
R.S.N.L. 1990, c.M-3, as amended;

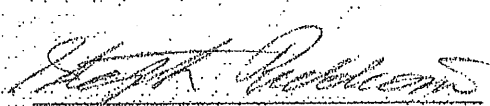
AND IN THE MATTER of a claim by Rodco
Mechanical (2014) Ltd., a body corporate,
carrying on business in the Province of
Newfoundland and Labrador, against property
of the Town of Placentia, as Owner, and against
Edward Collins Contracting Limited, a body
corporate, of Jerseyside, in the Province
aforesaid, as General Contractor;

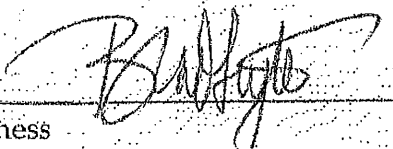
AFFIDAVIT

I, Stephen Puddicombe, of the Town of Conception Bay South, in the Province of Newfoundland
and Labrador, make oath and say as follows:

1. THAT I am the President of the Lien Claimant in the within matter, and I have full
knowledge of the facts set forth in the Claim attached hereto, and the said Claim is true to
the best of my knowledge, information and belief.

SWORN TO at the Town of
Conception Bay South, in the
Province of Newfoundland and
Labrador, this 3 day of
December, A.D., 2021, before me:


STEPHEN PUDDICOMBE


Witness

C. BRAD LEYTE
"A BARRISTER" (NL)

2022 01 GO 563
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

MECHANICS LIEN

No. 20011

Registered 4 day of February

2022 at 1:05 O'Clock P.m

Fee Paid \$ 24.00 Receipt No. 8000YDM8

Jan Zogl
Registrar of Deeds

IN THE MATTER of the *Mechanics' Lien Act*,
R.S.N.L. 1990, c.M-3, as amended;

AND IN THE MATTER of a claim of lien
by Rodco Mechanical (2014) Ltd. against the
Town of Conception Bay South, as owners, and
against property of the Town of Placentia, as
Owner, and against Edward Collins Contracting
Limited, as General Contractor;

BETWEEN:

RODCO MECHANICAL (2014) LTD.

PLAINTIFF

AND:

EDWARD COLLINS CONTRACTING LIMITED

FIRST DEFENDANT

AND:

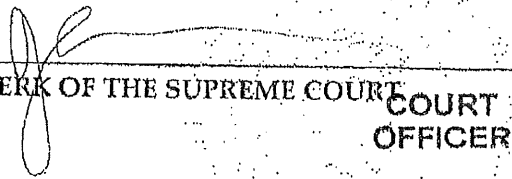
TOWN OF PLACENTIA

SECOND DEFENDANT

CERTIFICATE OF ACTION

THIS is to certify that Rodco Mechanical (2014) Ltd. has commenced an action in the Supreme Court of Newfoundland and Labrador, General Division, against Edward Collins Contracting Limited and the Town of Placentia, to enforce a Claim for Mechanics' Lien, being Lien No. 19963 registered at the Registry of Mechanics' Liens for the Province of Newfoundland and Labrador on the 3rd day of December, A.D., 2021, for a total amount of Five hundred eight thousand, two hundred seventy-one dollars and fifty cents (\$508,271.50), plus interest and costs, for labour and materials supplied to and in connection with water system construction, development, and improvement in the Town of Placentia, in the Province of Newfoundland and Labrador.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador, this 2 day of
February, A.D., 2022.


CLERK OF THE SUPREME COURT
COURT
OFFICER

2022 01 G O 563
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER of the *Mechanics' Lien Act*,
R.S.N.L. 1990, c.M-3, as amended;

AND IN THE MATTER of a claim of lien
by Rodco Mechanical (2014) Ltd. against the
Town of Conception Bay South, as owners, and
against property of the Town of Placentia, as
Owner, and against Edward Collins Contracting
Limited, as General Contractor;

BETWEEN:

RODCO MECHANICAL (2014) LTD.

PLAINTIFF

AND:

EDWARD COLLINS CONTRACTING LIMITED

FIRST DEFENDANT

AND:

TOWN OF PLACENTIA

SECOND DEFENDANT

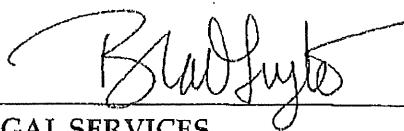
STATEMENT OF CLAIM

1. The Plaintiff is a body corporate, duly incorporated and existing pursuant to the laws of the Province of Newfoundland and Labrador, and has its registered address situate at 257 Conception Bay Highway, in the Town of Conception Bay South, in the Province of Newfoundland and Labrador, in the Province of Newfoundland and Labrador, postal code A0A 2R0.
2. The First Defendant is a body corporate, incorporated and existing pursuant to the laws of the Province of Newfoundland and Labrador, and has its registered office situate at Main Road, P.O. Box 51, in the Town of Jerseyside, Placentia Bay, in the Province of Newfoundland and Labrador, postal code A0B 2G0.

3. The Second Defendant is a municipality, incorporated and existing under the *Municipalities Act, 1999*, SNL 1999, c.M-24, as amended, with its address at P.O. Box 99, 21 Patterson Drive, in the Town of Placentia, in the Province of Newfoundland and Labrador, postal code A0B 2Y0, and at all times material and relevant hereto was an "Owner" within the meaning of the *Mechanics' Lien Act*, R.S.N.L. 1990, c.M-3, as amended (hereinafter referred to as the "*Act*").
4. The Plaintiff states that under a contract between the Plaintiff and the First Defendant, the Plaintiff agreed to supply materials and labour in connection with the construction, development and improvement of the municipal water system and associated structures upon the Owner's land or their interest in same (hereinafter referred to as the "Property"), and more particularly:
 - (a) Pressure reducing building and associated structures situate at the corner of Harbour Drive and Route 100, in the Town of Placentia, in the Province of Newfoundland and Labrador;
 - (b) Pressure reducing building and associated structures situate at the corner of Fox Harbour Road and Route 100, in the Town of Placentia, in the Province of Newfoundland and Labrador; and
 - (c) Clarkes Pond pump house and associated structures situate at the corner of Route 100 and the entrance to the Town of Placentia, in the Province of Newfoundland and Labrador.
5. The Plaintiff further states that it supplied materials and labour to the First Defendant under the terms of the contract up to November 10, 2021.
6. The Plaintiff further states that on December 3, 2021, pursuant to the provisions of the *Act*, the Plaintiff caused to be registered at the Registry of Deeds for Newfoundland, a Claim of Lien registered as Mechanics' Lien No. 19963 upon the interest of the Defendants in the Property (hereinafter the "Lien"), in the total amount of Five hundred eight thousand, two hundred seventy-one dollars and fifty cents (\$508,271.50), inclusive of HST, plus interest.
7. The Plaintiff acknowledges having received a payment in the amount of One hundred thirty-five thousand dollars (\$135,000.00) since the registration of the Lien.

8. The Plaintiff further states that there remains due and owing from the Defendants to the Plaintiff, in respect of the said contract, the amount of Three hundred eighty-one thousand, nine hundred fifty dollars and twenty-four cents (\$381,950.24), plus interest at the invoiced rate, and that despite demand, the Defendants have failed to pay this remaining amount to the Plaintiff.
9. The Plaintiff further states that the Defendants are liable to the Plaintiff pursuant to the Claim of Lien, and pleads the provisions of the *Act*.
10. The Plaintiff further states that it has suffered losses arising from the failure to pay and other expense caused by the Defendants, and the Defendants are liable to the Plaintiff for breach of contract and/or unjust enrichment.
11. The Plaintiff therefore claims against the Defendants:
 - (a) that the Plaintiff recover against the Defendants *in personam* the amount due and owing under the aforesaid contract of \$381,950.24, plus interest at the invoiced rate;
 - (b) general and special damages, in an amount to be assessed;
 - (c) in default of payment of the sum referred to above and interest and costs, that the Claim of Lien of the Plaintiff be realized by sale of the estate, right, title and interest of the Defendants in the Property and the proceeds applied toward the payment of the Plaintiff's claim and interest and costs pursuant to the *Act*;
 - (d) that for the purposes aforesaid, and for all other purposes pursuant to the *Act* that proper directions be given, inquiries made, and accounts taken;
 - (e) pre-judgment and post-judgment interest at the invoiced rate or, alternatively, pursuant to the *Judgment Interest Act*, R.S.N.L. 1990, c.J-2;
 - (f) costs, including costs of discovery, and;
 - (g) such further relief as this Honourable Court may deem just and appropriate.

DATED at Kelligrews, in the Town of Conception Bay South, in the Province of Newfoundland and Labrador,
this 2nd day of February, A.D., 2022.



C.B.S. LEGAL SERVICES

Solicitors for the Plaintiff

Whose address for service is:

565 Conception Bay Highway

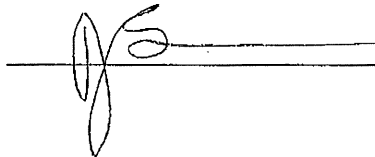
P.O. Box 17004, Stn Kelligrews

Conception Bay South, NL A1X 3H1

TO: The First Defendant
Edward Collins Contracting Limited
Main Road, PO Box 51
Jerseyside, Placentia Bay
NL A0B 2G0

TO: The Second Defendant
Town of Placentia
PO Box 99, 21 Patterson Drive
Placentia, NL A0B 2Y0

ISSUED at the City of St. John's, in the Province of Newfoundland and Labrador, this 2 day of
February, A.D., 2022.



**COURT
OFFICER**

2022 01 G 0563
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER of the *Mechanics' Lien Act*,
R.S.N.L. 1990, c.M-3, as amended;

AND IN THE MATTER of a claim of lien
by Rodco Mechanical (2014) Ltd. against the
Town of Conception Bay South, as owners, and
against property of the Town of Placentia, as
Owner, and against Edward Collins Contracting
Limited, as General Contractor;

BETWEEN:

RODCO MECHANICAL (2014) LTD.

PLAINTIFF

AND:

EDWARD COLLINS CONTRACTING LIMITED

FIRST DEFENDANT

AND:

TOWN OF PLACENTIA

SECOND DEFENDANT

NOTICE TO DEFENDANTS

You are hereby notified that the Plaintiff may enter judgment in accordance with the Statement of Claim or such order as, according to the practice of the Court, the Plaintiff is entitled to, without any further notice to you unless within ten (10) days after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland and Labrador, General Division, St. John's, a Defence and unless within the same time a copy of your Defence is served upon the Plaintiff or his solicitor at their stated address for service. Provided that if the Claim is for a debt or other liquidated demand and you pay the amount claimed in the Statement of Claim and the sum of \$ _____ (or such sum as may be allowed on taxation) for costs to the Plaintiff within ten (10) days from the service of this notice upon you, then this proceeding will be stayed.

TO: The First Defendant

Edward Collins Contracting Limited
Main Road, PO Box 51
Jerseyside, Placentia Bay
NL A0B 2G0

TO: The Second Defendant

Town of Placentia
PO Box 99, 21 Patterson Drive
Placentia, NL A0B 2Y0

TAB I

This is **Exhibit "I"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: RE Friday Dec 10 Meeting Follow-up: Edward Collins Contracting Ltd. - Western Surety Company - Bond Claims

From: Josh Collins <joshcollins@edwardcollinscontracting.com>

Sent: December 22, 2021 2:42 PM

To: James Toothill <JToothill@westernsurety.ca>

Cc: Connor Chow <CChow@westernsurety.ca>

Subject: Re: RE Friday Dec 10 Meeting Follow-up: Edward Collins Contracting Ltd. - Western Surety Company - Bond Claims

Rodco was paid \$135,000 and Napa received \$12,500
Rodco continues to work on-site.

I'm still gathering information. Haven't had time to finalize it yet.

Sent from my iPhone

On Dec 22, 2021, at 3:23 PM, James Toothill <JToothill@westernsurety.ca> wrote:

Good afternoon Josh,

I'm checking in to get a bit of follow-up on the items listed in my previous email. Do you have an update on #5 – the payment to Rodco of approx. \$142,000 that was hopefully happening last week or this week. Also, #2 – project information related to Bond 532,090 – Town of Placentia project.

If you could let us know the status of these that would be great. Thanks,

James

James Toothill FCIP, CRM • **Chief Claims Manager & Privacy Officer**

Western Surety Company

t. (306) 777-0608 • 1 (800) 475-4454

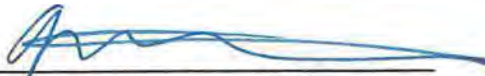
jtoothill@westernsurety.ca • www.westernsurety.ca

2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

<image003.jpg> Save a tree. Keep it on the screen.

TAB J

This is **Exhibit "J"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'A. [unclear]', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Edward Collins Contracting Ltd. - Town of Placentia Project and Settlement Agreement and Release Document

From: Josh Collins <joshcollins@edwardcollinscontracting.com>

Sent: January 24, 2022 5:01 AM

To: James Toothill <JToothill@westernsurety.ca>

Cc: Ruby Noseworthy <ruby.noseworthy@aon.ca>; Connor Chow <CChow@westernsurety.ca>; Wesley Benson <WBenson@westernsurety.ca>; Michael Cabot <michael.cabot@occolaw.com>

Subject: Re: Edward Collins Contracting Ltd. - Town of Placentia Project and Settlement Agreement and Release Document

The town of Placentia released the two outstanding claims to us Friday. We received approximately \$55,000 and we paid Rodco \$75,000 on Friday. They are continuing to work to complete the job.

Sent from my iPhone

TAB K

This is **Exhibit "K"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'J. [unclear]', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

From: C. Brad Leyte <bleyte@nf.aibn.com>

Sent: April 8, 2022 7:51 AM

To: James Toothill <JToothill@westernsurety.ca>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Hi James,

I can offering the following information in reply from my client:

- * Rodco is still owed \$391,700.24 from ECC
- * Rodco has been pursuing updates from ECC regarding payment but no firm answers have been received
- * Rodco has only received progress payments on current progress claims, and no lump sum payments on the long overdue balance

Any further information you can provide would be appreciated.

Brad

On 01/04/2022 12:37 a.m., James Toothill wrote:

Good evening Brad,

It has been awhile since I have followed up with you directly regarding the Labour & Material payment bond claim that you/your client Rodco submitted related to Edward Collins Contracting, so I wanted to provide an update from our end.

We have been in weekly contact with Josh @ ECC regarding the outstanding amounts, and I want to verify with you the information that we have been provided. Josh has advised us on a few occasions that he has been keeping in contact with Rodco about these accounts, and that Rodco has let him know that they are ok with waiting for ECC to make the payments to them directly once the project is complete and holdback released. Josh has also mentioned that they recently provided Rodco with a lump sum payment for this job, and that it is close to complete.

- If you could verify this for us that would be appreciated. We just want to make sure that the information is correct. We have not been provided a possible date for payment of these invoices to Rodco by ECC, just assurance that it is coming soon.

If you have any questions for us on this process please let me know. Thanks in advance for your reply.

James



James Toothill FCIP, CRM • **Chief Claims Manager & Privacy Officer**

Western Surety Company

t. (306) 777-0608 • 1 (800) 475-4454

jtoothill@westernsurety.ca • www.westernsurety.ca

2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

 Save a tree. Keep it on the screen.

TAB L

This is **Exhibit "L"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'Ara', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

RELEASE, ASSIGNMENT, UNDERTAKING AND GRANT

WHEREAS CRANE SUPPLY A DIVISION OF CRANE CANADA CO. of the Province of New Brunswick (hereinafter called the "Claimant") represents to **WESTERN SURETY COMPANY** having an office in the Province of Saskatchewan (hereinafter called the "Surety") and covenants with the Surety that **EDWARD COLLINS CONTRACTING LIMITED** (hereinafter called the "Contractor") is indebted to the Claimant in the amount of \$204,781.32 for labour or material or rentals provided by the Claimant to the Contractor and used on the contract between the Contractor and the **TOWN OF PLACENTIA** (hereinafter called the "Obligee") made the 19TH day of March, 2021 for water system upgrades in the Town of Placentia (the "Contract");

AND WHEREAS the Surety has issued, *inter alia*, a Labour & Material Payment Bond in connection with the Contract (the "Bond");

AND WHEREAS the Claimant has made a claim against the Surety and the Contractor in the amount of \$204,781.32 ("Claim");

AND WHEREAS the Surety has agreed to settle the Claim in exchange for the Claimant's assignment to the Surety of its rights and interests in the Claim;

AND WHEREAS the Claimant hereby warrants and represents to the Surety that it is entitled to payment from the Contractor and it is agreed and acknowledged that the Surety is relying on this warranty and representation in respect of this Agreement;

NOW THEREFORE THIS DEED WITNESSETH that in consideration of the promise of payment of \$204,781.32, which is the verified amount as per the Surety's correspondence dated **August 17, 2022**, by the Surety to the Claimant, the mutual covenants and agreements contained in this Agreement and the other good and valuable consideration set out herein, the receipt and sufficiency of which are hereby acknowledged by the parties, the Claimant covenants and agrees as follows:

- (1) hereby releases and forever discharges the Surety from any claims related to the Contract; and
- (2) hereby subrogates, assigns and transfers to the Surety any and all liens, claims, causes of action, actions, judgments and rights to recovery which the Claimant may have against any person, firm or corporation in connection with or in any way related to the Claim or the Contract, and authorizes the Surety to sue, compromise or settle in the Claimant's name or otherwise all such claims, causes of action and rights to recovery and without in any way limiting the generality of the foregoing, hereby subrogates, assigns and transfers to the Surety any and all claims, including lien claims and breach of trust claims which the Claimant has or may have by reason of any statute of the Province of Newfoundland and Labrador; and

- (3) hereby covenants, agrees and undertakes to execute such further and other documents and to perform such further and other acts which may reasonably be required by the Surety (including assisting with the prosecution of the Claim) in order that the Surety may realize upon the rights hereby subrogated, assigned and transferred to it; and
- (4) and honour all contractual obligations and/or warranties and/or guarantees in relation to labour or materials supplied or to be supplied by the Claimant; and
- (5) hereby grants to the Obligee, the Surety, and the Contractor and any person which the Surety may designate, all guarantees and warranties and other benefits with respect to the labour or material provided by the Claimant to which the Contractor would have been entitled had the Contractor paid the Claimant in a timely and proper manner; and
- (6) solemnly declares that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Claimant in the performance of its work as required by the subcontract between the Claimant and the Contractor, and for which the Contractor might in any way be held responsible, have been paid in full, as required by the subcontract up to and including the latest progress payment received.

IN WITNESS WHEREOF the Claimant has executed this Release, Assignment, Undertaking and Grant this August day of 25, 2022, at Hamilton, Ontario, New Brunswick by its proper signing officers.

CRANE SUPPLY A DIVISION OF CRANE CANADA CO.

Signature: _____

Print Name: Stanley Muchynski

Title: Director of Credit

I have authority to bind the Corporation

Witness Signature: _____

Print Name: PAT RINALDI

RELEASE, ASSIGNMENT, UNDERTAKING AND GRANT

WHEREAS RODCO MECHANICAL (2014) LTD. of the Province of Newfoundland and Labrador (hereinafter called the "Claimant") represents to **WESTERN SURETY COMPANY** having an office in the Province of Saskatchewan (hereinafter called the "Surety") and covenants with the Surety that **EDWARD COLLINS CONTRACTING LIMITED** (hereinafter called the "Contractor") is indebted to the Claimant in the amount of \$398,607.88 for labour or material or rentals provided by the Claimant to the Contractor and used on the contract between the Contractor and **TOWN OF PLACENTIA** (hereinafter called the "Obligee") made the 19TH day of March, 2021 for water system upgrades in the Town of Placentia (the "Contract");

AND WHEREAS the Surety has issued, *inter alia*, a Labour & Material Payment Bond in connection with the Contract (the "Bond");

AND WHEREAS the Claimant has made a claim against the Surety and the Contractor in the amount of \$398,607.88 ("Claim");

AND WHEREAS the Surety has agreed to settle the Claim in exchange for the Claimant's assignment to the Surety of its rights and interests in the Claim;

AND WHEREAS the Claimant hereby warrants and represents to the Surety that it is entitled to payment from the Contractor and it is agreed and acknowledged that the Surety is relying on this warranty and representation in respect of this Agreement;

NOW THEREFORE THIS DEED WITNESSETH that in consideration of the promise of payment of \$398,607.88, which is the verified amount as per the Surety's correspondence dated August 15, 2022, by the Surety to the Claimant, the mutual covenants and agreements contained in this Agreement and the other good and valuable consideration set out herein, the receipt and sufficiency of which are hereby acknowledged by the parties, the Claimant covenants and agrees as follows:

- (1) hereby releases and forever discharges the Surety from any claims related to the Contract; and
- (2) hereby subrogates, assigns and transfers to the Surety any and all liens, claims, causes of action, actions, judgments and rights to recovery which the Claimant may have against any person, firm or corporation in connection with or in any way related to the Claim or the Contract, and authorizes the Surety to sue, compromise or settle in the Claimant's name or otherwise all such claims, causes of action and rights to recovery and without in any way limiting the generality of the foregoing, hereby subrogates, assigns and transfers to the Surety any and all claims, including lien claims and breach of trust claims which the Claimant has or may have by reason of any statute of the Province of Newfoundland and Labrador; and

- (3) hereby covenants, agrees and undertakes to execute such further and other documents and to perform such further and other acts which may reasonably be required by the Surety (including assisting with the prosecution of the Claim) in order that the Surety may realize upon the rights hereby subrogated, assigned and transferred to it; and
- (4) and honour all contractual obligations and/or warranties and/or guarantees in relation to labour or materials supplied or to be supplied by the Claimant; and
- (5) hereby grants to the Obligee, the Surety, and the Contractor and any person which the Surety may designate, all guarantees and warranties and other benefits with respect to the labour or material provided by the Claimant to which the Contractor would have been entitled had the Contractor paid the Claimant in a timely and proper manner; and
- (6) solemnly declares that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Claimant in the performance of its work as required by the subcontract between the Claimant and the Contractor, and for which the Contractor might in any way be held responsible, have been paid in full, as required by the subcontract up to and including the latest progress payment received.

IN WITNESS WHEREOF the Claimant has executed this Release, Assignment, Undertaking and Grant this 24 day of August, 2022, at Kelligrews, Newfoundland and Labrador by its proper signing officers.

RODCO MECHANICAL (2014) LTD.

Signature: 

Print Name: Stephan Rodon comte

Title: president

I have authority to bind the Corporation

Witness Signature: 

Print Name: **C. BRAD LEYTE**
"A BARRISTER" (NL)

TAB M

This is **Exhibit "M"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan



ORR | CABOT
CROSBIE | OLEY
LAW

September 22, 2021

VIA EMAIL

WITHOUT PREJUDICE

Duffy Law Office

640 Torbay Road
St. John's, NL A1A 5G9

Attention: Lee Ballett

Dear Mr. Ballett:

Regarding: Our Client – Edward Collins Contracting Limited
Your Client – Crane Canada Co.
Claim for Lien bearing Registration Number 19909

Please be advised that the undersigned has been retained as legal counsel for Edward Collins Contracting Limited in relation to a Claim for Lien filed by your client, Crane Canada Co., on or about September 9, 2021, claiming payment in the amount of \$251,635.00.

Our client disputes the amount claimed in the lien and should this matter proceed to a Statement of Claim, I have instructions to file a Counterclaim to seek damages as against your client. In addition to deficiencies and overages in relation to the work/service, our client has claims against your client for damages in relation to actions taken in this matter including breach of privacy and breach of your client's contractual obligation of good faith to our client.

Notwithstanding the issues that will form the basis of future litigation, I have recommended to my client that we make an attempt to resolve this matter amicably, in order to avoid the high costs of litigation and to preserve the business relationship for the benefit of the parties moving forward.

As I trust you are aware, there is a holdback associated with this project. My client anticipates that by the end of September the total amount of the holdback will be approximately \$200,000.00 - \$210,000.00.

As a means to bring this matter to an immediate resolution, my client proposes the following:

1. My client will execute an assignment in your client's favour, whereby the full amount of the holdback as of September 30, 2021 is assigned to your client.
2. Your client will immediately vacate the Claim for Lien as registered;

Michael Cabot | Partner

Direct 709 702 8902 Fax 709 702 8901 Email michael.cabot@occolaw.com
55 Duckworth Street, St. John's, NL A1C 1E6



ORR | CABOT
CROSBIE | OLEY
LAW

Our client advises that the next payment on this project will take place on or about October 15, 2021. If there is an agreement on the above, the holdback amount as of September 30th should be available for release to your client within 2-4 weeks of October 15th.

It seems that the foregoing represents a fair resolution of this matter. We look forward to your immediate response.

Yours Truly,

Michael Cabot

Michael Cabot | Partner

Direct 709 702 8902 Fax 709 702 8901 Email michael.cabot@occolaw.com
55 Duckworth Street, St. John's, NL A1C 1E6

TAB N

This is **Exhibit "N"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'A. [unclear]', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan



ORR | CABOT
CROSBIE | OLEY
LAW

September 28, 2021

VIA EMAIL

Town of Placentia

P.O. Box 99
Placentia, NL A0B 2Y0

Attention: The Honourable Bernard Power, Mayor

Regarding: Our Client – Edward Collins Contracting Limited

Please be advised that the undersigned has been retained as legal counsel for Edward Collins Contracting, who we understand are working on a project for the Town of Placentia (the "**Town**").

In that regard, we are seeking written confirmation from the Town as follows:

1. Confirming the amount of the holdback currently held by the Town in relation to the project, and the associated HST; and
2. Confirmation that the Town will keep 'in trust' the holdback amount as of today's date, pending a further direction from Edward Collins Contracting Limited and/or their solicitor.

If any clarification is required in this regard, do let us know.

Otherwise, we trust that you will find foregoing to be order, and look forward to your earliest reply.

Yours Truly,

Michael Cabot

Michael Cabot | Partner

Direct 709 702 8902 Fax 709 702 8901 Email michael.cabot@occolaw.com
55 Duckworth Street, St. John's, NL A1C 1E6

TAB O

This is **Exhibit "O"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'J. Toothill', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan



September 28, 2021

Mr. Michael Cabot
ORR CABOT CROSBIE OLEY LAW
55 Duckworth Street
St. John's, NL A1C 1E6

Dear Mr. Cabot

Please be advised that the Town of Placentia confirms it has a holdback to Edward Collins Contracting in the amount of \$178,070.71 plus HST on the Multi Year Capital Works Project Part A – 17-GI-20-00050 Water connection to Dunville and Part B – 17-SCF-19-00129 Pumphouse Upgrades.

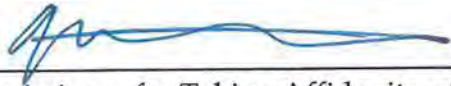
We further confirm that the Town will retain this holdback as of September 28, 2021, pending further direction from Edward Collins Contracting Limited and/or their solicitor.

Sincerely

Bernard Power
Mayor
Town of Placentia

TAB P

This is **Exhibit "P"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'A. [unclear]', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

IN THE MATTER OF the Mechanic's
Lien Act, Revised Statutes of Newfoundland
And Labrador, 1990, Ch. M-3, as amended

And

IN THE MATTER OF a Claim for Lien by
Crane Canada Co. against Edward Collins Contracting Limited and the Town of
Placentia, in the Province of Newfoundland and Labrador, to certain lands and premises
situate at Clarke's Pond Pumphouse, in the Dunville area, the town of Placentia,
Newfoundland and Labrador.

DISCHARGE OF LIEN

WHEREAS by a Claim for Lien dated the 9th day of September, 2021, and made by
Crane Canada Co. against Edward Collins Contracting Limited to certain lands and
premises situate at Clarke's Pond Pumphouse, in the Dunville area, in the Town of
Placentia, Newfoundland and Labrador, which Claim for Lien was registered in the
Mechanics' Lien Registry for the Province of Newfoundland and Labrador on
September 9th, 2021, as number 19909, for certain monies as more particularly stated in
the Claim for Lien.

AND WHEREAS all of the monies due and owing under the contract stated in the
Claim for Lien have been paid to Crane Canada Co.

NOW THEREFORE TAKE NOTICE that the lien claimant, Crane Canada Co.,
acknowledges receipt of payment from Edward Collins Contracting Limited and hereby
forever discharges and releases all claims and demands in connection with the Claim for

CERTIFICATE OF DISCHARGE

No. 19909
Registered 5 day of October
2021 at 9 10 O'Clock A.m
This Discharge in Full 6 Partial
Mechanics Lien No. 19909
Fee Paid \$ 24.00 Receipt No. SP2021.05.01
John Zeph
Registrar of Deeds

Lien to certain lands and premises situate at Clarke's Pond Pumphouse, in the Dunville area, in the Town of Placentia, Newfoundland and Labrador

DATED at the City of St. John's, in the Province of Newfoundland and Labrador, on this 5 day of October, 2021.



Lee E. Ballett
Duffy Law Office
Solicitor for the Lien Claimant
Whose address for Service is:
640 Torbay Road
St. John's, NL
A1A 5G9

IN THE MATTER OF the Mechanic's
Lien Act, Revised Statutes of Newfoundland
And Labrador, 1990, Ch. M-3, as amended

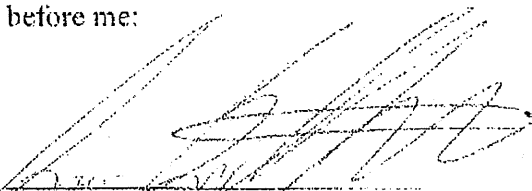
And

IN THE MATTER OF a Claim for Lien by
Crane Canada Co. against Edward Collins Contracting Limited and the Town of
Placentia, in the Province of Newfoundland and Labrador, to certain lands and premises
situate at Clarke's Pond Pumphouse, in the Dunville area, the town of Placentia,
Newfoundland and Labrador.

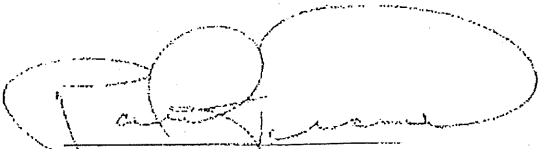
I, Paul Traverse, of St. John's, in the Province of Newfoundland and Labrador, make
oath and say as follows:

1. THAT I am an Officer and regional Sales representative for the lien
claimant in the annexed Discharge of Lien.
2. THAT said Lien was registered as number 19909.
3. THAT I have personal knowledge of the matters contained in the annexed
Discharge of Lien; and
4. THAT I am authorized to execute the within Discharge of Lien and I have
read, understood and executed the Discharge of Lien.
5. THAT the facts contained in the said Discharge of Lien are true to the best
of my knowledge, information and belief.

SWORN AT St. John's, Newfoundland and
Labrador, this 5 day of October, 2021,
before me:

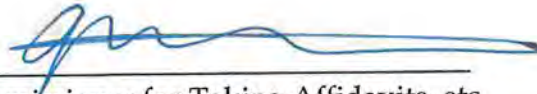

WITNESS: Lee E. Ballett

A Barrister, NL


Paul Traverse

TAB Q

This is **Exhibit "Q"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, consisting of a stylized 'J' followed by a long horizontal stroke with a small loop at the end.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

SETTLEMENT AGREEMENT

BETWEEN:

EDWARD COLLINS CONTRACTING LTD

(hereinafter referred to as "**ECCL**")

AND:

CRANE CANADA CO

(hereinafter referred to the "**Crane**")

WHEREAS the parties herein have carried on business whereby Crane has provided goods and services to ECCL in relation to work on Project Part A 17-GI-20-00050 Water connection to Dunville and Part B – 17-SCF-19-00129 Pumphouse Upgrades;

AND WHEREAS ECCL has an outstanding balance owing to Crane in relation to those services and materials (the "**Debt**");

AND WHEREAS on or about September 9, 2021, Crane registered a Claim for Lien with the Registry of Deeds for the Province of Newfoundland and Labrador bearing Registration Number 19909 in relation to the Debt;

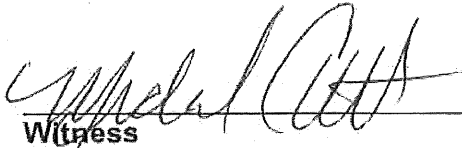
AND WHEREAS ECCL and Crane have agreed to settle the Debt on the terms as set out in this Agreement;

THE PARTIES therefore agree to the following mutually satisfactory terms and conditions thereby establishing an agreed settlement agreement:

1. The parties acknowledge and agree that ECCL shall pay \$178,070.71 plus HST to Crane in full and final settlement the Debt.
2. ECCL shall make payment by way of Irrevocable Direction to the Town of Placentia, directing that the \$178,070.71 plus HST currently held as holdback by the Town of Placentia be paid to Crane's solicitor. A copy of this Direction is attached at Schedule "A" to this Agreement.
3. Immediately on the receipt of the above referenced Direction, Crane shall vacate their Claim for Lien bearing Registration Number 19909.
4. Crane shall execute a Full and Final Release (a copy of which forms Schedule "B" to this Agreement) in favour of ECCL releasing ECCL from further claims in this matter.
5. Crane shall withdraw any and all claims made in relation to any bond(s) maintained by ECCL and Crane shall not make any further claims of this nature in the future.

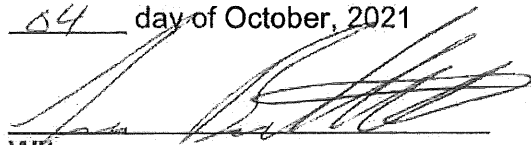
IN WITNESS WHEREOF this Agreement has been executed by the parties at the times and places hereinafter set forth.

EXECUTED at the City of
St. John's, in the Province of
Newfoundland and Labrador, this
31st day of October, 2021


Witness

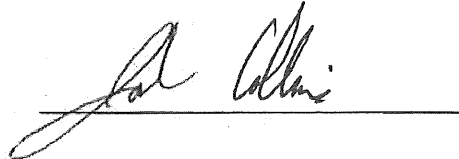
J. Michael Cabot
Barrister, NL

EXECUTED at the City of
St. John's, in the Province of
Newfoundland and Labrador, this
04 day of October, 2021

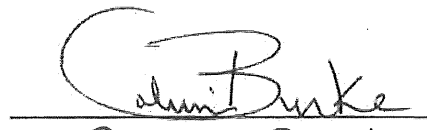

Witness

Leanne Ballew
A Barrister, NL

EDWARD COLLINS CONTRACTING
LTD



CRANE CANADA CO.

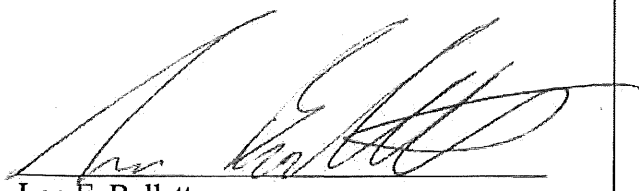

CALVIN BURKE

AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY

I, **CALVIN BURKE** of the city of St. John's, in the Province of Newfoundland and Labrador,
MAKE OATH AND SAY:

1. **THAT** I am an employee and representative of Crane Canada Co. named in the annexed Settlement Agreement.
2. **THAT** I have personal knowledge of the matters contained in the annexed Settlement Agreement
3. **THAT** I am authorized by the Corporation to execute the annexed Settlement Agreement without affixing a corporate seal.
4. **THAT** I make this Affidavit conscientiously believing the information contained herein to be true, and knowing that it is a criminal offence to falsely swear an Affidavit.

SWORN BEFORE ME at the City of St. John's, in the Province of Newfoundland and Labrador, this 04 day of October, 2021.



Lee E. Ballett
A Barrister, NL.



Calvin Burke **CALVIN BURKE**

Schedule "A"

IRREVOCABLE DIRECTION TO PAY

FROM: EDWARD COLLINS CONTRACTING LTD

TO: THE TOWN OF PLACENTIA

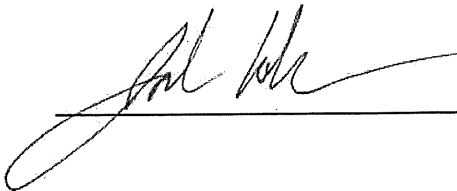
In the respect of the holdback funds identified in correspondence from the Town of Placentia dated September 28, 2021 in the amount of \$178,070.71 plus HST (the "**Funds**") held pursuant to the Multi Year Capital Works Project Part A 17-GI-20-00050 Water connection to Dunville and Part B – 17-SCF-19-00129 Pumphouse Upgrades, the undersigned hereby authorizes and directs you to advance and pay from the Funds to:

Crane Canada Co.
c/o **Duffy Law Office**
640 Torbay Road
St. John's, NL A1A 5G9

This authority and direction is given and made in consideration of a Settlement Agreement entered agreement to by the Edward Collins Contracting Ltd. and Crane Canada Co to resolve outstanding debts due and owing by Edward Collins Contracting Ltd.

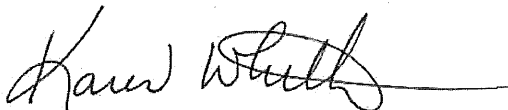
DATED at St. John's, in the
Province of Newfoundland and Labrador
This 4th day of October
A.D. 2021

Edward Collins Contracting Ltd.


_____

KAREN WHITTLE

A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2024.



TAB R

This is **Exhibit "R"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'J. [unclear]', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan



640 Torbay Road
St. John's, NL
A1A 5G9

Telephone: (709) 726-5298
Facsimile: (709) 726-8883
E-mail: LBallett@duffylawyers.com

Lee E. Ballett
B.A., J.D.

October 27, 2021

Via Email

Attn : Kevin Cahill
James Toothill

Western Surety Company
99 Wyse Rd
Dartmouth, NS
B3A 4S5

Dear Mr. Toothill and Mr. Cahill

RE: Bond No. 532,090
Principal: Edward Collins Contracting Limited
Obligee: Town of Placentia
Claimant: Crane Supply
Project: Water System Upgrades

Please be advised we represent Crane Supply (Crane Canada Co.) with reference to the above noted, Crane Supply is owed \$233,675.68 in unpaid invoices for materials provided to Edward Collins Contracting.

Crane Canada and Edward Collins, through their solicitor, entered into a settlement agreement whereby Edward Collins Contracting would sign over holdback funds associated with this job via irrevocable direction to pay to Crane Canada. Edward Collins advised the project was substantially completed and the holdback would be made available on or about October 15, 2021.

The Town of Placentia, through their counsel, have reached out to us and made us aware that the project is "at best still several weeks away from being substantially complete", they advised that other suppliers have filed or are in the process of filing against that holdback as well. The terms of the agreement where therefore falsely represented to Crane Canada.

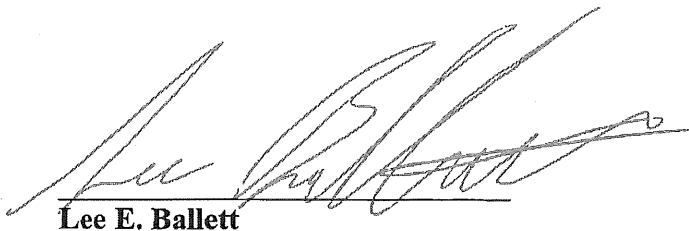
This letter is to serve as a notice of assertion of claim under the above noted bond for labour and materials.

Please do not hesitate to contact the undersigned to follow up on this matter.

We trust this to be sufficient and remain.

Sincerely yours,

MICHAEL H. DUFFY PLC Inc.

A handwritten signature in black ink, appearing to read "Lee E. Ballett", written over a horizontal line.

Lee E. Ballett

LEB
Enclosure

TAB S

This is **Exhibit "S"** to the Affidavit of JAMES TOOTHILL of the City of Regina, in the Province of Saskatchewan, sworn before me at the City of Regina, in the Province of Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, consisting of a stylized 'J' followed by a long, horizontal, wavy line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan



ORR | CABOT
CROSBIE | OLEY
LAW

November 1, 2021

VIA EMAIL

Western Surety Company

99 Wyse Road
Dartmouth, NS B3A 4S5

Attention: J. Toothill

Regarding: Our Client – Edward Collins Contracting Limited
Claimant – Crane Canada Co.
Bond No. – 532,090

We write further to correspondence from the solicitors for Crane Canada Co. dated October 27, 2021, wherein Crane submits a claim against the above referenced bond and makes certain allegations against Edward Collins Contracting Limited ("ECC").

Specifically, Crane Canada alleges that ECC made false representations as a precursor to the Settlement Agreement (the "Agreement") between the parties.

I have discussed this allegation with my client, and they deny that ECC made any false representations as now alleged. It is their position that any statements or information provided by ECC were made based on the information known to ECC at that time.

Subsequently the completion of the project has been delayed – ECC is in receipt of Change Orders that have resulted in a delay of bringing this to a conclusion. This delay was not foreseen by ECC at the time discussions were held to conclude the Agreement. Moreover, these delays are not within ECC's control.

The parties here agreed to resolve the claim by Crane by way of an assignment of ECC's interest in the holdback retained by the Town. ECC completed the Assignment and forwarded same to the Town. This was confirmed the Town's solicitor.

The Agreement did not specify any time by which the holdback would have to be paid out to Crane.

In consideration for the above, Crane agreed to vacate their mechanics' lien and expressly agreed to not make any claims against the bond in the future.

The Agreement remains binding on the parties.

Michael Cabot | Partner

Direct 709 702 8902 Fax 709 702 8901 Email michael.cabot@occolaw.com
55 Duckworth Street, St. John's, NL A1C 1E6



ORR | CABOT
CROSBIE | OLEY
LAW

Our client therefore submits that not only should this claim be denied, but it in fact constitutes a breach of Crane's obligations as set out in the Agreement.

We trust that you will find the foregoing to be in order.

Yours Truly,

Michael Cabot

Michael Cabot | Partner

Direct 709 702 8902 Fax 709 702 8901 Email michael.cabot@occolaw.com
55 Duckworth Street, St. John's, NL A1C 1E6

TAB T

This is **Exhibit "T"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 15th, 2023.


A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Edward Collins Contracting Ltd. - Town of Placentia Project and Settlement Agreement and Release Document
Attachments: 2021-11-24 Signed Settlement Agreement.pdf

From: James Toothill <JToothill@westernsurety.ca>
Sent: March 8, 2022 2:21 PM
To: Josh Collins <joshcollins@edwardcollinscontracting.com>
Cc: Connor Chow <CChow@westernsurety.ca>; Michael Cabot <michael.cabot@occolaw.com>; Wesley Benson <WBenson@westernsurety.ca>; Ruby Noseworthy <ruby.noseworthy@aon.ca>
Subject: RE: Edward Collins Contracting Ltd. - Town of Placentia Project and Settlement Agreement and Release Document

Good day Josh,

We are receiving almost daily calls/emails from Crane Supply and their lawyer regarding the Town of Placentia project and them receiving the payment that was agreed to in the attached settlement agreement. Can you please advise us of the status of the project, as well as when the payment can be expected to Crane.

We have also been advised that Rodco has submitted a new lien against this project. Can you provide any further details on this and if this is impacting payment from the Owner.

Thank-you in advance.

James



James Toothill FCIP, CRM • **Chief Claims Manager & Privacy Officer**
Western Surety Company
t. (306) 777-0608 • 1 (800) 475-4454
jtoothill@westernsurety.ca • www.westernsurety.ca
2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

Save a tree. Keep it on the screen.

SETTLEMENT AGREEMENT

BETWEEN:

EDWARD COLLINS CONTRACTING LTD

(hereinafter referred to as "ECCL")

AND:

CRANE CANADA CO

(hereinafter referred to the "Crane")

WHEREAS the parties herein have carried on business whereby Crane has provided goods and services to ECCL in relation to work on Project Part A 17-GI-20-00050 Water connection to Dunville and Part B – 17-SCF-19-00129 Pumphouse Upgrades;

AND WHEREAS ECCL has an outstanding balance owing to Crane in relation to those services and materials (the "Debt");

AND WHEREAS on or about September 9, 2021, Crane registered a Claim for Lien with the Registry of Deeds for the Province of Newfoundland and Labrador bearing Registration Number 19909 in relation to the Debt;

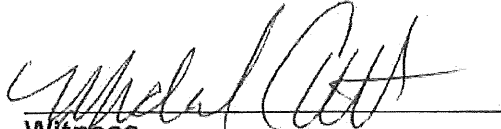
AND WHEREAS ECCL and Crane have agreed to settle the Debt on the terms as set out in this Agreement;

THE PARTIES therefore agree to the following mutually satisfactory terms and conditions thereby establishing an agreed settlement agreement:

1. The parties acknowledge and agree that ECCL shall pay \$178,070.71 plus HST to Crane in full and final settlement the Debt.
2. ECCL shall make payment by way of Irrevocable Direction to the Town of Placentia, directing that the \$178,070.71 plus HST currently held as holdback by the Town of Placentia be paid to Crane's solicitor. A copy of this Direction is attached at Schedule "A" to this Agreement.
3. Immediately on the receipt of the above referenced Direction, Crane shall vacate their Claim for Lien bearing Registration Number 19909.
4. Crane shall execute a Full and Final Release (a copy of which forms Schedule "B" to this Agreement) in favour of ECCL releasing ECCL from further claims in this matter.
5. Crane shall withdraw any and all claims made in relation to any bond(s) maintained by ECCL and Crane shall not make any further claims of this nature in the future.

IN WITNESS WHEREOF this Agreement has been executed by the parties at the times and places hereinafter set forth.

EXECUTED at the City of
St. John's, in the Province of
Newfoundland and Labrador, this
14 day of October, 2021


Witness

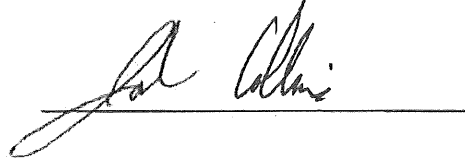
J. Michael Cabot
Barrister, NL

EXECUTED at the City of
St. John's, in the Province of
Newfoundland and Labrador, this
14 day of October, 2021

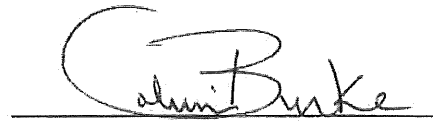

Witness

Leona Bullett
A Barrister. NL

EDWARD COLLINS CONTRACTING
LTD



CRANE CANADA CO.


CALVIN BURKE

AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY

I, **CALVIN BURKE** of the city of St. John's, in the Province of Newfoundland and Labrador,
MAKE OATH AND SAY:

1. **THAT** I am an employee and representative of Crane Canada Co. named in the annexed Settlement Agreement.
2. **THAT** I have personal knowledge of the matters contained in the annexed Settlement Agreement
3. **THAT** I am authorized by the Corporation to execute the annexed Settlement Agreement without affixing a corporate seal.
4. **THAT** I make this Affidavit conscientiously believing the information contained herein to be true, and knowing that it is a criminal offence to falsely swear an Affidavit.

SWORN BEFORE ME at the City of St. John's, in the Province of Newfoundland and Labrador, this 04 day of October, 2021.



Lee E. Ballett
A Barrister, NL.



Calvin Burke **CALVIN BURKE**

TAB U

This is **Exhibit "U"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a long horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan



May 12, 2022

Town of Placentia c/o
Matthew Craig, Stewart McKelvey
Suite 1100, Cabot Place, 100 New Gower St.
St. John's, N.L. A1C 6K3

Dear Madam/Sirs:

Re: Bond No.: 532,090 Performance and Labour & Material Payments bonds (the "Bonds")
Principal: Edward Collins Contracting Limited ("ECC")
Obligee: Town of Placentia
Project: Water System Upgrades 17-GI-20-00050 / 17-SCF-19-00129, Placentia,
Newfoundland and Labrador (the "Project")

As you know, Western Surety Company is the Surety which issued the Bonds for the Project. In consideration of the issuance of the Bonds, ECC and others executed the attached Indemnity and Security Agreement in favour of Western Surety Company.

Western Surety Company has received a number of claims on the Payment Bond 532,090 issued for the Project and has concerns regarding the use of Project funds consistent with the Indemnity and Security Agreement and provisions of the *Mechanics' Lien Act*. Currently the amounts payable on the two Labour & Material payment bond claims that have been submitted to Western Surety Company are as follows:

1. Crane Supply Co. \$204,781.32
 2. Rodco Mechanical (2014) Ltd. \$398,607.88
- We are also aware of lien(s) that have been submitted by subcontractors on this project.

In the circumstances, Western Surety Company respectfully request that all funds due and/or owing to ECC in connection with the Project not be released to ECC until arrangements can be put in place to administer the contract funds in accordance with the provisions of the Contract and the *Mechanics' Lien Act* and to ensure the payment of the unpaid ECC subcontractors. We would ask that you contact the undersigned to confirm receipt of this letter and to discuss arrangements for the payment of the remaining contract funds. We look forward to hearing from you.

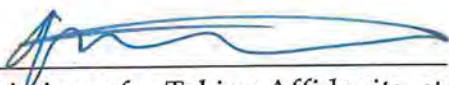
Yours truly,

James Toothill
Chief Claims Manager & Privacy Officer
Western Surety Company
Ph: 306-777-0608 | E-mail: jtoothill@westernsurety.ca

Cc: *Edward Collins Contracting Limited*

Tab V

This is **Exhibit "V"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.


A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Town of Placentia Water System Upgrades - Western Surety Bond 532,090 - Edward Collins Construction

From: Matthew Craig <mccraig@stewartmckelvey.com>

Sent: May 12, 2022 12:26 PM

To: James Toothill <jtoothill@westernsurety.ca>

Cc: Michel Prud'homme <michel.prudhomme@bbcg.ca>; MacLellan, James <jmaclellan@blg.com>

Subject: RE: Town of Placentia Water System Upgrades - Western Surety Bond 532,090 - Edward Collins Construction

James,

The Town has now confirmed that substantial completion was achieved on March 28, 2022. It is my understanding that the Town's consultant is processing the final progress payments submitted by ECC. The Town has also confirmed that it does not intend to release the holdback amount while liens remain outstanding.

Any update you are able to provide with respect to the status of discussions between Western Surety and ECC's subcontractors would be greatly appreciated.

Best regards,
Matt

Matthew N. Craig

Partner
Stewart McKelvey
D: 709.570.8827
C: 709.725.2501

TAB W

This is **Exhibit "W"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'J. [unclear]', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan



ORR | CABOT
CROSBIE | OLEY
LAW

May 13, 2022

VIA EMAIL pguaragna@millerthomson.com

Without Prejudice

Miller Thomson LLP

100 New Park Place, Suite 700
Vaughn, Ontario, L4K 0H9

Attention: Paul Guaragna

Dear Mr. Guaragna:

Regarding: Our Client – Edward Collins Contracting Limited ("**ECC**")
Your Client – Crane Canada Co.
Settlement Agreement – October 7, 2021 (the "**Settlement Agreement**")

We write further to your correspondence of May 11, 2022 and thank-you for same.

As you know, ECC and Crane did enter into a Settlement Agreement on or about October 7, 2021. Pursuant to the terms of that agreement, Crane agreed to accept payment from proceeds held by the Town of Placentia (the "**Town**") from the holdback maintained on the project. We note that the Town did participate in the Settlement Agreement, confirming to our office in written correspondence dated September 28, 2021, that the Town would retain the holdback subject to further direction from ECC. On October 6, 2021, my office forwarded the Direction to Pay to the Town confirming ECC's direction to pay Crane, in keeping with ECC's obligations under the Settlement Agreement.

Regarding the completion of the project, I understand that Meridian issued a final certificate on May 9, 2022 to ECC and the Town to confirm substantial performance has been achieved as of March 28, 2022. The exact status of the certificate is somewhat unclear, as Meridian has added by hand an outstanding item to be resolved, and it therefore appears to identify an issue outstanding as of May 9, 2022.

In any event, it does appear that the substantial completion is either confirmed or will be shortly.

Michael Cabot | Partner

Direct 709 702 8902 Fax 709 702 8901 Email michael.cabot@occolaw.com
55 Duckworth Street, St. John's, NL A1C 1E6



ORR | CABOT
CROSBIE | OLEY
LAW

With respect to payment to your client, I note that the release of any holdback funds is a decision under the Town's purview as project owner. As part of the Settlement Agreement my client provided a Direction to Pay Crane to the Town, however, ECC has no further authority to instruct the Town to release holdback funds to your client.

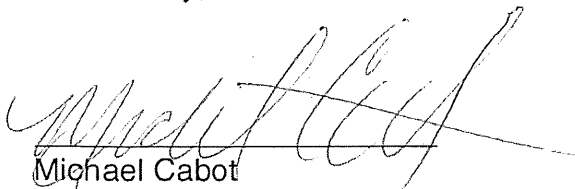
More generally, we understand Rodco Mechanical (2014) Ltd. has caused a Claim for Lien and Certificate of Action filed with the Supreme Court of Newfoundland and Labrador, General Division bearing court file number 2022 01G 0563 in the amount of \$508,271.50.

As a result, it appears that there are competing claims by Crane and Rodco as against the holdback funds for this project.

As you will appreciate, my client has no authority to resolve the relative priority of these claims. As a result, we suggest that your client's request for payment be directed to the Town.

We trust this answers your inquiry.

Yours Truly,



Michael Cabot

cc. James Toothill
Western Surety Company
Via email JToothill@westernsurety.ca

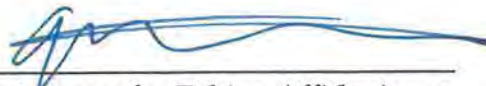
cc. Matthew Craig
Stewart McKelvey
Counsel for the Town of Placentia
Via email mcraig@stewartmckelvey.com

Michael Cabot | Partner

Office 709 702 8902 Fax 709 702 8901 Email michael.cabot@occolaw.com
55 Duckworth Street, St. John's, NL A1C 1E6

TAB X

This is **Exhibit "X"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

From: Guaragna, Paul <pguaragna@millerthomson.com>

Sent: May 17, 2022 2:49 PM

To: MacLellan, James <JMACLELLAN@blg.com>

Cc: Muchynski, Stanley <Stanley.Muchynski@cranesupply.com>

Subject: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]

Good afternoon James,

I hope that you and yours are keeping well.

Further to our email exchange below, attached is an email from counsel for the Town confirming that substantial completion was reached on March 28, 2022. More than 30 days have passed and therefore, it is our understanding that the holdback is now payable to ECC, although those funds may be consumed by the lien claimant, Rodco, pursuant to Rodco's lien dated December 3, 2021.

ECC is in breach of its settlement agreement with Crane Canada, attached for your reserve reference. Accordingly, Crane Canada looks forward to receiving payment in the amount of \$201,219.90 (being \$178,070.71 plus HST) from Western Surety promptly.

We look forward to hearing from you.

PAUL GUARAGNA

Partner

Miller Thomson LLP

100 New Park Place, Suite 700

Vaughan, Ontario L4K 0H9

Direct Line: +1 905.532.6679

Fax: +1 905.660.0139

Email: pguaragna@millerthomson.com

millerthomson.com



MILLER THOMSON
AVOCATS | LAWYERS

Please consider the environment before printing this email.

TAB Y

This is **Exhibit "Y"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

From: Michael Cabot <michael.cabot@occolaw.com>
Sent: May 26, 2022 3:02 PM
To: C. Brad Leyte <bleyte@nf.aibn.com>; James Toothill <JToothill@westernsurety.ca>
Cc: MacLellan, James <JMACLELLAN@blg.com>; Michel Prud'homme <michel.prudhomme@bbcg.ca>
Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Without Prejudice

Brad –

My understanding was that the agreement did not provide a payment schedule per se. Rather the idea was that as a means to bring this to a conclusion, Rodco releases their lien - in turn Crane Supply gets \$206,000 from the holdback. Rodco would then take the balance of the holdback (\$53,000). This would happen immediately, pending the completion of any documentation as may be required to effect same.

If ECC does not repay Rodco the balance in full by July 28, the bonding company remains available to satisfy that claim.

This would resolve the matter and avoid any risk that there are additional delays, or more problematically litigation, which would only increase the costs to all involved and cause potential further payment delays.

That is my understanding of the discussions between our clients and it seems like a reasonable resolution; given Western Surety remains in place, but cannot make payment in any event until the expiry of 90 days. As such, this would see your client get paid approximately \$53,000 now and the balance in 90 days, whether that is from ECC or the bond.

I happy to discuss this further if that would be helpful.

Kind Regards,
Mike

Michael Cabot
Partner

Direct 709 702 8902 Fax 709 702 8901
Email michael.cabot@occolaw.com
Web www.occolaw.com



ORR | CABOT
CROSBIE | OLEY
LAW

55 Duckworth St., St. John's, NL A1C 1E6

TAB Z

This is **Exhibit "Z"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'J. [unclear]', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

From: Michael Cabot <michael.cabot@occolaw.com>

Sent: May 27, 2022 1:53 PM

To: C. Brad Leyte <bleyte@nf.aibn.com>; James Toothill <JToothill@westernsurety.ca>; MacLellan, James <JMACLELLAN@blg.com>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

[External / Externe]

Brad –

I have asked my client to confirm the figures, and I am advised as follows:

Amount in holdback: \$244,977.53

Amount due to Crane: \$204,781.36

Balance to Rodco: \$40,196.17

I have included James MacLellan on this email, who acts for Western.

James – can you confirm what assurance Western may be agreeable to provide in answer to Brad's query below?

Mike

Michael Cabot
Partner

Direct 709 702 8902 Fax 709 702 8901

Email michael.cabot@occolaw.com

Web www.occolaw.com



55 Duckworth St., St. John's, NL A1C 1E6

TAB AA

This is **Exhibit "AA"** to the Affidavit of JAMES TOOTHILL of the City of Regina, in the Province of Saskatchewan, sworn before me at the City of Regina, in the Province of Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

On 30/05/2022 7:20 a.m., Michael Cabot wrote:

Hi Brad -

I understand that the amounts in my email include all outstanding claims. There is no other company seeking any payments here, including ECC.

Michael Cabot
Partner

From: C. Brad Leyte <bleyte@nf.aibn.com>

Sent: Friday, May 27, 2022 4:42:21 PM

To: Michael Cabot <michael.cabot@occolaw.com>; MacLellan, James <JMACLELLAN@blg.com>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Without Prejudice

Mike,

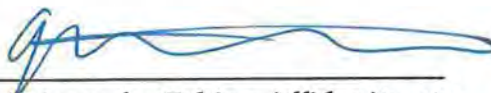
Are there no other outstanding claims (other than on the holdback)?

ECC has no claims of its own?

Brad

TAB BB

This is **Exhibit "BB"** to the Affidavit of JAMES TOOTHILL of the City of Regina, in the Province of Saskatchewan, sworn before me at the City of Regina, in the Province of Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject:

FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

From: C. Brad Leyte <bleyte@nf.aibn.com>

Date: Monday, May 30, 2022 at 9:00 AM

To: Michael Cabot <michael.cabot@occolaw.com>, MacLellan, James <JMACLELLAN@blg.com>

Cc: James Toothill <JToothill@westernsurety.ca>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Without Prejudice

Mike,

Thank you. My client is agreeable to moving forward.

I assume you will be drafting the agreement?

Brad

On 30/05/2022 7:20 a.m., Michael Cabot wrote:

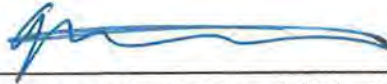
Hi Brad -

I understand that the amounts in my email include all outstanding claims. There is no other company seeking any payments here, including ECC.

Michael Cabot
Partner

TAB CC

This is **Exhibit "CC"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

From: C. Brad Leyte <bleyte@nf.aibn.com>

Date: Friday, June 3, 2022 at 12:05 PM

To: Michael Cabot <michael.cabot@occolaw.com>, MacLellan, James <JMACLELLAN@blg.com>

Cc: James Toothill <JToothill@westernsurety.ca>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Thank you. A few observations:

1. Clause 2(a) : the figure here should be \$358,411.71.
2. Clause 3(a) should read "proceedings" instead of "proceeds". And it should not apply to bar legal proceedings intended to enforce the settlement agreement.
3. Clause 4(2) : the figure here should be \$358,411.71.
4. Clause 5(b) should read "in complete" instead of "incomplete".

The Town is not a party to the settlement agreement, as written, but without its involvement I think we ought to have the Town's independent written confirmation that it will pay out the holdback as is being proposed.

Brad

On 03/06/2022 9:31 a.m., Michael Cabot wrote:

Hi Brad –

For your review, please see attached a draft agreement.

Kind Regards,

Mike

Michael Cabot
Partner

Direct 709 702 8902 Fax 709 702 8901

Email michael.cabot@occolaw.com

Web www.occolaw.com

THIS EMAIL TRANSMISSION IS SOLICITOR-CLIENT PRIVILEGED and is intended only for the person(s) to whom it is addressed. Any other distribution, copying or disclosure is strictly prohibited. If you receive this message in error please notify us by return email and delete the message and any attachments received with it.

SETTLEMENT AGREEMENT entered into with effect as of this ____ day of June, 2022.

BETWEEN:

EDWARD COLLINS CONTRACTING LIMITED, a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

(**"ECC"**)

AND:

RODCO MECHANICAL (2014) LTD. a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

(**"Rodco"**)

AND:

WESTERN SURETY COMPANY, a corporation duly incorporated and existing under the laws of the Province of Ontario,

(**"Western"**)

WHEREAS

- A. The Town of Placentia and ECC entered into an agreement for the supply of certain construction works and services dated March 19, 2021 (the **"Contract"**).
- B. Pursuant to the Contract, ECC agreed to supply the construction works and services necessary in connection with a water system upgrade project being undertaken in the Town of Placentia (the **"Project"**).
- C. ECC engaged Rodco to provide certain works and services in connection with the completion of the Contract.
- D. The Town of Placentia is in possession of a holdback in relation to the Project in the amount of \$244,977.53.
- E. Rodco has caused to be registered a mechanics' lien bearing Lien No. 19963 and had further caused a Certificate of Action to be registered with the Supreme Court of Newfoundland and Labrador General Division bearing court file no. 2022 01G 0563. Rodco has also issued a mechanics' lien bearing Lien No 20096.
- F. Western has issued a labour and materials bond in relation to the Project (the **"Bond"**).
- G. Rodco has submitted a claim under the labour and materials bond which bond was issued by Western Surety Company for amounts due and owing to Rodco by ECC.
- H. ECC, Rodco and Western (the **"Parties"**) have agreed to enter into this Settlement Agreement (the **"Settlement Agreement"**), for purposes of setting out the terms and

conditions of the agreement reached between ECC, Rodco and Western with respect to the completion of the Project and release of holdback.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth and contained, and other good and valuable consideration passing between ECC and Rodco (hereinafter collectively referred to as the "**Parties**"), the Parties agree as follows:

AGREEMENT

1. The Parties acknowledge and agree that the holdback can be released and paid as follows:
 - (a) Crane Supply to be paid from the holdback the amount of \$204,781.32.
 - (b) Rodco to be paid from the holdback the amount of \$40,196.17
2. ECC agrees to:
 - (a) Pay the balance of monies due and owing to Rodco in the amount of [\$] to Rodco on or before July 28, 2022.
 - (b) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of ECC under this Settlement Agreement.
3. Rodco agrees to:
 - (a) Discharge any and all mechanics' liens as registered in connection with the Project, including but not limited to claim for lien No. 19963 and Certificate of Action bearing court file no. 2022 01G 0563 and lien NO. 20096.
 - (a) Not register any additional mechanics' liens or initiate legal proceeds in relation to the Contract.
 - (b) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of Rodco under this Settlement Agreement and to take all steps required to have the holdback for the Project released.
4. Western Agrees to:
 - (a) Make full payment to Rodco in the amount of [\$] less any payments made by ECC following the date of these Minutes of Settlement that remains due to Rodco by ECC as outstanding on July 28, 2022 within 7 business days of Rodco providing written notice to Western of the outstanding amount.
5. General Terms
 - (a) This Settlement Agreement, including the schedules hereto, embodies the entire Agreement between the Parties concerning the subject matters mentioned herein, and supersedes all previous discussions, correspondence, understandings or agreements, whether written or oral, with respect to such matters.

- (b) Rodco and ECC agree that this Settlement Agreement is intended to be incomplete satisfaction of all matters arising between Rodco and ECC in relation to the Contract and/or the Project.
- (c) The invalidity of any of the provisions of this Settlement Agreement, or any of the provisions of the documents attached as schedules to this Settlement Agreement, shall not invalidate or affect any of the other provisions of this Settlement Agreement, which shall remain in full force and effect.
- (d) This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- (e) None of the terms, conditions or provisions of this Settlement Agreement shall be changed, waived, varied, modified or altered unless done so in writing and signed by all of the Parties.
- (f) This Settlement Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Newfoundland and Labrador, and the laws of Canada applicable therein, and the Parties shall attorn to the jurisdiction of the courts of the Province of Newfoundland and Labrador.
- (g) This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together constitute one and the same instrument. This Settlement Agreement may be executed and transmitted by facsimile or by email attachment in .pdf.

[Remainder of page intentionally blank. Signature pages to follow.]

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed as of the day and year first before written.

Witness

**EDWARD COLLINGS CONTRACTING
LIMITED**

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the Town

Witness

RODCO MECHANICAL (2014) LTD.

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

Witness

WESTERN SURETY COMPANY

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

TAB DD

This is **Exhibit "DD"** to the Affidavit of JAMES TOOTHILL of the City of Regina, in the Province of Saskatchewan, sworn before me at the City of Regina, in the Province of Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a long horizontal stroke with a small upward flick at the end.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject:

FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

On 07/06/2022 1:04 p.m., Michael Cabot wrote:

Hi Brad –

Thank-you for your comments and corrections on the Agreement.

I have revised the Agreement as per your email below, which you will find attached.

This seems to conclude the language of the Agreement. I am sure everyone is wanting this resolved at this stage, and what remains is signing the agreement by all parties and then discharges of the lien(s) from Rodco – can you confirm when we can expect to receive those?

I can make arrangements for my client's signature – are we satisfied to compete the agreement in parts an counterparts?

Regarding getting confirmation from the Town regarding release of the holdback, we can certainly loop them in on this to ensure there are no issues on their end. I can send them an email in that regard, or you can if you prefer – just let me know and we can button that up right away.

Does that cover it? If not, just let me know.

Let me say, I apologize for not getting a draft of this back more quickly, but I had a personal matter come up that has me out of the office and playing catch up.

Kind Regards,
Mike

Michael Cabot
Partner

Direct 709 702 8902 Fax 709 702 8901

Email michael.cabot@occolaw.com

Web www.occolaw.com



ORR | CABOT
CROSBIE | OLEY
LAW

55 Duckworth St., St. John's, NL A1C 1E6

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SETTLEMENT AGREEMENT entered into with effect as of this ____ day of June, 2022.

BETWEEN: **EDWARD COLLINS CONTRACTING LIMITED**, a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

("ECC")

AND: **RODCO MECHANICAL (2014) LTD.** a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

("Rodco")

AND: **WESTERN SURETY COMPANY**, a corporation duly incorporated and existing under the laws of the Province of Ontario,

("Western")

WHEREAS

- A. The Town of Placentia and ECC entered into an agreement for the supply of certain construction works and services dated March 19, 2021 (the "**Contract**").
- B. Pursuant to the Contract, ECC agreed to supply the construction works and services necessary in connection with a water system upgrade project being undertaken in the Town of Placentia (the "**Project**").
- C. ECC engaged Rodco to provide certain works and services in connection with the completion of the Contract.
- D. The Town of Placentia is in possession of a holdback in relation to the Project in the amount of \$244,977.53.
- E. Rodco has caused to be registered a mechanics' lien bearing Lien No. 19963 and had further caused a Certificate of Action to be registered with the Supreme Court of Newfoundland and Labrador General Division bearing court file no. 2022 01G 0563. Rodco has also issued a mechanics' lien bearing Lien No 20096.
- F. Western has issued a labour and materials bond in relation to the Project (the "**Bond**").
- G. Rodco has submitted a claim under the labour and materials bond which bond was issued by Western Surety Company for amounts due and owing to Rodco by ECC.
- H. ECC, Rodco and Western (the "**Parties**") have agreed to enter into this Settlement Agreement (the "**Settlement Agreement**"), for purposes of setting out the terms and

conditions of the agreement reached between ECC, Rodco and Western with respect to the completion of the Project and release of holdback.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth and contained, and other good and valuable consideration passing between ECC and Rodco (hereinafter collectively referred to as the "**Parties**"), the Parties agree as follows:

AGREEMENT

1. The Parties acknowledge and agree that the holdback can be released and paid as follows:
 - (a) Crane Supply to be paid from the holdback the amount of \$204,781.32.
 - (b) Rodco to be paid from the holdback the amount of \$40,196.17
2. ECC agrees to:
 - (a) Pay the balance of monies due and owing to Rodco in the amount of \$358,411.71 to Rodco on or before July 28, 2022.
 - (b) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of ECC under this Settlement Agreement.
3. Rodco agrees to:
 - (a) Discharge any and all mechanics' liens as registered in connection with the Project, including but not limited to claim for lien No. 19963 and Certificate of Action bearing court file no. 2022 01G 0563 and lien No. 20096.
 - (b) Not register any additional mechanics' liens or initiate legal proceedings in relation to the Contract, with the exception of legal proceedings to enforce this Settlement Agreement.
 - (c) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of Rodco under this Settlement Agreement and to take all steps required to have the holdback for the Project released.
4. Western Agrees to:
 - (a) Make full payment to Rodco in the amount of \$358,411.71 less any payments made by ECC following the date of these Minutes of Settlement that remains due to Rodco by ECC as outstanding on July 28, 2022 within 7 business days of Rodco providing written notice to Western of the outstanding amount.
5. General Terms
 - (a) This Settlement Agreement, including the schedules hereto, embodies the entire Agreement between the Parties concerning the subject matters mentioned herein, and supersedes all previous discussions, correspondence,

understandings or agreements, whether written or oral, with respect to such matters.

- (b) Rodco and ECC agree that this Settlement Agreement is intended to be in complete satisfaction of all matters arising between Rodco and ECC in relation to the Contract and/or the Project.
- (c) The invalidity of any of the provisions of this Settlement Agreement, or any of the provisions of the documents attached as schedules to this Settlement Agreement, shall not invalidate or affect any of the other provisions of this Settlement Agreement, which shall remain in full force and effect.
- (d) This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- (e) None of the terms, conditions or provisions of this Settlement Agreement shall be changed, waived, varied, modified or altered unless done so in writing and signed by all of the Parties.
- (f) This Settlement Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Newfoundland and Labrador, and the laws of Canada applicable therein, and the Parties shall attorn to the jurisdiction of the courts of the Province of Newfoundland and Labrador.
- (g) This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together constitute one and the same instrument. This Settlement Agreement may be executed and transmitted by facsimile or by email attachment in .pdf.

[Remainder of page intentionally blank. Signature pages to follow.]

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed as of the day and year first before written.

Witness

EDWARD COLLINGS CONTRACTING LIMITED

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the Town

Witness

RODCO MECHANICAL (2014) LTD.

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

Witness

WESTERN SURETY COMPANY

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

TAB EE

This is **Exhibit "EE"** to the Affidavit of JAMES TOOTHILL of the City of Regina, in the Province of Saskatchewan, sworn before me at the City of Regina, in the Province of Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, consisting of a stylized 'J' followed by a series of loops and a long horizontal stroke.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

From: C. Brad Leyte <bleyte@nf.aibn.com>

Sent: Wednesday, June 8, 2022 10:42:05 AM

To: Michael Cabot <michael.cabot@occolaw.com>; MacLellan, James <JMACLELLAN@blg.com>

Cc: James Toothill <JToothill@westernsurety.ca>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Mike,

There should be no problem signing in counterparts.

If you could please coordinate with the Town to obtain confirmation in writing of their willingness to proceed on the proposed basis.

My client can execute discharges of the liens, to be held in trust until all necessary signatures have been obtained.

Brad

TAB FF

This is **Exhibit "FF"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'J. [unclear]', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject:

FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

On 08/06/2022 2:11 p.m., Michael Cabot wrote:

Brad –

I spoke with Matthew Craig, counsel for the Town. He advises that the town want to be cooperative here in getting this completed and funds released.

I understood that he was going to review his file, but he did ask that I raise the prospect of getting a release from companies involved – both Rodco and Crane.

Can you confirm your client's position in that regard?

Mike

Michael Cabot
Partner

Direct 709 702 8902 Fax 709 702 8901
Email michael.cabot@occolaw.com
Web www.occolaw.com



ORR | CABOT
CROSBIE | OLEY
LAW

55 Duckworth St., St. John's, NL A1C 1E6

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From: C. Brad Leyte <bleyte@nf.aibn.com>

Date: Wednesday, June 8, 2022 at 10:42 AM

To: Michael Cabot <michael.cabot@occolaw.com>, MacLellan, James <JMACLELLAN@blg.com>

Cc: James Toothill <JToothill@westernsurety.ca>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Mike,

There should be no problem signing in counterparts.

If you could please coordinate with the Town to obtain confirmation in writing of their willingness to proceed on the proposed basis.

My client can execute discharges of the liens, to be held in trust until all necessary signatures have been obtained.

Brad

TAB GG

This is **Exhibit "GG"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Town of Placentia Water System Upgrades

From: Michael Cabot <michael.cabot@occolaw.com>

Sent: Thursday, June 23, 2022 12:00 PM

To: Matthew Craig <mcraig@stewartmckelvey.com>; Michel Prud'homme <michel.prudhomme@bbcg.ca>; James Toothill <JToothill@westernsurety.ca>; MacLellan, James <JMACLELLAN@blg.com>

Subject: Re: Town of Placentia Water System Upgrades

This is an external email.

Hi Matt –

For clarification, we exchanged a settled the terms of a settlement agreement with Rodco on June 7. This included the discharge of any liens by Rodco.

The draft was exchanged and all that remained was execution of the agreement.

I have emailed Brad/Rodco about that this afternoon, but I have been operating on the basis that the agreement with Rodco only requires signatures, and is otherwise resolved.

I placed a call to Brad this afternoon and understand that he is out with Covid, expected back next week.

Hopefully we can get this sorted immediately on his return.

Michael Cabot
Partner

Direct 709 702 8902 Fax 709 702 8901

Email michael.cabot@occolaw.com

Web www.occolaw.com



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ТАВ НН

This is **Exhibit "HH"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.
Attachments: RE: Western Surety - ECC - Crane Town of Placentia Water System Upgrades [MTDMS-Legal.FID10197120]; RE: Town of Placentia Water System Upgrades

From: C. Brad Leyte <bleyte@nf.aibn.com>

Sent: June 28, 2022 6:54 AM

To: Michael Cabot <michael.cabot@occolaw.com>; JMACLELLAN@blg.com; James Toothill <JToothill@westernsurety.ca>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Hi Michael,

My client attended with me this morning to execute the Agreement and the Discharges of Liens.

I have yet to receive anything from the Town or Crane with regard to proposed Releases.

Brad

On 23/06/2022 2:50 p.m., Michael Cabot wrote:

Hi Brad –

I am following up on my email below and the attached agreement.

I understood that the attached draft is acceptable to all parties, but it remains to be executed.

Can you confirm, so we can get this completed and in turn make arrangements with the Town (Matt Craig) to have the funds released.

I note that Matt had previously inquired about releases from Rodco and Crane. I know there was a draft sent to Crane, but I Matt advised he has not had any correspondence with you in relation to such a release.

I have confirmed with the Town and they will also require a release from Rodco, so I am going to ask that they send that to your attention ASAP. I recall that you previously indicated that your client had no issue with that.

Once the above is completed, I understand that the Town is agreeable to release of funds.

I look forward to your response, and hopefully we can get this concluded.

Kind Regards,

Mike

Michael Cabot
Partner

Direct 709 702 8902 Fax 709 702 8901

Email michael.cabot@occolaw.com

Web www.occolaw.com



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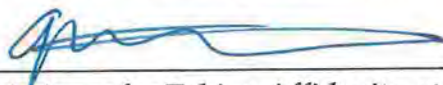
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If you no longer wish to receive electronic messages from Western Surety Company, contact us at wscinfo@westernsurety.ca.

TAB II

This is **Exhibit "II"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'J. [unclear]', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

From: James Toothill <JToothill@westernsurety.ca>

Date: Monday, July 4, 2022 at 12:29 PM

To: Michael Cabot <michael.cabot@occolaw.com>, C. Brad Leyte <bleyte@nf.aibn.com>, Punzo, Andrew <APunzo@blg.com>

Cc: MacLellan, James <JMACLELLAN@blg.com>, Michel Prud'homme <michel.prudhomme@bbcg.ca>

Subject: RE: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Hi Mike,

It was my understanding that Western did not need to sign the agreement. The initial draft that I reviewed did not have a signing place for Western. We have not received a final version, however if there is a place for Western to sign can you please forward to either myself or Andrew Punzo and we will get it signed.

Please note, Andrew Punzo from BLG is now handling this matter for Western. Please include Andrew in all emails moving forward. You do not have to include James M from BLG in future emails.

Thanks in advance,

James



James Toothill FCIP, CRM • Chief Claims Manager & Privacy Officer

Western Surety Company

t. (306) 777-0608 • 1 (800) 475-4454

jtoothill@westernsurety.ca • www.westernsurety.ca

2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

 Save a tree. Keep it on the screen.

From: Michael Cabot <michael.cabot@occolaw.com>

Sent: July 4, 2022 8:20 AM

To: James Toothill <JToothill@westernsurety.ca>; MacLellan, James <JMACLELLAN@blg.com>; C. Brad Leyte <bleyte@nf.aibn.com>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

James –

Matt Craig (counsel for the Town) asked whether WS had signed the settlement agreement. Can you confirm?

Kind Regards,

Mike

Michael Cabot
Partner

Direct 709 702 8902 Fax 709 702 8901

Email michael.cabot@occolaw.com

Web www.occolaw.com



ORR | CABOT
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55 Duckworth St., St. John's, NL A1C 1E6

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TAB JJ

This is **Exhibit "JJ"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject:

FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Hi James –

Welcome aboard Andrew.

I have attached the final version agreement, that has WS as a party.

I understand that Rodco has signed for their part and I am making arrangements for ECC to do the same. We are proceeding in counterparts.

Matt Craig sent along additional documents today, so this should be moving towards a conclusion.

Kind Regards,
Mike

Michael Cabot
Partner

Direct 709 702 8902 Fax 709 702 8901

Email michael.cabot@occolaw.com

Web www.occolaw.com



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SETTLEMENT AGREEMENT entered into with effect as of this ____ day of June, 2022.

BETWEEN: **EDWARD COLLINS CONTRACTING LIMITED**, a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

("ECC")

AND: **RODCO MECHANICAL (2014) LTD.** a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

("Rodco")

AND: **WESTERN SURETY COMPANY**, a corporation duly incorporated and existing under the laws of the Province of Ontario,

("Western")

WHEREAS

- A. The Town of Placentia and ECC entered into an agreement for the supply of certain construction works and services dated March 19, 2021 (the "**Contract**").
- B. Pursuant to the Contract, ECC agreed to supply the construction works and services necessary in connection with a water system upgrade project being undertaken in the Town of Placentia (the "**Project**").
- C. ECC engaged Rodco to provide certain works and services in connection with the completion of the Contract.
- D. The Town of Placentia is in possession of a holdback in relation to the Project in the amount of \$244,977.53.
- E. Rodco has caused to be registered a mechanics' lien bearing Lien No. 19963 and had further caused a Certificate of Action to be registered with the Supreme Court of Newfoundland and Labrador General Division bearing court file no. 2022.01G 0563. Rodco has also issued a mechanics' lien bearing Lien No 20096.
- F. Western has issued a labour and materials bond in relation to the Project (the "**Bond**").
- G. Rodco has submitted a claim under the labour and materials bond which bond was issued by Western Surety Company for amounts due and owing to Rodco by ECC.
- H. ECC, Rodco and Western (the "**Parties**") have agreed to enter into this Settlement Agreement (the "**Settlement Agreement**"), for purposes of setting out the terms and

conditions of the agreement reached between ECC, Rodco and Western with respect to the completion of the Project and release of holdback.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth and contained, and other good and valuable consideration passing between ECC and Rodco (hereinafter collectively referred to as the "**Parties**"), the Parties agree as follows:

AGREEMENT

1. The Parties acknowledge and agree that the holdback can be released and paid as follows:
 - (a) Crane Supply to be paid from the holdback the amount of \$204,781.32.
 - (b) Rodco to be paid from the holdback the amount of \$40,196.17
2. ECC agrees to:
 - (a) Pay the balance of monies due and owing to Rodco in the amount of \$358,411.71 to Rodco on or before July 28, 2022.
 - (b) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of ECC under this Settlement Agreement.
3. Rodco agrees to:
 - (a) Discharge any and all mechanics' liens as registered in connection with the Project, including but not limited to claim for lien No. 19963 and Certificate of Action bearing court file no. 2022 01G 0563 and lien No. 20096.
 - (b) Not register any additional mechanics' liens or initiate legal proceedings in relation to the Contract, with the exception of legal proceedings to enforce this Settlement Agreement.
 - (c) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of Rodco under this Settlement Agreement and to take all steps required to have the holdback for the Project released.
4. Western Agrees to:
 - (a) Make full payment to Rodco in the amount of \$358,411.71 less any payments made by ECC following the date of these Minutes of Settlement that remains due to Rodco by ECC as outstanding on July 28, 2022 within 7 business days of Rodco providing written notice to Western of the outstanding amount.
5. General Terms
 - (a) This Settlement Agreement, including the schedules hereto, embodies the entire Agreement between the Parties concerning the subject matters mentioned herein, and supersedes all previous discussions, correspondence,

understandings or agreements, whether written or oral, with respect to such matters.

- (b) Rodco and ECC agree that this Settlement Agreement is intended to be in complete satisfaction of all matters arising between Rodco and ECC in relation to the Contract and/or the Project.
- (c) The invalidity of any of the provisions of this Settlement Agreement, or any of the provisions of the documents attached as schedules to this Settlement Agreement, shall not invalidate or affect any of the other provisions of this Settlement Agreement, which shall remain in full force and effect.
- (d) This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- (e) None of the terms, conditions or provisions of this Settlement Agreement shall be changed, waived, varied, modified or altered unless done so in writing and signed by all of the Parties.
- (f) This Settlement Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Newfoundland and Labrador, and the laws of Canada applicable therein, and the Parties shall attorn to the jurisdiction of the courts of the Province of Newfoundland and Labrador.
- (g) This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together constitute one and the same instrument. This Settlement Agreement may be executed and transmitted by facsimile or by email attachment in .pdf.

[Remainder of page intentionally blank. Signature pages to follow.]

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed as of the day and year first before written.

Witness

EDWARD COLLINGS CONTRACTING LIMITED

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the Town

Witness

RODCO MECHANICAL (2014) LTD.

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

Witness

WESTERN SURETY COMPANY

Per: _____

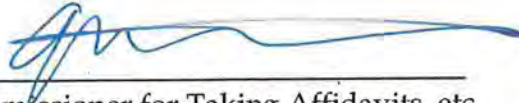
Name: _____

Title: _____

I/We have the authority to bind the corporation

TAB KK

This is **Exhibit "KK"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a long, horizontal, wavy line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

From: Michael Cabot <michael.cabot@occolaw.com>

Sent: July 6, 2022 10:11 AM

To: Punzo, Andrew <APunzo@blg.com>; James Toothill <JToothill@westernsurety.ca>; C. Brad Leyte <bleyte@nf.aibn.com>

Cc: Michel Prud`homme <michel.prudhomme@bbcg.ca>; Borgo, Mark <MBorgo@blg.com>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

[External / Externe]

Andrew –

Just checking in on this to let you know that ECC has signed this agreement.

I understand that Rodco has done the same.

Have you had an opportunity to review it?

Mike

Michael Cabot
Partner

Direct 709 702 8902 Fax 709 702 8901

Email michael.cabot@occolaw.com

Web www.occolaw.com



ORR | CABOT
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55 Duckworth St., St. John's, NL A1C 1E6

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TAB LL

This is **Exhibit "LL"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'A. [unclear]', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd. [BLG-DOCUMENTS.FID8425518]
Attachments: Settlement Agreement (BLG Approved).doc; Settlement Agreement Blackline(130647952.1).pdf; 2022-06-07 Settlement Agreement FINAL[82] (130503556.1).doc

From: Borgo, Mark <MBorgo@blg.com>
Sent: February 9, 2023 12:07 PM
To: Khalid, Bushra <BKhalid@blg.com>
Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd. [BLG-DOCUMENTS.FID8425518]

From: James Toothill <JToothill@westernsurety.ca>
Sent: July 13, 2022 12:26 PM
To: Michael Cabot <michael.cabot@occolaw.com>
Cc: Punzo, Andrew <APunzo@blg.com>; Borgo, Mark <MBorgo@blg.com>
Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd. [BLG-DOCUMENTS.FID8425518]

[External / Externe]

Hi Michael,

Please see the below comments from our counsel, as well as the attached blackline copy of the agreement. There are a couple items on the original agreement that we think are worthwhile changing, especially from Western's perspective. Can you advise if you are ok with these changes and recirculating this for signatures? Or if that may cause some hardship with the parties.

Thanks,

James



James Toothill FCIP, CRM • **Chief Claims Manager & Privacy Officer**
Western Surety Company
t. (306) 777-0608 • 1 (800) 475-4454
jtoothill@westernsurety.ca • www.westernsurety.ca
2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

SETTLEMENT AGREEMENT entered into with effect as of this ____ day of June, 2022.

BETWEEN:

EDWARD COLLINS CONTRACTING LIMITED, a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

(**"ECC"**)

AND:

RODCO MECHANICAL (2014) LTD. a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

(**"Rodco"**)

AND:

WESTERN SURETY COMPANY, a corporation duly incorporated and existing under the laws of the Province of Ontario,

(**"Western"**)

WHEREAS

- A. The Town of Placentia and ECC entered into an agreement for the supply of certain construction works and services dated March 19, 2021 (the **"Contract"**).
- B. Pursuant to the Contract, ECC agreed to supply the construction works and services necessary in connection with a water system upgrade project being undertaken in the Town of Placentia (the **"Project"**).
- C. ECC engaged Rodco to provide certain works and services in connection with the completion of the Contract.
- D. The Town of Placentia is in possession of a holdback in relation to the Project in the amount of \$244,977.53.
- E. Rodco has caused to be registered a mechanics' lien bearing Lien No. 19963 and had further caused a Certificate of Action to be registered with the Supreme Court of Newfoundland and Labrador General Division bearing court file no. 2022 01G 0563. Rodco has also issued a mechanics' lien bearing Lien No 20096.
- F. Western has issued a labour and material payment bond in relation to the Contract (the **"Bond"**).
- G. Rodco has submitted a claim under the Bond.
- H. ECC, Rodco and Western (the **"Parties"**) have agreed to enter into this Settlement Agreement (the **"Settlement Agreement"**), for purposes of setting out the terms and

conditions of the agreement reached between ECC, Rodco and Western with respect to the completion of the Project and release of holdback.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth and contained, and other good and valuable consideration passing between the Parties, the Parties agree as follows:

AGREEMENT

1. The Parties acknowledge and agree that the holdback can be released and paid as follows:
 - (a) Crane Supply to be paid from the holdback the amount of \$204,781.32.
 - (b) Rodco to be paid from the holdback the amount of \$40,196.17
2. ECC agrees to:
 - (a) Pay the balance of monies due and owing to Rodco in the amount of \$358,411.71 to Rodco on or before July 28, 2022 in full satisfaction of Rodco's claims against ECC and Western.
 - (b) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of ECC under this Settlement Agreement.
3. Rodco agrees to:
 - (a) Discharge any and all mechanics' liens as registered in connection with the Project, including but not limited to claim for lien No. 19963 and Certificate of Action bearing court file no. 2022 01G 0563 and lien No. 20096.
 - (b) Not register any additional mechanics' liens or initiate legal proceedings in relation to the Contract, with the exception of legal proceedings to enforce this Settlement Agreement.
 - (c) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of Rodco under this Settlement Agreement and to take all steps required to have the holdback for the Project released.
4. Western agrees to:
 - (a) In exchange for a Release and Assignment from Rodco in Western's standard form, make full payment to Rodco in the amount of \$358,411.71 less any payments made by ECC following the date of this Settlement Agreement that remains due to Rodco by ECC as outstanding on July 28, 2022 within 7 business days of Rodco providing written notice to Western of the outstanding amount.
5. General Terms
 - (a) This Settlement Agreement, including the schedules hereto, embodies the entire Agreement between the Parties concerning the subject matters mentioned

herein, and supersedes all previous discussions, correspondence, understandings or agreements, whether written or oral, with respect to such matters.

- (b) Rodco and ECC agree that this Settlement Agreement is intended to be in complete satisfaction of all matters arising between Rodco, ECC and Western in relation to the Contract and/or the Project.
- (c) The invalidity of any of the provisions of this Settlement Agreement, or any of the provisions of the documents attached as schedules to this Settlement Agreement, shall not invalidate or affect any of the other provisions of this Settlement Agreement, which shall remain in full force and effect.
- (d) This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- (e) None of the terms, conditions or provisions of this Settlement Agreement shall be changed, waived, varied, modified or altered unless done so in writing and signed by all of the Parties.
- (f) This Settlement Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Newfoundland and Labrador, and the laws of Canada applicable therein, and the Parties shall attorn to the jurisdiction of the courts of the Province of Newfoundland and Labrador.
- (g) This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together constitute one and the same instrument. This Settlement Agreement may be executed and transmitted by facsimile or by email attachment in .pdf.

[Remainder of page intentionally blank. Signature pages to follow.]

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed as of the day and year first before written.

Witness

**EDWARD COLLINGS CONTRACTING
LIMITED**

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the Town

Witness

RODCO MECHANICAL (2014) LTD.

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

Witness

WESTERN SURETY COMPANY

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

SETTLEMENT AGREEMENT entered into with effect as of this ____ day of June, 2022.

BETWEEN: **EDWARD COLLINS CONTRACTING LIMITED**, a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

("ECC")

AND: **RODCO MECHANICAL (2014) LTD.** a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

("Rodco")

AND: **WESTERN SURETY COMPANY**, a corporation duly incorporated and existing under the laws of the Province of Ontario,

("Western")

WHEREAS

- A. The Town of Placentia and ECC entered into an agreement for the supply of certain construction works and services dated March 19, 2021 (the "**Contract**").
- B. Pursuant to the Contract, ECC agreed to supply the construction works and services necessary in connection with a water system upgrade project being undertaken in the Town of Placentia (the "**Project**").
- C. ECC engaged Rodco to provide certain works and services in connection with the completion of the Contract.
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- E. Rodco has caused to be registered a mechanics' lien bearing Lien No. 19963 and had further caused a Certificate of Action to be registered with the Supreme Court of Newfoundland and Labrador General Division bearing court file no. 2022 01G 0563. Rodco has also issued a mechanics' lien bearing Lien No 20096.
- F. Western has issued a labour and ~~materials~~material payment bond in relation to the ~~Project~~Contract (the "**Bond**").
- G. Rodco has submitted a claim under the ~~labour and materials bond which bond was issued by Western Surety Company for amounts due and owing to Rodco by ECC~~Bond.

- H. ECC, Rodco and Western (the "Parties") have agreed to enter into this Settlement Agreement (the "**Settlement Agreement**"), for purposes of setting out the terms and conditions of the agreement reached between ECC, Rodco and Western with respect to the completion of the Project and release of holdback.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth and contained, and other good and valuable consideration passing between ~~ECC and Rodco~~ (hereinafter collectively referred to as the "Parties"), the Parties agree as follows:

AGREEMENT

1. The Parties acknowledge and agree that the holdback can be released and paid as follows:
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 - (c) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of Rodco under this Settlement Agreement and to take all steps required to have the holdback for the Project released.
4. ~~Western Agrees~~ agrees to:
 - (a) Make in exchange for a Release and Assignment from Rodco in Western's standard form, make full payment to Rodco in the amount of \$358,411.71 less any payments made by ECC following the date of ~~these Minutes of this~~ Settlement Agreement that remains due to Rodco by ECC as outstanding on July 28, 2022 within 7 business days of Rodco providing written notice to Western of the outstanding amount.
5. General Terms

- (a) This Settlement Agreement, including the schedules hereto, embodies the entire Agreement between the Parties concerning the subject matters mentioned herein, and supersedes all previous discussions, correspondence, understandings or agreements, whether written or oral, with respect to such matters.
- (b) Rodco and ECC agree that this Settlement Agreement is intended to be in complete satisfaction of all matters arising between Rodco, ECC and ECCWestern in relation to the Contract and/or the Project.
- (c) The invalidity of any of the provisions of this Settlement Agreement, or any of the provisions of the documents attached as schedules to this Settlement Agreement, shall not invalidate or affect any of the other provisions of this Settlement Agreement, which shall remain in full force and effect.
- (d) This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- (e) None of the terms, conditions or provisions of this Settlement Agreement shall be changed, waived, varied, modified or altered unless done so in writing and signed by all of the Parties.
- (f) This Settlement Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Newfoundland and Labrador, and the laws of Canada applicable therein, and the Parties shall attorn to the jurisdiction of the courts of the Province of Newfoundland and Labrador.
- (g) This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together constitute one and the same instrument. This Settlement Agreement may be executed and transmitted by facsimile or by email attachment in .pdf.

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Witness

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LIMITED**

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the Town

Witness

RODCO MECHANICAL (2014) LTD.

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

Witness

WESTERN SURETY COMPANY

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

Document comparison by Workshare Compare on July 12, 2022 7:02:49 PM

Input:	
Document 1 ID	file:///C:/Users/MBorgo/Desktop/2022-06-07 Settlement Agreement FINAL[82](130503556.1).doc
Description	2022-06-07 Settlement Agreement FINAL[82](130503556.1)
Document 2 ID	file:///C:/Users/MBorgo/Desktop/Settlement Agreement (BLG Comments).doc
Description	Settlement Agreement (BLG Comments)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<u>Deletion</u>	
<u>Moved from</u>	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	10
Deletions	10
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	20

SETTLEMENT AGREEMENT entered into with effect as of this ____ day of June, 2022.

BETWEEN:

EDWARD COLLINS CONTRACTING LIMITED, a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

(**"ECC"**)

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RODCO MECHANICAL (2014) LTD. a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

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AND:

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- H. ECC, Rodco and Western (the **"Parties"**) have agreed to enter into this Settlement Agreement (the **"Settlement Agreement"**), for purposes of setting out the terms and

conditions of the agreement reached between ECC, Rodco and Western with respect to the completion of the Project and release of holdback.

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AGREEMENT

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4. Western Agrees to:
 - (a) Make full payment to Rodco in the amount of \$358,411.71 less any payments made by ECC following the date of these Minutes of Settlement that remains due to Rodco by ECC as outstanding on July 28, 2022 within 7 business days of Rodco providing written notice to Western of the outstanding amount.
5. General Terms
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- (c) The invalidity of any of the provisions of this Settlement Agreement, or any of the provisions of the documents attached as schedules to this Settlement Agreement, shall not invalidate or affect any of the other provisions of this Settlement Agreement, which shall remain in full force and effect.
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[Remainder of page intentionally blank. Signature pages to follow.]

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed as of the day and year first before written.

Witness

**EDWARD COLLINGS CONTRACTING
LIMITED**

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the Town

Witness

RODCO MECHANICAL (2014) LTD.

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

Witness

WESTERN SURETY COMPANY

Per: _____

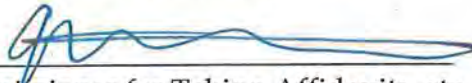
Name: _____

Title: _____

I/We have the authority to bind the corporation

TAB MM

This is **Exhibit "MM"** to the Affidavit of JAMES TOOTHILL
of the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, consisting of a stylized 'J' followed by a series of loops and a long horizontal stroke.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

From: Borgo, Mark
Sent: February 9, 2023 12:09 PM
To: Khalid, Bushra
Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Follow Up Flag: Follow up
Flag Status: Flagged

From: James Toothill <JToothill@westernsurety.ca>
Sent: July 19, 2022 9:18 AM
To: C. Brad Leyte <bleyte@nf.aibn.com>; Michael Cabot <michael.cabot@occolaw.com>; Punzo, Andrew <APunzo@blg.com>
Cc: Michel Prud'homme <michel.prudhomme@bbcg.ca>; Borgo, Mark <MBorgo@blg.com>
Subject: RE: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

[External / Externe]

Hi Brad,

I will be signing and returning a copy to all parties in the next few hours.

James

From: C. Brad Leyte <bleyte@nf.aibn.com>
Sent: July 18, 2022 6:13 AM
To: James Toothill <JToothill@westernsurety.ca>; Michael Cabot <michael.cabot@occolaw.com>; Punzo, Andrew <APunzo@blg.com>
Cc: Michel Prud'homme <michel.prudhomme@bbcg.ca>; Borgo, Mark <MBorgo@blg.com>
Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Please advise as to the current status of the settlement agreement.

Brad

TAB NN

This is **Exhibit "NN"** to the Affidavit of JAMES TOOTHILL of the City of Regina, in the Province of Saskatchewan, sworn before me at the City of Regina, in the Province of Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a series of loops and a long horizontal stroke.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

From: Borgo, Mark
Sent: February 9, 2023 12:09 PM
To: Khalid, Bushra
Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.
Attachments: ECC July 19 2022.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

From: James Toothill <JToothill@westernsurety.ca>
Sent: July 19, 2022 11:03 AM
To: C. Brad Leyte <bleyte@nf.aibn.com>; Michael Cabot <michael.cabot@occolaw.com>; Punzo, Andrew <APunzo@blg.com>
Cc: Michel Prud'homme <michel.prudhomme@bbcg.ca>; Borgo, Mark <MBorgo@blg.com>
Subject: RE: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

[External / Externe]

Hi all,

Attached is the signed document from Western Surety.

Regards,

James



James Toothill FCIP, CRM • **Chief Claims Manager & Privacy Officer**
Western Surety Company
t. (306) 777-0608 • 1 (800) 475-4454
jtoothill@westernsurety.ca • www.westernsurety.ca
2100 - 1881 Scarth Street, Regina, Saskatchewan S4P 4K9

 Save a tree. Keep it on the screen.

For more information on Western Surety Company, contact us at wscinfo@westernsurety.ca.

SETTLEMENT AGREEMENT entered into with effect as of this ____ day of June, 2022.

BETWEEN:

EDWARD COLLINS CONTRACTING LIMITED, a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

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AND:

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AND:

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[Remainder of page intentionally blank. Signature pages to follow.]

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Witness

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Per: _____

Name: _____

Title: _____

I/We have the authority to bind the Town

Witness

RODCO MECHANICAL (2014) LTD.

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

Witness

WESTERN SURETY COMPANY

Per: _____ *James*

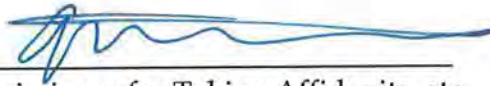
Name: *James Toothill*

Title: *Chief Claims Manager*

I/We have the authority to bind the corporation

TAB 00

This is **Exhibit "OO"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

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A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

From: Borgo, Mark
Sent: February 9, 2023 3:59 PM
To: Khalid, Bushra
Subject: FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd. [BLG-DOCUMENTS.FID8425518]

From: Michael Cabot <michael.cabot@occolaw.com>
Sent: July 27, 2022 6:31 AM
To: Borgo, Mark <MBorgo@blg.com>
Cc: C. Brad Leyte <bleyte@nf.aibn.com>; James Toothill <JToothill@westernsurety.ca>; Michel Prud`homme <michel.prudhomme@bbcg.ca>; Punzo, Andrew <APunzo@blg.com>
Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd. [BLG-DOCUMENTS.FID8425518]

[External / Externe]

Mark -

I am no longer acting for ECC on this matter.

I have passed your correspondence along to ECC.

Kind regards,

Michael Cabot
Partner

From: Borgo, Mark <MBorgo@blg.com>
Sent: Tuesday, July 26, 2022 5:40:35 PM
To: Michael Cabot <michael.cabot@occolaw.com>
Cc: C. Brad Leyte <bleyte@nf.aibn.com>; James Toothill <JToothill@westernsurety.ca>; Michel Prud`homme <michel.prudhomme@bbcg.ca>; Punzo, Andrew <APunzo@blg.com>
Subject: RE: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd. [BLG-DOCUMENTS.FID8425518]

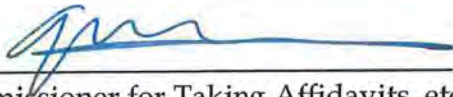
Hi Michael,

May we please hear from you regarding the below. We would like to conclude the settlement.

Thank you,

TAB PP

This is **Exhibit "PP"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'J. Smith', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

From: Borgo, Mark
Sent: August 23, 2022 9:25 AM
To: josh_56@icloud.com
Cc: Punzo, Andrew; James Toothill; Michel Prud`homme
Subject: Western Surety - ECC - Town of Placentia - Rodco Mechanical and Crane Supply [BLG-DOCUMENTS.FID8425518]
Attachments: 2022 07 19 - ECC - Settlement Agreement (Placentia).pdf

Dear Mr. Collins:

We write to inform you that Western Surety is paying the claims of Crane Supply and Rodco Mechanical as ECC failed to pay by July 28th in accordance with the Settlement Agreement. As the Town of Placentia was not a party to the Agreement, it will not release the holdback on account of the liens but it will release the holdback to Western Surety with ECC's direction / acknowledgement. As you know, the Settlement Agreement contemplated the release of the holdback funds, which your former lawyer (Michael Cabot) advised ECC had signed. Can you therefore confirm that ECC will direct the holdback funds to Western Surety so we can prepare that appropriate direction.

We look forward to hearing from you.

Best regards,



Mark A. Borgo

Associate

T [416.367.7887](tel:416.367.7887) | MBorgo@blg.com

Bay Adelaide Centre, East Tower, [22 Adelaide St. W., Toronto, ON,](#)

[Canada M5H 4E3](#)

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Borden Ladner Gervais LLP

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SETTLEMENT AGREEMENT entered into with effect as of this ____ day of June, 2022.

BETWEEN:

EDWARD COLLINS CONTRACTING LIMITED, a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

(**"ECC"**)

AND:

RODCO MECHANICAL (2014) LTD. a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

(**"Rodco"**)

AND:

WESTERN SURETY COMPANY, a corporation duly incorporated and existing under the laws of the Province of Ontario,

(**"Western"**)

WHEREAS

- A. The Town of Placentia and ECC entered into an agreement for the supply of certain construction works and services dated March 19, 2021 (the **"Contract"**).
- B. Pursuant to the Contract, ECC agreed to supply the construction works and services necessary in connection with a water system upgrade project being undertaken in the Town of Placentia (the **"Project"**).
- C. ECC engaged Rodco to provide certain works and services in connection with the completion of the Contract.
- D. The Town of Placentia is in possession of a holdback in relation to the Project in the amount of \$244,977.53.
- E. Rodco has caused to be registered a mechanics' lien bearing Lien No. 19963 and had further caused a Certificate of Action to be registered with the Supreme Court of Newfoundland and Labrador General Division bearing court file no. 2022 01G 0563. Rodco has also issued a mechanics' lien bearing Lien No 20096.
- F. Western has issued a labour and materials bond in relation to the Project (the **"Bond"**).
- G. Rodco has submitted a claim under the labour and materials bond which bond was issued by Western Surety Company for amounts due and owing to Rodco by ECC.
- H. ECC, Rodco and Western (the **"Parties"**) have agreed to enter into this Settlement Agreement (the **"Settlement Agreement"**), for purposes of setting out the terms and

conditions of the agreement reached between ECC, Rodco and Western with respect to the completion of the Project and release of holdback.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth and contained, and other good and valuable consideration passing between ECC and Rodco (hereinafter collectively referred to as the "**Parties**"), the Parties agree as follows:

AGREEMENT

1. The Parties acknowledge and agree that the holdback can be released and paid as follows:
 - (a) Crane Supply to be paid from the holdback the amount of \$204,781.32.
 - (b) Rodco to be paid from the holdback the amount of \$40,196.17
2. ECC agrees to:
 - (a) Pay the balance of monies due and owing to Rodco in the amount of \$358,411.71 to Rodco on or before July 28, 2022.
 - (b) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of ECC under this Settlement Agreement.
3. Rodco agrees to:
 - (a) Discharge any and all mechanics' liens as registered in connection with the Project, including but not limited to claim for lien No. 19963 and Certificate of Action bearing court file no. 2022 01G 0563 and lien No. 20096.
 - (b) Not register any additional mechanics' liens or initiate legal proceedings in relation to the Contract, with the exception of legal proceedings to enforce this Settlement Agreement.
 - (c) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of Rodco under this Settlement Agreement and to take all steps required to have the holdback for the Project released.
4. Western Agrees to:
 - (a) Make full payment to Rodco in the amount of \$358,411.71 less any payments made by ECC following the date of these Minutes of Settlement that remains due to Rodco by ECC as outstanding on July 28, 2022 within 7 business days of Rodco providing written notice to Western of the outstanding amount.
5. General Terms
 - (a) This Settlement Agreement, including the schedules hereto, embodies the entire Agreement between the Parties concerning the subject matters mentioned herein, and supersedes all previous discussions, correspondence,

understandings or agreements, whether written or oral, with respect to such matters.

- (b) Rodco and ECC agree that this Settlement Agreement is intended to be in complete satisfaction of all matters arising between Rodco and ECC in relation to the Contract and/or the Project.
- (c) The invalidity of any of the provisions of this Settlement Agreement, or any of the provisions of the documents attached as schedules to this Settlement Agreement, shall not invalidate or affect any of the other provisions of this Settlement Agreement, which shall remain in full force and effect.
- (d) This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- (e) None of the terms, conditions or provisions of this Settlement Agreement shall be changed, waived, varied, modified or altered unless done so in writing and signed by all of the Parties.
- (f) This Settlement Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Newfoundland and Labrador, and the laws of Canada applicable therein, and the Parties shall attorn to the jurisdiction of the courts of the Province of Newfoundland and Labrador.
- (g) This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together constitute one and the same instrument. This Settlement Agreement may be executed and transmitted by facsimile or by email attachment in .pdf.

[Remainder of page intentionally blank. Signature pages to follow.]

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed as of the day and year first before written.

Witness

**EDWARD COLLINGS CONTRACTING
LIMITED**

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the Town

Witness

RODCO MECHANICAL (2014) LTD.

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

Witness

WESTERN SURETY COMPANY

Per: _____ *James*

Name: *James Toothill*

Title: *Chief Claims Manager*

I/We have the authority to bind the corporation

TAB QQ

This is **Exhibit "QQ"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

From: Darren O'Keefe <darren@okeefeandcompany.com>
Sent: August 23, 2022 3:22 PM
To: Borgo, Mark
Cc: Punzo, Andrew
Subject: Re: Western Surety - ECC - Town of Placentia - Rodco Mechanical and Crane Supply [BLG-DOCUMENTS.FID8425518]
Attachments: image003.jpg; image001.jpg; RE: Western Surety Company - Edward Collins Contracting Limited; RE: Western Surety Company - Edward Collins Contracting Limited; RE: Town of Bryant's Cove - Edward Collins Contracting Ltd. - Western Surety Company; RE: Town of Bryant's Cove - Edward Collins Contracting Ltd. - Western Surety Company; FW: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.; Re: Town of Bryant's Cove - Edward Collins Contracting Ltd. - Western Surety Company

[External / Externe]

Mark, you are well aware that we represent ECC with respect to its proposed CCAA filings and naturally that would include dealing with any ongoing contracts or bonding claims relevant thereto.

It was not reasonable for you to assume that ECC are unrepresented or acting without legal counsel on this or any other matter. In the very least, given that your email is asking ECC to confirm the existence of a settlement agreement, which you know was never executed between the parties, it was incumbent upon you to ask ECC if they had legal counsel engaged on this matter.

It is our view that you're discourteous and unprofessional conduct demonstrates your clients continued bad faith on this file.

To be clear, and to avoid any further confusion on your end, all correspondence from your office to ECC or any affiliate thereof should be copied to the undersigned.

Trust you will govern yourself accordingly.

Darren O'Keefe
Principal | Lawyer
O'Keefe & Company
P: 709 699 3002

On Aug 23, 2022, at 4:32 PM, Borgo, Mark <MBorgo@blg.com> wrote:

Darren:

Your response is vexatious and contradictory. We enclose all the communications we have received from your office to date. None of them relate to the Town of Placentia project. Michael Cabot was formally representing ECC in this matter and he advised about a month ago that he was no longer acting

for ECC. He also indicated in the enclosed email that he would be passing along our correspondence directly to ECC. We did not hear back from you in regard to this correspondence. Therefore, it was reasonable for us to assume there was nobody acting for ECC in this matter. Also, I do not recall you ever advising that you act for ECC in this matter. If we are missing something please advise.

Best regards,

Mark A. Borgo

Associate

T 416.367.7887 | MBorgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON,
Canada M5H 4E3

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From: Darren O'Keefe <darren@okeefeandcompany.com>

Sent: August 23, 2022 9:57 AM

To: Borgo, Mark <MBorgo@blg.com>; Punzo, Andrew <APunzo@blg.com>

Subject: RE: Western Surety - ECC - Town of Placentia - Rodco Mechanical and Crane Supply [BLG-DOCUMENTS.FID8425518]

[External / Externe]

Mark,

You are aware that we represent ECC. Why are you contacting my client directly? This is a clear breach of the *Law Society Code of Conduct* to which you are subject if you are practicing in Newfoundland and Labrador under the national mobility rules.

7.2-8 A lawyer retained to act on a matter involving a corporate or other organization represented by a lawyer must not approach an officer or employee of the organization: (a) who has the authority to bind the organization; (b) who supervises, directs or regularly consults with the organization's lawyer; or (c) whose own interests are directly at stake in the representation, in respect of that matter, unless the lawyer representing the organization consents or the contact is otherwise authorized or required by law.

If you cannot conduct yourself professionally on this file we will have to ask that the Law Society intervene. Accordingly, we will be filing a complaint with the Law Society of Newfoundland and Labrador and Law Society of Ontario to address this matter.

Regards,

Darren D. O'Keefe

Principal | Lawyer | O'Keefe & Company

P 709 800 6536 | C 709 699 3002

84 Airport Rd, St. John's, NL A1A 4Y3

This email (including any attachments) is confidential and is intended only for the use of the addressee(s). If you have received this email in error, please notify the sender immediately, and delete all versions of this email and any attachments.

Begin forwarded message:

From: "Borgo, Mark" <MBorgo@blg.com>

Date: August 23, 2022 at 9:25:55 AM EDT

To: josh 56@icloud.com

Cc: "Punzo, Andrew" <APunzo@blg.com>, James Toothill <JToothill@westernsurety.ca>, Michel Prud'homme <michel.prudhomme@bbcg.ca>

Subject: Western Surety - ECC - Town of Placentia - Rodco Mechanical and Crane Supply [BLG-DOCUMENTS.FID8425518]

Dear Mr. Collins:

We write to inform you that Western Surety is paying the claims of Crane Supply and Rodco Mechanical as ECC failed to pay by July 28th in accordance with the Settlement Agreement. As the Town of Placentia was not a party to the Agreement, it will not release the holdback on account of the liens but it will release the holdback to Western Surety with ECC's direction / acknowledgement. As you know, the Settlement Agreement contemplated the release of the holdback funds, which your former lawyer (Michael Cabot) advised ECC had signed. Can you therefore confirm that ECC will direct the holdback funds to Western Surety so we can prepare that appropriate direction.

We look forward to hearing from you.

Best regards,

Mark A. Borgo

Associate

T 416.367.7887 | MBorgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W., Toronto, ON,

Canada M5H 4E3

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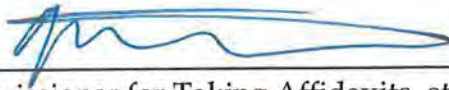
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TAB RR

This is **Exhibit "RR"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke, positioned above a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Western Surety - ECC - Town of Placentia - Rodco Mechanical and Crane Supply

From: Punzo, Andrew <APunzo@blg.com>

Sent: August 24, 2022 12:28 PM

To: Darren O'Keefe <darren@okeefeandcompany.com>; Borgo, Mark <MBorgo@blg.com>

Subject: RE: Western Surety - ECC - Town of Placentia - Rodco Mechanical and Crane Supply

Darren,

Now that your involvement has been confirmed in connection with all ECC matters and we are governing ourselves accordingly, can you please respond to our email below that was initially addressed to Mr. Collins?

Western Surety is obtaining assignments of the Rodco and Crane claims/ liens and is accordingly entitled to the holdback as assignee lien claimant. The Town is willing to direct the funds to Western Surety, but needs ECC's acknowledgement and direction. Are you able to provide same? It should not be an issue as payment of the holdback to the lien claimants directly was contemplated by the Settlement Agreement in any event.

Thanks,

Andrew Punzo

Partner

T 416.367.6005 | APunzo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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TAB SS

This is **Exhibit "SS"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Andrew Punzo
T: 416-367-6005
apunzo@blg.com

Mark Borgo
T: 416-367-7887
mborgo@blg.com

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto ON M5H 4E3
Canada
T 416-367-6000
F 416-367-6749
blg.com



File No. 013722.000143

October 18, 2022

DELIVERED BY EMAIL
phil.clarke@ca.gt.com

Phil Clarke
Grant Thornton Limited
15 International Place, Suite 300
St. John's, NL A1A 0L4

Dear Mr. Clarke:

Re: Surety: Western Surety Company ("Western Surety ")
Principal: Edward Collins Contracting Limited ("ECC")
Obligee: Town of Placentia (the "Town")
Claimants: Rodco Mechanical (2014) Ltd. ("Rodco") and Crane Supply
Payment Bond No.: 532,090 ("Payment Bond")
Contract: Town of Placentia / Water Systems Upgrades 17-G1-2-00050 / 17-SCF-19-00129 (the "Contract")

As you may recall, we represent Western Surety in connection with the above-noted matter.

On March 19, 2021, ECC entered into the Contract with the Town for the project known as Town of Placentia / Water Systems Upgrades (the "Project").

Western Surety issued Payment Bond 532,090 in connection with the Contract naming ECC as Principal, the Town as Obligee, and Western Surety as Surety.

Rodco and Crane Supply subsequently entered into agreements with ECC for the supply of certain services and materials in relation to the Contract.

In or around December 2021, Rodco and Crane Supply each made claims for lien and claims against the Payment Bond for unpaid invoices for work performed on the Project.

In or around June 2022, Rodco, Crane Supply, ECC, and Western Surety negotiated a Settlement Agreement whereby Crane Supply would be paid the full amount of its claim from the holdback, being \$204,781.32, and Rodco would receive the remaining balance of the holdback to satisfy a portion of

its claim, being \$40,196.17. ECC agreed to pay the balance of Rodco's claim, being \$358,411.71, by July 28, 2022, failing which Western Surety would pay the balance owing to Rodco.

Rodco, Crane Supply, and Western Surety each executed the Settlement Agreement. Previous counsel for ECC, Michael Cabot, advised that ECC had executed the Settlement Agreement, but the parties were never provided with a copy of the signed Settlement Agreement despite repeated requests. Accordingly, Western Surety had no choice but to comply with its obligations under the Payment Bond and issued payment to Rodco and Crane Supply without any contribution from the holdback.

In exchange for an Assignment and Release, Western Surety paid Rodco \$398,607.88 and Crane Supply \$204,781.32 under the Payment Bond. Accordingly, Western Surety is now assignee of those parties' claims, including claims for lien.

Western Surety has reached an agreement in principle with the Town whereby the holdback will be directly released to Western Surety given the assignments. While the Town is agreeable in principle with this proposal, the Town would like a Release from ECC and/or approval from the Monitor disclaiming any rights to the holdback and confirming ECC will not seek further amounts from the Town in connection with the Contract.

We look forward to hearing from you regrading the foregoing proposal. Please let us know if you require any additional information.

Yours very truly,



Andrew Punzo

ASP/MAB

cc. Darren D. O'Keefe
O'Keefe & Company
darren@okeefeeandcompany.com

Matthew Craig
Stewart McKelvey
mcraig@stewartmckelvey.com

TAB TT

This is **Exhibit "TT"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

O'KEEFE & COMPANY

BY EMAIL

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower 22 Adelaide Street West
Toronto ON M5H 4E3 Canada
Attn: Mark Borgo and Andrew Punzo
Email: mborgo@blg.com
apunzo@blg.com

19 October 2022

Mssrs. Borgo and Punzo:

Re: Surety: Western Surety Company ("Western")
Principal: Edward Collins Contracting Limited ("ECC")
Obligee: Town of Placentia (the "Town")
Claimants: Rodco Mechanical (2014) Ltd. ("Rodco") and;
Crane Supply ("Crane")
Payment Bond No.: 532,090 ("Payment Bond")
Contract: Town of Placentia / Water Systems Upgrades 17-G1-2-00050 / 17-SCF-19-
00129 (the "Contract")

As you are aware we represent Edward Collins Contracting Ltd. and its affiliated companies ("ECC"). We refer to your two separate letters dated 18 October 2022 addressed to Phil Clarke, the Court appointed Monitor, concerning the above noted.

Please be advised that ECC disagrees with the position taken by Western, *to wit*:

- (i) Westerns payment to Crane was contrary to a contract entered into between ECC and Crane whereby Crane waived all rights of payment as against the Payment Bond. Any payments made by Western – and accepted by Crane – in violation of that agreement are not recoverable against the holdback or ECC.
- (ii) With respect to the draft settlement agreement between Rodco, Crane, Western and ECC, referred to in your letter, as you know, this was never finalized.
- (iii) Westerns position that it has obtained a better claim to the holdback funds by virtue of its private arrangements existing outside the CCAA process – that do not involve ECC or the Monitor – is flawed. The assignment of the debts once held by Rodco and Crane *may* be valid, but the assignment of the lien claim is void *ab initio* as no lien claim exists. Further, this purported assignment which would give Western better enforcement rights *vis a vis* ECC than it bargained for under the Payment Bond is

contrary to the Rule 22 Order of Madam Justice Marshall dated 20 July 2022 and to the Amended and Restated Initial Order of Mr. Justice MacDonald dated 17 October 2022.

- (iv) It is ECC's position that the holdback on this Contract currently held by the Town should be paid to ECC and form part of its estate. As there appears to be a contrary view held by Western, ECC would respectfully suggest that the holdback be paid to the Monitor, in trust, pending direction from the Court.

We trust the foregoing is clear.

Regards,



DARREN D. O'KEEFE
darren@okeefeandcompany.com

cc.

Matthew Craig
Stewart McKelvey
mcraig@stewartmckelvey.com

Phil Clarke
Grant Thornton Ltd.
phil.clarke@ca.gt.com

TAB UU

This is **Exhibit "UU"** to the Affidavit of JAMES TOOTHILL of the City of Regina, in the Province of Saskatchewan, sworn before me at the City of Regina, in the Province of Saskatchewan, on February 10, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Western Surety - ECC - Town of Placentia | Bond No. 532,090

From: Clarke, Phil <Phil.Clarke@ca.gt.com>

Sent: October 26, 2022 10:58 AM

To: Borgo, Mark <MBorgo@blg.com>

Cc: Darren O'Keefe <darren@okeefeandcompany.com>; Matthew Craig <mcraig@stewartmckelvey.com>; Punzo, Andrew <APunzo@blg.com>

Subject: RE: Western Surety - ECC - Town of Placentia | Bond No. 532,090 [BLG-DOCUMENTS.FID8425518]

[External / Externe]

Mark:

On this proposal – can I see the following documents:

- Copies of the lien claims of Rodco and Crane Supply (from December 2021);
- Copy of the executed settlement agreement between Rodco, Crane Supply and Western Surety. (I understand you don't have a signed copy from ECC – your version);
- Do you have anything from Michael Cabot confirming it had been signed?;
- Confirm that you paid the lien claims of Rodco and Crane Supply (note – Rodco has advised the Monitor it has not been paid – that apparent discrepancy needs to be resolved – I have asked them for the claim amount, happy to circulate once received);
- Copy of the agreement in principle.

Once received I can provide the Monitors position.

Cheers,

Phil Clarke | Partner

Grant Thornton LLP

Nova Centre, North Tower | Suite 1000 - 1675 Grafton Street | Halifax | NS | B3J 0E9

T +1 902 420 7191 | F +1 902 420 1068 | C +1 902 293 9119

E Phil.Clarke@ca.gt.com | W <http://www.grantthornton.ca/>



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TAB VV

This is **Exhibit "VV"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Western Surety - ECC - Town of Placentia | Bond No. 532,090

From: Borgo, Mark <MBorgo@blg.com>

Sent: November 25, 2022 6:15 PM

To: Clarke, Phil <Phil.Clarke@ca.gt.com>

Cc: Darren O'Keefe <darren@okeefeandcompany.com>; Matthew Craig <mcraig@stewartmckelvey.com>; Punzo, Andrew <APunzo@blg.com>

Subject: RE: Western Surety - ECC - Town of Placentia | Bond No. 532,090 [BLG-DOCUMENTS.FID8425518]

CAUTION: EXTERNAL EMAIL. DO NOT CLICK ON LINKS OR OPEN ATTACHMENTS YOU DO NOT TRUST

*****NEW*** DO NOT ENTER YOUR GT PASSWORD ON ANY EXTERNAL EMAIL REQUEST**

Hi Phil,

In response to your email below, we enclose the following:

1. The lien claim of Rodco Mechanical;
2. Irrevocable Direction To Pay in favour of Crane Supply;
3. The Release, Assignment, Undertaking and Grant executed by Rodco Mechanical and Crane Supply;
4. Copy of the Settlement Agreement between Rodco Mechanical, Crane Supply, ECC, and Western Surety; and
5. Email from Michael Cabot confirming ECC signed the Settlement Agreement.

Western Surety confirmed that both Rodco Mechanical and Crane Supply were paid under the Payment Bond.

We understand that Crane Supply discharged its claim for lien in contemplation of the settlement agreement. There is no lien documentation to provide. However, we enclose the Irrevocable Direction to Pay that ECC signed in favour of Crane Supply.

We have not received the signed copy of the Settlement Agreement from Rodco Mechanical or Crane Supply. This should not be an issue as the Rodco Mechanical lien is effective, assigned, and exceeds the holdback amount.

The agreement in principle with the Town is detailed in our letter dated October 18, 2022 (enclosed). The Town is agreeable in principle to release the holdback directly to Western Surety but requires a release from ECC and/or approval from the monitor disclaiming any rights to the holdback and confirming ECC will not seek further amounts from the Town in connection with the Contract.

We look forward to hearing from you.

Best regards,

BLG
Borden Ladner Gervais

Mark A. Borgo

Associate

T 416.367.7887 | MBorgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON,

Canada M5H 4E3

Khalid, Bushra

From: Borgo, Mark
Sent: February 10, 2023 11:50 AM
To: Khalid, Bushra
Subject: FW: Western Surety - ECC - Town of Placentia | Bond No. 532,090 [BLG-DOCUMENTS.FID8425518]

From: Clarke, Phil <Phil.Clarke@ca.gt.com>
Sent: December 7, 2022 11:25 AM
To: Borgo, Mark <MBorgo@blg.com>
Cc: Darren O'Keefe <darren@okeefeandcompany.com>; Matthew Craig <mcraig@stewartmckelvey.com>; Punzo, Andrew <APunzo@blg.com>
Subject: RE: Western Surety - ECC - Town of Placentia | Bond No. 532,090 [BLG-DOCUMENTS.FID8425518]

[External / Externe]

Mark:

Thanks for sending along this information. Much appreciated I will go through this material. To keep you in the loop I had a conversation with Matt Craig on the matter. He is copied here so he can chime in.

It is my understand that there are no issues with the work done.

Town - Matt Craig advised there still is a lien on the property by Rodco (would have to confirm). Town would only pay out funds on receipt of releases from Western and ECC so that parties cant come back to the Town for further funds.

ECC – disputes the position of Western and is of the view there is no lien. I have not looked at their information.

The Monitor cant provide releases on the holdback or not seek further amounts from the Town. We don't have the capacity – only the Company can do that.

My view is one of 2 things – 1) Town pays funds into court and the parties can make application or 2) parties provide the funds to the Monitor and have a hearing on its distribution within the CCAA proceeding, assuming parties are agreeable to the Towns position.

It is my understand that parties would not be interested in option 2. So it would seem option 1 is the path forward here.

All parties are on this email and can chime in if I have made an error or omission.

Cheers,

Phil Clarke | Partner
Grant Thornton LLP
Nova Centre, North Tower | Suite 1000 - 1675 Grafton Street | Halifax | NS | B3J 0E9
T +1 902 420 7191 | F +1 902 420 1068
E Phil.Clarke@ca.gt.com | W <http://www.grantthornton.ca/>

2022 01 G O 5 6 3
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER of the *Mechanics' Lien Act*,
R.S.N.L. 1990, c.M-3, as amended;

AND IN THE MATTER of a claim of lien
by Rodco Mechanical (2014) Ltd. against the
Town of Conception Bay South, as owners, and
against property of the Town of Placentia, as
Owner, and against Edward Collins Contracting
Limited, as General Contractor;

BETWEEN:

RODCO MECHANICAL (2014) LTD.

PLAINTIFF

AND:

EDWARD COLLINS CONTRACTING LIMITED

FIRST DEFENDANT

AND:

TOWN OF PLACENTIA

SECOND DEFENDANT

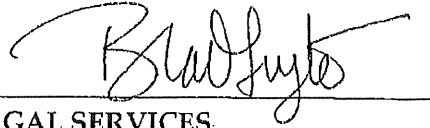
STATEMENT OF CLAIM

1. The Plaintiff is a body corporate, duly incorporated and existing pursuant to the laws of the Province of Newfoundland and Labrador, and has its registered address situate at 257 Conception Bay Highway, in the Town of Conception Bay South, in the Province of Newfoundland and Labrador, in the Province of Newfoundland and Labrador, postal code A0A 2R0.
2. The First Defendant is a body corporate, incorporated and existing pursuant to the laws of the Province of Newfoundland and Labrador, and has its registered office situate at Main Road, P.O. Box 51, in the Town of Jerseyside, Placentia Bay, in the Province of Newfoundland and Labrador, postal code A0B 2G0.

3. The Second Defendant is a municipality, incorporated and existing under the *Municipalities Act, 1999*, SNL 1999, c.M-24, as amended, with its address at P.O. Box 99, 21 Patterson Drive, in the Town of Placentia, in the Province of Newfoundland and Labrador, postal code A0B 2Y0, and at all times material and relevant hereto was an "Owner" within the meaning of the *Mechanics' Lien Act*, R.S.N.L. 1990, c.M-3, as amended (hereinafter referred to as the "*Act*").
4. The Plaintiff states that under a contract between the Plaintiff and the First Defendant, the Plaintiff agreed to supply materials and labour in connection with the construction, development and improvement of the municipal water system and associated structures upon the Owner's land or their interest in same (hereinafter referred to as the "Property"), and more particularly:
 - (a) Pressure reducing building and associated structures situate at the corner of Harbour Drive and Route 100, in the Town of Placentia, in the Province of Newfoundland and Labrador;
 - (b) Pressure reducing building and associated structures situate at the corner of Fox Harbour Road and Route 100, in the Town of Placentia, in the Province of Newfoundland and Labrador; and
 - (c) Clarkes Pond pump house and associated structures situate at the corner of Route 100 and the entrance to the Town of Placentia, in the Province of Newfoundland and Labrador.
5. The Plaintiff further states that it supplied materials and labour to the First Defendant under the terms of the contract up to November 10, 2021.
6. The Plaintiff further states that on December 3, 2021, pursuant to the provisions of the *Act*, the Plaintiff caused to be registered at the Registry of Deeds for Newfoundland, a Claim of Lien registered as Mechanics' Lien No. 19963 upon the interest of the Defendants in the Property (hereinafter the "*Lien*"), in the total amount of Five hundred eight thousand, two hundred seventy-one dollars and fifty cents (\$508,271.50), inclusive of HST, plus interest.
7. The Plaintiff acknowledges having received a payment in the amount of One hundred thirty-five thousand dollars (\$135,000.00) since the registration of the Lien.

8. The Plaintiff further states that there remains due and owing from the Defendants to the Plaintiff, in respect of the said contract, the amount of Three hundred eighty-one thousand, nine hundred fifty dollars and twenty-four cents (\$381,950.24), plus interest at the invoiced rate, and that despite demand, the Defendants have failed to pay this remaining amount to the Plaintiff.
9. The Plaintiff further states that the Defendants are liable to the Plaintiff pursuant to the Claim of Lien, and pleads the provisions of the *Act*.
10. The Plaintiff further states that it has suffered losses arising from the failure to pay and other expense caused by the Defendants, and the Defendants are liable to the Plaintiff for breach of contract and/or unjust enrichment.
11. The Plaintiff therefore claims against the Defendants:
 - (a) that the Plaintiff recover against the Defendants *in personam* the amount due and owing under the aforesaid contract of \$381,950.24, plus interest at the invoiced rate;
 - (b) general and special damages, in an amount to be assessed;
 - (c) in default of payment of the sum referred to above and interest and costs, that the Claim of Lien of the Plaintiff be realized by sale of the estate, right, title and interest of the Defendants in the Property and the proceeds applied toward the payment of the Plaintiff's claim and interest and costs pursuant to the *Act*;
 - (d) that for the purposes aforesaid, and for all other purposes pursuant to the *Act* that proper directions be given, inquiries made, and accounts taken;
 - (e) pre-judgment and post-judgment interest at the invoiced rate or, alternatively, pursuant to the *Judgment Interest Act*, R.S.N.L. 1990, c.J-2;
 - (f) costs, including costs of discovery, and;
 - (g) such further relief as this Honourable Court may deem just and appropriate.

DATED at Kelligrews, in the Town of Conception Bay South, in the Province of Newfoundland and Labrador,
this 2nd day of February, A.D., 2022.



C.B.S. LEGAL SERVICES

Solicitors for the Plaintiff

Whose address for service is:

565 Conception Bay Highway

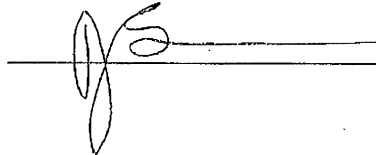
P.O. Box 17004, Stn Kelligrews

Conception Bay South, NL A1X 3H1

TO: The First Defendant
Edward Collins Contracting Limited
Main Road, PO Box 51
Jerseyside, Placentia Bay
NL A0B 2G0

TO: The Second Defendant
Town of Placentia
PO Box 99, 21 Patterson Drive
Placentia, NL A0B 2Y0

ISSUED at the City of St. John's, in the Province of Newfoundland and Labrador, this 2 day of
February, A.D., 2022.



**COURT
OFFICER**

2022 01 G 0563
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER of the *Mechanics' Lien Act*,
R.S.N.L. 1990, c.M-3, as amended;

AND IN THE MATTER of a claim of lien
by Rodco Mechanical (2014) Ltd. against the
Town of Conception Bay South, as owners, and
against property of the Town of Placentia, as
Owner, and against Edward Collins Contracting
Limited, as General Contractor;

BETWEEN:

RODCO MECHANICAL (2014) LTD.

PLAINTIFF

AND:

EDWARD COLLINS CONTRACTING LIMITED

FIRST DEFENDANT

AND:

TOWN OF PLACENTIA

SECOND DEFENDANT

NOTICE TO DEFENDANTS

You are hereby notified that the Plaintiff may enter judgment in accordance with the Statement of Claim or such order as, according to the practice of the Court, the Plaintiff is entitled to, without any further notice to you unless within ten (10) days after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland and Labrador, General Division, St. John's, a Defence and unless within the same time a copy of your Defence is served upon the Plaintiff or his solicitor at their stated address for service. Provided that if the Claim is for a debt or other liquidated demand and you pay the amount claimed in the Statement of Claim and the sum of \$ _____ (or such sum as may be allowed on taxation) for costs to the Plaintiff within ten (10) days from the service of this notice upon you, then this proceeding will be stayed.

TO: The First Defendant
Edward Collins Contracting Limited
Main Road, PO Box 51
Jerseyside, Placentia Bay
NL A0B 2G0

TO: The Second Defendant
Town of Placentia
PO Box 99, 21 Patterson Drive
Placentia, NL A0B 2Y0

IN THE MATTER of the *Mechanics' Lien Act*,
R.S.N.L. 1990, c.M-3, as amended;

AND IN THE MATTER of a claim by Rodco
Mechanical (2014) Ltd., a body corporate,
carrying on business in the Province of
Newfoundland and Labrador, against property
of the Town of Placentia, as Owner, and against
Edward Collins Contracting Limited, a body
corporate, of Jerseyside, in the Province
aforesaid, as General Contractor;

MECHANICS LIEN

No. 19963

Registered 3rd day of December

20 21 at 12:45 O'Clock P m

Fee Paid \$ 24 Receipt No. 8000437V

Jan Zol
Registrar of Deeds

CLAIM OF LIEN

Pursuant to the *Mechanics' Lien Act*, R.S.N.L. 1990, c.M-3, as amended, Rodco Mechanical (2014) Ltd., a body corporate, duly incorporated and carrying on business in the Province of Newfoundland and Labrador, with its registered office at 257 Conception Bay Highway, in the Town of Conception Bay South, in the Province of Newfoundland and Labrador, postal code A0A 2R0, hereby claims a Lien upon the property of the Town of Placentia, which property is situate at the Town of Placentia, in the Province of Newfoundland and Labrador (which lands and premises are generally identified and described in Paragraph Six (6) hereof) for labour and materials supplied to and in connection with Town of Placentia water system upgrades, performed at the aforementioned property, on or before the date of November 10, 2021.

1. The amount claimed as due is as follows:

- (a) Outstanding balance for materials and labour in the amount of Five hundred and eight thousand, two hundred and seventy-one dollars and fifty cents (\$508,271.50), inclusive of HST;
- (b) Pre-judgment and post-judgment interest at the invoiced rate, or alternatively, pursuant to the *Judgment Interest Act*, R.S.N.L. 1990, c.J-2, as amended; and
- (d) Costs.

6. The land and structures upon which the Lien is claimed are generally described as:

- (a) Pressure reducing building and associated structures situate at the corner of Harbour Drive and Route 100, in the Town of Placentia, in the Province of Newfoundland and Labrador;
- (b) Pressure reducing building and associated structures situate at the corner of Fox Harbour Road and Route 100, in the Town of Placentia, in the Province of Newfoundland and Labrador; and
- (c) Clarkes Pond pump house and associated structures situate at the corner of Route 100 and the entrance to the Town of Placentia, in the Province of Newfoundland and Labrador.

DATED at the Town of Conception Bay South, in the Province of Newfoundland and Labrador,
this 3 day of December, A.D., 2021.


C.B.S. LEGAL SERVICES

Solicitors for the Lien Claimant

565 Conception Bay Highway

P.O. Box 17004, Stn Kelligrews

Conception Bay South, NL, A1X 3H1

IN THE MATTER of the *Mechanics' Lien Act*,
R.S.N.L. 1990, c.M-3, as amended;

AND IN THE MATTER of a claim by Rodco
Mechanical (2014) Ltd., a body corporate,
carrying on business in the Province of
Newfoundland and Labrador, against property
of the Town of Placentia, as Owner, and against
Edward Collins Contracting Limited, a body
corporate, of Jerseyside, in the Province
aforesaid, as General Contractor;

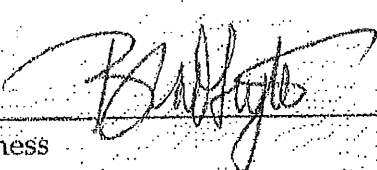
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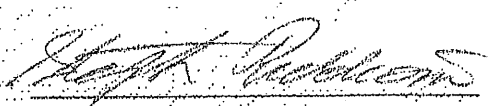
I, Stephen Puddicombe, of the Town of Conception Bay South, in the Province of Newfoundland
and Labrador, make oath and say as follows:

1. THAT I am the President of the Lien Claimant in the within matter, and I have full
knowledge of the facts set forth in the Claim attached hereto, and the said Claim is true to
the best of my knowledge, information and belief.

SWORN TO at the Town of
Conception Bay South, in the
Province of Newfoundland and
Labrador, this 3 day of
December, A.D., 2021, before me:

Witness


C. BRAD LEYTE
"A BARRISTER" (NL)


STEPHEN PUDDICOMBE

2022 01 GO 563

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

MECHANICS LIEN

No. 20011

Registered 4 day of February

2022 at 1:05 O'Clock P.m

Fee Paid \$ 24.00 Receipt No. 8000YDM8

Jan Zyl
Registrar of Deeds

IN THE MATTER of the *Mechanics' Lien Act*,
R.S.N.L. 1990, c.M-3, as amended;

AND IN THE MATTER of a claim of lien
by Rodco Mechanical (2014) Ltd. against the
Town of Conception Bay South, as owners, and
against property of the Town of Placentia, as
Owner, and against Edward Collins Contracting
Limited, as General Contractor;

BETWEEN:

RODCO MECHANICAL (2014) LTD.

PLAINTIFF

AND:

EDWARD COLLINS CONTRACTING LIMITED

FIRST DEFENDANT

AND:

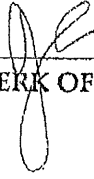
TOWN OF PLACENTIA

SECOND DEFENDANT

CERTIFICATE OF ACTION

THIS is to certify that Rodco Mechanical (2014) Ltd. has commenced an action in the Supreme Court of Newfoundland and Labrador, General Division, against Edward Collins Contracting Limited and the Town of Placentia, to enforce a Claim for Mechanics' Lien, being Lien No. 19963 registered at the Registry of Mechanics' Liens for the Province of Newfoundland and Labrador on the 3rd day of December, A.D., 2021, for a total amount of Five hundred eight thousand, two hundred seventy-one dollars and fifty cents (\$508,271.50), plus interest and costs, for labour and materials supplied to and in connection with water system construction, development, and improvement in the Town of Placentia, in the Province of Newfoundland and Labrador.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador, this 2 day of
February, A.D., 2022.


CLERK OF THE SUPREME COURT
COURT
OFFICER



ORR | CABOT
CROSBIE | OLEY
LAW

October 6, 2021

VIA EMAIL mgreene@placentia.ca

Town of Placentia

P.O. Box 99

Placentia, NL A0B 2Y0

Attention: The Honourable Bernard Power, Mayor

Regarding: Our Client – Edward Collins Contracting Limited.
Project Part A 17-GI-20-00050 Water connection to Dunville and Part B – 17-SCF-19-00129 Pumphouse Upgrades

Further to the above-referenced project, please find enclosed a Direction to Pay on behalf of our client, Edward Collins Contracting Limited.

We trust that you will find the foregoing to be in order.

Yours Truly,

Michael Cabot

cc. Lee Ballett, via email
Counsel for Crane Canada Co.

Michael Cabot | Partner

Direct 709 702 8902 Fax 709 702 8901 Email michael.cabot@occolaw.com
55 Duckworth Street, St. John's, NL A1C 1E6

Schedule "A"

IRREVOCABLE DIRECTION TO PAY

FROM: EDWARD COLLINS CONTRACTING LTD

TO: THE TOWN OF PLACENTIA

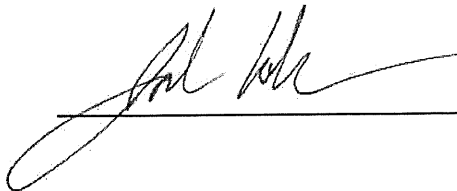
In the respect of the holdback funds identified in correspondence from the Town of Placentia dated September 28, 2021 in the amount of \$178,070.71 plus HST (the "**Funds**") held pursuant to the Multi Year Capital Works Project Part A 17-GI-20-00050 Water connection to Dunville and Part B – 17-SCF-19-00129 Pumphouse Upgrades, the undersigned hereby authorizes and directs you to advance and pay from the Funds to:

Crane Canada Co.
c/o **Duffy Law Office**
640 Torbay Road
St. John's, NL A1A 5G9

This authority and direction is given and made in consideration of a Settlement Agreement entered into by the Edward Collins Contracting Ltd. and Crane Canada Co to resolve outstanding debts due and owing by Edward Collins Contracting Ltd.

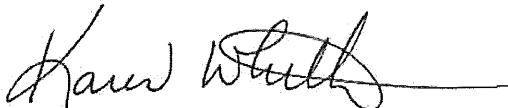
DATED at St. John's, in the
Province of Newfoundland and Labrador
This 4TH day of October
A.D. 2021

Edward Collins Contracting Ltd.


_____

KAREN WHITTLE

A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2024.



RELEASE, ASSIGNMENT, UNDERTAKING AND GRANT

WHEREAS RODCO MECHANICAL (2014) LTD. of the Province of Newfoundland and Labrador (hereinafter called the "Claimant") represents to **WESTERN SURETY COMPANY** having an office in the Province of Saskatchewan (hereinafter called the "Surety") and covenants with the Surety that **EDWARD COLLINS CONTRACTING LIMITED** (hereinafter called the "Contractor") is indebted to the Claimant in the amount of \$398,607.88 for labour or material or rentals provided by the Claimant to the Contractor and used on the contract between the Contractor and **TOWN OF PLACENTIA** (hereinafter called the "Obligee") made the 19TH day of March, 2021 for water system upgrades in the Town of Placentia (the "Contract");

AND WHEREAS the Surety has issued, *inter alia*, a Labour & Material Payment Bond in connection with the Contract (the "Bond");

AND WHEREAS the Claimant has made a claim against the Surety and the Contractor in the amount of \$398,607.88 ("Claim");

AND WHEREAS the Surety has agreed to settle the Claim in exchange for the Claimant's assignment to the Surety of its rights and interests in the Claim;

AND WHEREAS the Claimant hereby warrants and represents to the Surety that it is entitled to payment from the Contractor and it is agreed and acknowledged that the Surety is relying on this warranty and representation in respect of this Agreement;

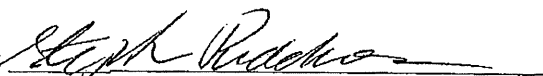
NOW THEREFORE THIS DEED WITNESSETH that in consideration of the promise of payment of \$398,607.88, which is the verified amount as per the Surety's correspondence dated August 15, 2022, by the Surety to the Claimant, the mutual covenants and agreements contained in this Agreement and the other good and valuable consideration set out herein, the receipt and sufficiency of which are hereby acknowledged by the parties, the Claimant covenants and agrees as follows:

- (1) hereby releases and forever discharges the Surety from any claims related to the Contract; and
- (2) hereby subrogates, assigns and transfers to the Surety any and all liens, claims, causes of action, actions, judgments and rights to recovery which the Claimant may have against any person, firm or corporation in connection with or in any way related to the Claim or the Contract, and authorizes the Surety to sue, compromise or settle in the Claimant's name or otherwise all such claims, causes of action and rights to recovery and without in any way limiting the generality of the foregoing, hereby subrogates, assigns and transfers to the Surety any and all claims, including lien claims and breach of trust claims which the Claimant has or may have by reason of any statute of the Province of Newfoundland and Labrador; and

- (3) hereby covenants, agrees and undertakes to execute such further and other documents and to perform such further and other acts which may reasonably be required by the Surety (including assisting with the prosecution of the Claim) in order that the Surety may realize upon the rights hereby subrogated, assigned and transferred to it; and
- (4) and honour all contractual obligations and/or warranties and/or guarantees in relation to labour or materials supplied or to be supplied by the Claimant; and
- (5) hereby grants to the Obligee, the Surety, and the Contractor and any person which the Surety may designate, all guarantees and warranties and other benefits with respect to the labour or material provided by the Claimant to which the Contractor would have been entitled had the Contractor paid the Claimant in a timely and proper manner; and
- (6) solemnly declares that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Claimant in the performance of its work as required by the subcontract between the Claimant and the Contractor, and for which the Contractor might in any way be held responsible, have been paid in full, as required by the subcontract up to and including the latest progress payment received.

IN WITNESS WHEREOF the Claimant has executed this Release, Assignment, Undertaking and Grant this 24 day of August, 2022, at Kelligraws, Newfoundland and Labrador by its proper signing officers.

RODCO MECHANICAL (2014) LTD.

Signature: 

Print Name: Stephen Rodonante

Title: president.

I have authority to bind the Corporation

Witness Signature: 

Print Name:

C. BRAD LEYTE
"A BARRISTER" (NL)

RELEASE, ASSIGNMENT, UNDERTAKING AND GRANT

WHEREAS CRANE SUPPLY A DIVISION OF CRANE CANADA CO. of the Province of New Brunswick (hereinafter called the "Claimant") represents to **WESTERN SURETY COMPANY** having an office in the Province of Saskatchewan (hereinafter called the "Surety") and covenants with the Surety that **EDWARD COLLINS CONTRACTING LIMITED** (hereinafter called the "Contractor") is indebted to the Claimant in the amount of \$204,781.32 for labour or material or rentals provided by the Claimant to the Contractor and used on the contract between the Contractor and the **TOWN OF PLACENTIA** (hereinafter called the "Obligee") made the 19TH day of March, 2021 for water system upgrades in the Town of Placentia (the "Contract");

AND WHEREAS the Surety has issued, *inter alia*, a Labour & Material Payment Bond in connection with the Contract (the "Bond");

AND WHEREAS the Claimant has made a claim against the Surety and the Contractor in the amount of \$204,781.32 ("Claim");

AND WHEREAS the Surety has agreed to settle the Claim in exchange for the Claimant's assignment to the Surety of its rights and interests in the Claim;

AND WHEREAS the Claimant hereby warrants and represents to the Surety that it is entitled to payment from the Contractor and it is agreed and acknowledged that the Surety is relying on this warranty and representation in respect of this Agreement;

NOW THEREFORE THIS DEED WITNESSETH that in consideration of the promise of payment of \$204,781.32, which is the verified amount as per the Surety's correspondence dated **August 17, 2022**, by the Surety to the Claimant, the mutual covenants and agreements contained in this Agreement and the other good and valuable consideration set out herein, the receipt and sufficiency of which are hereby acknowledged by the parties, the Claimant covenants and agrees as follows:

- (1) hereby releases and forever discharges the Surety from any claims related to the Contract; and
- (2) hereby subrogates, assigns and transfers to the Surety any and all liens, claims, causes of action, actions, judgments and rights to recovery which the Claimant may have against any person, firm or corporation in connection with or in any way related to the Claim or the Contract, and authorizes the Surety to sue, compromise or settle in the Claimant's name or otherwise all such claims, causes of action and rights to recovery and without in any way limiting the generality of the foregoing, hereby subrogates, assigns and transfers to the Surety any and all claims, including lien claims and breach of trust claims which the Claimant has or may have by reason of any statute of the Province of Newfoundland and Labrador; and

- (3) hereby covenants, agrees and undertakes to execute such further and other documents and to perform such further and other acts which may reasonably be required by the Surety (including assisting with the prosecution of the Claim) in order that the Surety may realize upon the rights hereby subrogated, assigned and transferred to it; and
- (4) and honour all contractual obligations and/or warranties and/or guarantees in relation to labour or materials supplied or to be supplied by the Claimant; and
- (5) hereby grants to the Obligee, the Surety, and the Contractor and any person which the Surety may designate, all guarantees and warranties and other benefits with respect to the labour or material provided by the Claimant to which the Contractor would have been entitled had the Contractor paid the Claimant in a timely and proper manner; and
- (6) solemnly declares that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Claimant in the performance of its work as required by the subcontract between the Claimant and the Contractor, and for which the Contractor might in any way be held responsible, have been paid in full, as required by the subcontract up to and including the latest progress payment received.

IN WITNESS WHEREOF the Claimant has executed this Release, Assignment, Undertaking and Grant this August day of 25, 2022, at Hamilton, Ontario New Brunswick by its proper signing officers.

CRANE SUPPLY A DIVISION OF CRANE CANADA CO.

Signature: [Signature]

Print Name: Stanley Muchynski

Title: Director of Credit

I have authority to bind the Corporation

Witness Signature: [Signature]

Print Name: PAT RINALDI

SETTLEMENT AGREEMENT entered into with effect as of this ____ day of June, 2022.

BETWEEN: **EDWARD COLLINS CONTRACTING LIMITED**, a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

("ECC")

AND: **RODCO MECHANICAL (2014) LTD.** a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

("Rodco")

AND: **WESTERN SURETY COMPANY**, a corporation duly incorporated and existing under the laws of the Province of Ontario,

("Western")

WHEREAS

- A. The Town of Placentia and ECC entered into an agreement for the supply of certain construction works and services dated March 19, 2021 (the "**Contract**").
- B. Pursuant to the Contract, ECC agreed to supply the construction works and services necessary in connection with a water system upgrade project being undertaken in the Town of Placentia (the "**Project**").
- C. ECC engaged Rodco to provide certain works and services in connection with the completion of the Contract.
- D. The Town of Placentia is in possession of a holdback in relation to the Project in the amount of \$244,977.53.
- E. Rodco has caused to be registered a mechanics' lien bearing Lien No. 19963 and had further caused a Certificate of Action to be registered with the Supreme Court of Newfoundland and Labrador General Division bearing court file no. 2022 01G 0563. Rodco has also issued a mechanics' lien bearing Lien No 20096.
- F. Western has issued a labour and materials bond in relation to the Project (the "**Bond**").
- G. Rodco has submitted a claim under the labour and materials bond which bond was issued by Western Surety Company for amounts due and owing to Rodco by ECC.
- H. ECC, Rodco and Western (the "**Parties**") have agreed to enter into this Settlement Agreement (the "**Settlement Agreement**"), for purposes of setting out the terms and

conditions of the agreement reached between ECC, Rodco and Western with respect to the completion of the Project and release of holdback.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth and contained, and other good and valuable consideration passing between ECC and Rodco (hereinafter collectively referred to as the "**Parties**"), the Parties agree as follows:

AGREEMENT

1. The Parties acknowledge and agree that the holdback can be released and paid as follows:
 - (a) Crane Supply to be paid from the holdback the amount of \$204,781.32.
 - (b) Rodco to be paid from the holdback the amount of \$40,196.17
2. ECC agrees to:
 - (a) Pay the balance of monies due and owing to Rodco in the amount of \$358,411.71 to Rodco on or before July 28, 2022.
 - (b) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of ECC under this Settlement Agreement.
3. Rodco agrees to:
 - (a) Discharge any and all mechanics' liens as registered in connection with the Project, including but not limited to claim for lien No. 19963 and Certificate of Action bearing court file no. 2022 01G 0563 and lien No. 20096.
 - (b) Not register any additional mechanics' liens or initiate legal proceedings in relation to the Contract, with the exception of legal proceedings to enforce this Settlement Agreement.
 - (c) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of Rodco under this Settlement Agreement and to take all steps required to have the holdback for the Project released.
4. Western Agrees to:
 - (a) Make full payment to Rodco in the amount of \$358,411.71 less any payments made by ECC following the date of these Minutes of Settlement that remains due to Rodco by ECC as outstanding on July 28, 2022 within 7 business days of Rodco providing written notice to Western of the outstanding amount.
5. General Terms
 - (a) This Settlement Agreement, including the schedules hereto, embodies the entire Agreement between the Parties concerning the subject matters mentioned herein, and supersedes all previous discussions, correspondence,

understandings or agreements, whether written or oral, with respect to such matters.

- (b) Rodco and ECC agree that this Settlement Agreement is intended to be in complete satisfaction of all matters arising between Rodco and ECC in relation to the Contract and/or the Project.
- (c) The invalidity of any of the provisions of this Settlement Agreement, or any of the provisions of the documents attached as schedules to this Settlement Agreement, shall not invalidate or affect any of the other provisions of this Settlement Agreement, which shall remain in full force and effect.
- (d) This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- (e) None of the terms, conditions or provisions of this Settlement Agreement shall be changed, waived, varied, modified or altered unless done so in writing and signed by all of the Parties.
- (f) This Settlement Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Newfoundland and Labrador, and the laws of Canada applicable therein, and the Parties shall attorn to the jurisdiction of the courts of the Province of Newfoundland and Labrador.
- (g) This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together constitute one and the same instrument. This Settlement Agreement may be executed and transmitted by facsimile or by email attachment in .pdf.

[Remainder of page intentionally blank. Signature pages to follow.]

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed as of the day and year first before written.

Witness

EDWARD COLLINGS CONTRACTING LIMITED

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the Town

Witness

RODCO MECHANICAL (2014) LTD.

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

Witness

WESTERN SURETY COMPANY

Per: _____

Name: *James Tothill*

Title: *Chief Claims Manager*

I/We have the authority to bind the corporation

From: Michael Cabot <michael.cabot@occolaw.com>

Sent: July 6, 2022 8:11 AM

To: Punzo, Andrew <APunzo@blg.com>; James Toothill <JToothill@westernsurety.ca>; C. Brad Leyte <bleyte@nf.aibn.com>

Cc: Michel Prud'homme <michel.prudhomme@bbcg.ca>; Borgo, Mark <MBorgo@blg.com>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) l

Andrew –

Just checking in on this to let you know that ECC has signed this agreement.

I understand that Rodco has done the same.

Have you had an opportunity to review it?

Mike

Michael Cabot

Partner

Direct 709 702 8902 Fax 709 702 8901

Email michael.cabot@occolaw.com

Web www.occolaw.com



55 Duckworth St., St. John's, NL A1C 1E6

Andrew Punzo
T: 416-367-6005
apunzo@blg.com

Mark Borgo
T: 416-367-7887
mborgo@blg.com

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto ON M5H 4E3
Canada
T 416-367-6000
F 416-367-6749
blg.com



File No. 013722.000143

October 18, 2022

DELIVERED BY EMAIL
phil.clarke@ca.gt.com

Phil Clarke
Grant Thornton Limited
15 International Place, Suite 300
St. John's, NL A1A 0L4

Dear Mr. Clarke:

Re: Surety: Western Surety Company ("Western Surety ")
Principal: Edward Collins Contracting Limited ("ECC")
Obligee: Town of Placentia (the "Town")
Claimants: Rodco Mechanical (2014) Ltd. ("Rodco") and Crane Supply
Payment Bond No.: 532,090 ("Payment Bond")
Contract: Town of Placentia / Water Systems Upgrades 17-G1-2-00050 / 17-SCF-19-00129 (the "Contract")

As you may recall, we represent Western Surety in connection with the above-noted matter.

On March 19, 2021, ECC entered into the Contract with the Town for the project known as Town of Placentia / Water Systems Upgrades (the "Project").

Western Surety issued Payment Bond 532,090 in connection with the Contract naming ECC as Principal, the Town as Obligee, and Western Surety as Surety.

Rodco and Crane Supply subsequently entered into agreements with ECC for the supply of certain services and materials in relation to the Contract.

In or around December 2021, Rodco and Crane Supply each made claims for lien and claims against the Payment Bond for unpaid invoices for work performed on the Project.

In or around June 2022, Rodco, Crane Supply, ECC, and Western Surety negotiated a Settlement Agreement whereby Crane Supply would be paid the full amount of its claim from the holdback, being \$204,781.32, and Rodco would receive the remaining balance of the holdback to satisfy a portion of

its claim, being \$40,196.17. ECC agreed to pay the balance of Rodco's claim, being \$358,411.71, by July 28, 2022, failing which Western Surety would pay the balance owing to Rodco.

Rodco, Crane Supply, and Western Surety each executed the Settlement Agreement. Previous counsel for ECC, Michael Cabot, advised that ECC had executed the Settlement Agreement, but the parties were never provided with a copy of the signed Settlement Agreement despite repeated requests. Accordingly, Western Surety had no choice but to comply with its obligations under the Payment Bond and issued payment to Rodco and Crane Supply without any contribution from the holdback.

In exchange for an Assignment and Release, Western Surety paid Rodco \$398,607.88 and Crane Supply \$204,781.32 under the Payment Bond. Accordingly, Western Surety is now assignee of those parties' claims, including claims for lien.

Western Surety has reached an agreement in principle with the Town whereby the holdback will be directly released to Western Surety given the assignments. While the Town is agreeable in principle with this proposal, the Town would like a Release from ECC and/or approval from the Monitor disclaiming any rights to the holdback and confirming ECC will not seek further amounts from the Town in connection with the Contract.

We look forward to hearing from you regrading the foregoing proposal. Please let us know if you require any additional information.

Yours very truly,



Andrew Punzo

ASP/MAB

cc. Darren D. O'Keefe
O'Keefe & Company
darren@okeefeandcompany.com

Matthew Craig
Stewart McKelvey
mcraig@stewartmckelvey.com

TAB WW

This is **Exhibit "WW"** to the Affidavit of JAMES TOOTHILL
of the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'J. [unclear]', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Western Surety - ECC - Town of Placentia | Bond No. 532,090

From: Punzo, Andrew <APunzo@blg.com>

Sent: December 12, 2022 6:25 PM

To: Clarke, Phil <Phil.Clarke@ca.gt.com>; Borgo, Mark <MBorgo@blg.com>

Cc: Darren O'Keefe <darren@okeefeandcompany.com>; Matthew Craig <mcraig@stewartmckelvey.com>

Subject: RE: Western Surety - ECC - Town of Placentia | Bond No. 532,090

CAUTION: EXTERNAL EMAIL. DO NOT CLICK ON LINKS OR OPEN ATTACHMENTS YOU DO NOT TRUST
*****NEW*** DO NOT ENTER YOUR GT PASSWORD ON ANY EXTERNAL EMAIL REQUEST**

Phil,

Thanks for getting back to us. We would appreciate the Monitor or its counsel providing a position with regard to the Rodco lien. In our view, the Monitor's obligation is to provide an independent position regarding, inter alia, the matters affecting creditors, including Rodco (and Western Surety by assignment). Therefore, the hearings you have proposed below based on any bald assertions of ECC regarding the existence or validity of the Rodco lien should not be required at this stage.

Can you please put us in touch with the Monitor's counsel so that we can discuss this matter? The issue of a lien claimant's (i.e. Western Surety) entitlement to holdback funds should be straightforward under the lien legislation. This entitlement is in addition to the unsecured position of Western on the basis of the Settlement Agreement between ECC/Crane Supply/Rodco and ECC's written irrevocable direction in favour of Crane Supply, which were also assigned to Western. All of the supporting materials have been provided to you. We are unaware of the basis of ECC's position you have advised below, namely, "*ECC – disputes the position of Western and is of the view there is no lien. I have not looked at their information.*" To the extent ECC has any information to support its position, it should be produced and reviewed.

If necessary, we will get instructions to take further steps if needed, however, we want to avoid unnecessary costs being incurred by the parties and particularly by creditors as a result of groundless and prejudicial positions asserted by the debtor.

We look forward to hearing from you.

Andrew Punzo

Partner

T 416.367.6005 | APunzo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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Borden Ladner Gervais LLP

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Khalid, Bushra

From: Borgo, Mark
Sent: February 10, 2023 11:57 AM
To: Khalid, Bushra
Subject: FW: Western Surety - ECC - Town of Placentia | Bond No. 532,090

From: Darren O'Keefe <darren@okeefeandcompany.com>
Sent: December 12, 2022 5:30 PM
To: Punzo, Andrew <APunzo@blg.com>; Clarke, Phil <Phil.Clarke@ca.gt.com>; Borgo, Mark <MBorgo@blg.com>
Cc: Matthew Craig <mcraig@stewartmckelvey.com>
Subject: RE: Western Surety - ECC - Town of Placentia | Bond No. 532,090

[External / Externe]

Mr. Punzo,

Our assertions are not bald.

In response to your comment that "to the extent ECC has any information to support its position, it should be produced and reviewed" – the only "information" we have is our interpretation of the *Mechanic's Lien Act* and relevant legal principles concerning how a lien survives after the underlying debt obligation is paid. As suggested by the Monitor, this will likely require a hearing.

Regards,

Darren D. O'Keefe
Principal, Lawyer | O'Keefe & Company

P 709 700 0911 | C 709 699 3002
E darren@okeefeandcompany.com
84 Airport Rd, St. John's, NL A1A 4Y3

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From: Punzo, Andrew <APunzo@blg.com>
Sent: Monday, December 12, 2022 6:55 PM
To: Clarke, Phil <Phil.Clarke@ca.gt.com>; Borgo, Mark <MBorgo@blg.com>
Cc: Darren O'Keefe <darren@okeefeandcompany.com>; Matthew Craig <mcraig@stewartmckelvey.com>
Subject: RE: Western Surety - ECC - Town of Placentia | Bond No. 532,090

Phil,

Thanks for getting back to us. We would appreciate the Monitor or its counsel providing a position with regard to the Rodco lien. In our view, the Monitor's obligation is to provide an independent position regarding, inter alia, the matters

affecting creditors, including Rodco (and Western Surety by assignment). Therefore, the hearings you have proposed below based on any bald assertions of ECC regarding the existence or validity of the Rodco lien should not be required at this stage.

Can you please put us in touch with the Monitor's counsel so that we can discuss this matter? The issue of a lien claimant's (i.e. Western Surety) entitlement to holdback funds should be straightforward under the lien legislation. This entitlement is in addition to the unsecured position of Western on the basis of the Settlement Agreement between ECC/Crane Supply/Rodco and ECC's written irrevocable direction in favour of Crane Supply, which were also assigned to Western. All of the supporting materials have been provided to you. We are unaware of the basis of ECC's position you have advised below, namely, *"ECC – disputes the position of Western and is of the view there is no lien. I have not looked at their information."* To the extent ECC has any information to support its position, it should be produced and reviewed.

If necessary, we will get instructions to take further steps if needed, however, we want to avoid unnecessary costs being incurred by the parties and particularly by creditors as a result of groundless and prejudicial positions asserted by the debtor.

We look forward to hearing from you.

Andrew Punzo

Partner

T 416.367.6005 | APunzo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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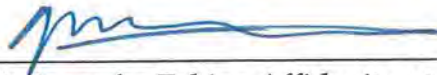
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TAB XX

This is **Exhibit "XX"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

2022 01G 1964
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the Companies Creditor Arrangement Act, R.S.C. 1985 c.C-36 as amended (the "CCAA"); and

AND IN THE MATTER OF an application of Edward Collins Contracting Ltd., Classic Security Limited, FGC Holdings Ltd., 51037 Newfoundland and Labrador Inc., and H & E Designs Ltd. (collectively "ECC" or the "Company").

STAY EXTENSION ORDER

Before the Honourable Justice Alexander MacDonald on December 14, 2022:

THIS APPLICATION, made by Edward Collins Contracting Limited, Classic Security Ltd., FGC Holdings Ltd., 51037 Newfoundland and Labrador Inc. and H & E Designs Ltd. (collectively, the "Applicants") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order extending the Stay Period (as defined herein) up to and including March 31, 2023, was heard on December 14, 2022.

ON READING the affidavits of Josh Collins, sworn December 8 and 12, 2022, and the Exhibits thereto; the affidavit of David Savoie dated August 8, 2022, the report of Grant Thornton Limited dated December 8 and 13, 2022 in its capacity as monitor of the Applicants (the "Monitor");

ON HEARING the submissions of counsel for the Applicants, the Monitor, the Royal Bank of Canada, and such other counsel that were present:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the materials filed, as set out in the Affidavit of Service, is hereby deemed adequate notice so that this Motion is properly returnable today and hereby dispenses with further service thereof.

STAY OF PROCEEDINGS

2. **THIS COURT ORDERS** that the Stay Period, as defined in the Order of the Honourable Justice Alexander MacDonald dated October 17, 2022 (the "Initial Order"), is hereby extended up to and including April 6, 2023.

INTERIM MATTERS

3. **THIS COURT ORDERS** that:

- (a) the Monitor shall file with the Court an updating report on or before February 3, 2023 (the "Monitors Interim Report");
- (b) any materials to be filed in reply to the Monitors Interim Report must be filed by February 10, 2023;
- (c) that the Parties shall return for an interim hearing on February 17, 2023, to review the contents of the Monitors Interim Report;
- (d) the Company shall pay to the Monitor the amount of \$250,000.00 to be held by the Monitor, in trust, pending an application to this Honourable Court for distribution and a determination of entitlement to such amounts recognizing the relative priorities of the parties to such amounts as at the date of the stay of proceedings in the Initial Order; and
- (e) the comeback hearing in this matter shall be scheduled for 10:00 a.m. on March 17, 2023.

GENERAL

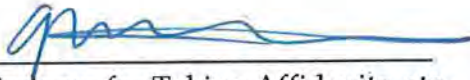
4. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Newfoundland time on the date of this Order.

ISSUED at St. John's, Newfoundland and Labrador this 15th day of December 2022.


COURT OFFICER

TAB YY

This is **Exhibit "YY"** to the Affidavit of JAMES TOOTHILL of the City of Regina, in the Province of Saskatchewan, sworn before me at the City of Regina, in the Province of Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, consisting of a stylized 'A' followed by several loops and a long horizontal stroke.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Western Surety - ECC - Town of Placentia | Bond No. 532,090
Attachments: Town of Placentia Waterline [FILED] 02 Feb 23.pdf

From: Punzo, Andrew <APunzo@blg.com>
Sent: January 5, 2023 2:55 PM
To: Clarke, Phil <Phil.Clarke@ca.gt.com>; Borgo, Mark <MBorgo@blg.com>
Cc: Darren O'Keefe <darren@okeefeandcompany.com>; mcraig@stewartmckelvey.com; skour@reconllp.com
Subject: RE: Western Surety - ECC - Town of Placentia | Bond No. 532,090

All,

Thanks again for your time today. Further to our call just now, we are confirming that Western's preference is for the Town to hold onto the funds rather than paying the funds into court. This approach contemplates one hearing to determine who/where the Town ought to pay the funds.

We will leave it to Matt to advise if the Town does not want to hold the funds, and prefers to incur the costs and take affirmative steps under the MLA to pay them into court or otherwise.

Andrew Punzo

Partner

T 416.367.6005 | APunzo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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TAB ZZ

This is **Exhibit "ZZ"** to the Affidavit of JAMES TOOTHILL of
the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'J. [unclear]', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, C. C-36**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGMENT OF
EDWARD COLLINS CONTRACTING LIMITED, H & E DESIGNS LTD.,
CLASSIC SECURITY LTD., FGC HOLDINGS LTD. AND
51037 NEWFOUNDLAND & LABRADOR INC.**

**Fourth Report of Grant Thornton Limited,
in its Capacity as Monitor**

February 3, 2023



**Grant Thornton Limited,
Monitor**

Suite 300 - 15 International Place
St. John's, NL A1A 0L4

Fourth Report of the Monitor

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Appendix A – Stay Extension Order

Appendix B – Contracts Update

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Appendix D – Accounts Payable – January 29, 2023

Appendix E – ECC Internal Financial Statements to December 31, 2022

Appendix F – 51037 NL Inc. Internal Financial Statements to December 31, 2022

Appendix G – H&E Designs Ltd. Internal Financial Statements to December 31, 2022

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Appendix I – Equipment Sale Status – January 25, 2023

Appendix J – CRA Remittance Update

Appendix K – CRA Balances Owing as of November 23, 2022

Appendix L – CRA Proposed Change to ITC's

Appendix M – Cash Flow Variance Analysis to January 27, 2023

Appendix N – Town of Placentia Waterline Dispute

Appendix O – Town of Humber Arm South Dispute

Appendix P – Flat Bay Inc. Dispute

Appendix Q – PHC Avalon Culvert Replacement Dispute

Appendix R – Intact Dispute

Appendix S – UESI v Dollard Dispute

Appendix T – Traveler's Due Diligence Update as of December 5, 2022

Appendix U – Monitor's Recalculation of the Refinancing Gap

Introduction

1. Pursuant to an order of the Supreme Court of Newfoundland and Labrador (the “**Court**”) made on October 5, 2022 (the “**Initial Order**”), Edward Collins Contracting Limited (“**ECC**”), H&E Designs Ltd. (“**H&E**”), Classic Security Ltd. (“**Classic**”), FGC Holdings Ltd. (“**FGC**”) and 51037 Newfoundland and Labrador Inc. (“**51037**”) (collectively, “**ECC et al.**” or the “**Company**”) were granted protection under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended, (the “**CCAA**”).
2. The Initial Order appointed Grant Thornton Limited as monitor (“**GTL**” or the “**Monitor**”) in the CCAA proceedings and established an initial stay of proceedings (the “**Stay Period**”) until October 17, 2022.
3. On October 17, 2022, the Court issued an Amended and Restated Initial Order (“**ARIO**”) which affirmed the terms of the Initial Order and authorized the Company, among other things:
 - a. Confirmed the appointment of Grant Thornton Limited as Monitor;
 - b. Authority to file, if deemed appropriate, a plan of compromise and arrangement;
 - c. Authority to implement operational changes and pursue restructuring opportunities;
 - d. Authority under s. 32 of the CCAA to disclaim or rescind agreements for real property;
 - e. Granted an extension of the stay of proceedings to December 15, 2022;
 - f. Empowered the Company to permanently downsize, cease, or shut down any of its business operations and dispose of assets subject to oversight of the Royal Bank of Canada (“**RBC**”) and the Canada Revenue Agency (“**CRA**”), and oversight of the Court; and
 - g. Pursue all avenues of refinancing of its Business and Property, in whole or in part, subject to prior approval of the Court being obtained before any material refinancing.
4. On December 14, 2022, the Court issued a Stay Extension Order granting an extension of the stay of proceedings until April 6, 2023. In addition, the Court ordered:
 - a. The Monitor to file an updating report on or before February 3, 2023;
 - b. Materials filed in reply to the Monitor’s report must be filed by February 10, 2023;
 - c. The Parties shall return for an interim hearing on February 17, 2023 to review the contents of the Monitor’s report;
 - d. The Company shall pay to the monitor the amount of \$250,000.00 to be held by the Monitor, in trust, pending an application to this Honourable Court for distribution and a determination of entitlement to such amounts recognizing the relative priorities of the parties to such amounts as at the date of the stay of proceedings in the Initial Order; and
 - e. A combeback hearing on the matter will be held at 10:00 am on March 17, 2023.

The Stay Extension Order is attached hereto as **Appendix “A”**.

5. This is the fourth report of the Monitor (the “**Fourth Report**”). The Monitor previously filed with the Court a Pre-filing Report (the “**Pre-filing Report**”) dated September 13, 2022, a Supplemental to the Pre-filing Report (the “**Supplemental Pre-Filing Report**”) dated September 23, 2022, a First Report

("First Report") dated October 13, 2022, a Second Report ("Second Report") dated November 17, 2022, a Third Report ("Third Report") dated December 8, 2022 and a Supplement to the Third Report ("Supplemental Third Report") dated December 13, 2022. Readers are encouraged to review these reports and the related application materials for additional information on the proceedings.

Purpose of this Report

6. The purpose of this Fourth Report is to provide this Honourable Court and the Company's stakeholders with information in respect to the following:
 - a. An update on the Company's operations since the last report;
 - b. An update on the Monitor's activities since the last report;
 - c. An update on the status of the Company's refinancing;
 - d. An update on the status of the CRA trust examinations;
 - e. An update on the Company's cash flow including budget to actual variance analysis;
 - f. The status of legal disputes related to various contracts;
 - g. An update on the status of the proposed sale of assets for the benefit of creditors; and
 - h. Any other matter the Monitor considers material.

Background

7. ECC et al. consists of the legal entities, Edward Collins Contracting Limited ("ECC"), H&E Designs Ltd. ("H&E"), Classic Security Ltd. ("Classic"), FGC Holdings Ltd. ("FGC") and 51037 Newfoundland and Labrador Inc. ("51037"). The Company's main operating entity, ECC, was created in 1974 and for 48 years has operated in the heavy civil construction industry. The business's expertise includes road building, commercial site and subdivision development, water and sewer installation, ditching, culvert installation and subgrade road work, and heavy equipment rentals. The Company operates across Newfoundland and Labrador and does not have any operations or assets outside Newfoundland and Labrador.
8. Additional background information on ECC et al. and the CCAA Proceedings along with all the unsealed documents filed with the Court are available on the Monitor's website, located at: www.grantthornton.ca/ecc (the "Monitor's Website"). The Monitor continues to update this website as appropriate.

Terms of Reference and Disclaimer

9. In preparing this Fourth Report, the Monitor has relied upon unaudited financial information, the Company's records, financial information and projections, and discussions with the Company's management. While the Monitor reviewed various documents provided by the Company (including, among other things, unaudited internal financial documents and financial projections) and believes that the information therein provides a fair summary of the transactions as reflected in the

documents, such work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Assurance Standards (“GAAS”), Generally Accepted Accounting Principles (“GAAP”), or International Financial Reporting Standards (“IFRS”). Accordingly, the Monitor expresses no opinion or other form of assurance pursuant to GAAS, GAAP or IFRS with respect to such information.

10. Some of the information used in preparing this Fourth Report consists of financial projections, including an updated Cash Flow Projection. The Monitor cautions that these projections are based upon assumptions about future events and conditions that are not ascertainable. The Company’s actual results may vary from the Revised Cash Flow Projection, even if the hypothetical and probable assumptions set forth in the Cash Flow Projection contained therein materialize, and the variations could be significant. The Monitor’s review of the future oriented information used to prepare this Second Report did not constitute an audit of such information under GAAS, GAAP or IFRS.
11. In the course of its mandate, the Monitor has assumed the integrity and truthfulness of the information and explanations presented to it by the Company, its management and other stakeholders, within the context in which such information was presented. To date, nothing has come to the Monitor’s attention that would cause it to question the reasonableness of these assumptions, or accuracy of the information. The Monitor has requested that management bring to its attention any significant matters which were not addressed in the course of the Monitor’s specific inquiries. Accordingly, this Report is based solely on the information (financial or otherwise) made available to the Monitor by the Company, its Management, and other stakeholders.
12. This Fourth Report has been prepared for the use of this Honourable Court and the Company’s stakeholders as general information relating to the Company and to assist the Court in administering this proceeding. Accordingly, the reader is cautioned that this Report may not be appropriate for any other purpose. The Monitor will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Fourth Report contrary to the provisions of this paragraph.
13. Capitalized terms not defined in this Fourth Report have the meanings ascribed to them in the Initial Order, the Originating Application, or the previous reports of the Monitor.
14. All references to dollars are in Canadian currency unless otherwise noted.

Update on the Company’s Restructuring Efforts

15. The Company continues to work towards streamlining its operations and enhancing financial performance. Nothing significant has changed in this regard since the last report.
16. The Company continues to operate within the constraints of the CCAA proceeding and is operating on a cash on delivery (“COD”) basis with certain exceptions including utilities and lease payments.

17. The Company continues to engage its former external accountant to provide additional accounting support in the short term. As reported in the Third Report, internal financial statements for the 2022 fiscal year-end and internal interim financial statements to October 31, 2022, have been prepared. Subsequently, internal interim financial statements to December 31, 2022, have recently been prepared for ECC, FGC, 51037 and H&E. In addition, compilation reports for 2022 have been completed for FGC and H&E. The Company continues to search for a permanent solution to staff its finance and accounting function.

- a. ECC engaged Lori Haines CPA Professional Corporation to conduct a compilation report for ECC for the year ended July 31, 2022 as required by Traveler's as part of the refinancing efforts. That effort is complete.
- b. The Company has disclaimed one lease for equipment it deemed surplus and which the anticipated sale value was less than the contract buyout amount. The lessor has been advised of the conditions imposed on that release in the ARIO. The equipment disclaimed to date includes:

Creditor	Lessor	Equipment	Balance Owning
CWB National Leasing	FGC Holdings Inc.	2015 John Deere 350G Excavator (s/n 1FF350GXHED810283)	\$ 371,148.99

- c. The Company has engaged with Ritchie Bothers to sell surplus equipment as contemplated in the restructuring, with the oversight required by the ARIO. Additional information on the sales of assets is described below.
18. The Company continues to bid on new contracts with a focus on smaller projects in the municipal infrastructure and private company market. No new contracts have been defaulted. The Company has won 2 new contracts in January 2023. The biggest impact on the operations has been that work on the two Monopile contracts where ECC is subcontractor to Universal Environmental Services Inc. Those contracts have commenced generating a significant receivable.
19. The Company has continued to operate within the constraints of the CCAA proceeding, including paying vendors, CRA, engaging with employees, and communicating with other stakeholders and creditors involved in the proceeding.
20. The Company continues to work with the Monitor and provide information to the Monitor and creditors as requested, continues to communicate with creditors, employees, customers, and other stakeholders, and assist its legal counsel with the various contract disputes.
21. The Company is also diligently working to prepare and provide the information requested by Traveler's as a pre- condition for their submission to underwriting. Questions and communications between Traveler's and the Company are ongoing. Further details on the status of this effort are discussed later in this report.

22. The Company has paid the \$250,000 to the Monitor which the Monitor is holding in a separate trust account for the benefit of the creditors pursuant to the ARIO.
23. The Company is experiencing challenges collecting receivables and holdbacks. Given these challenges, the Company has commenced certain litigations to collect on balances owing.
24. A successful restructuring and the ability to submit a plan of arrangement to creditors continues to be based on the successful achievement of the following objectives:

- a. Maintaining neutral cash flow, or positive cash flow, in the short term to allow time for the Company to liquidate certain assets to both 1) reduce operational costs, and 2) generate cash to close the Traveler's funding gap.

To date the Company still has NOT been able to generate significant positive cash flow from operations to generate a contribution on the Traveler's financing gap;

- b. Sell certain equipment for values at orderly liquidation values, or better, and close the sale of 30 Reid Lane, Deer Lake;
 - c. Collect on accounts receivable, force account receivable, and holdbacks; and
 - d. Closing the Traveler's refinancing.
25. The fundamental issue is whether the company can monetize 30 Reid's Lane, sell equipment, and collect on accounts receivable in a timeframe that is acceptable to Traveler's, the creditors, and the Court. Further details on these key issues are described below.
 26. Classic is not intended to form part of any proposed Plan of Arrangement. Once its sole asset, the condominium is sold and the funds distributed to the creditors, it will play no further role. The condominium remains listed for sale with a realtor and is unsold. Updates on the status of the sale have been provided to RBC and CRA and the realtor continues to operate within the parameters established by RBC and CRA.

Update on the Operations of the Applicant

27. Since the date of the ARIO, the Company continues to work on existing project and contract work and continues to pursue new work and bid on new projects.
28. An updated listing of the Company contracts is attached hereto as **Appendix "B"**. The Company continues to bid on contracts in the normal course. The Company recently was awarded contracts for the Inspection and Maintenance of the Sir Ambrose Shea Lift Bridge in Placentia, NL to begin in February 2023, and the Town of Placentia Harbour Drive Phase 2 to begin in April 2023.

29. The Company has been working to complete contracts, collect AR, and negotiate settlements on disputed contracts where possible. A current accounts receivable listing dated January 31, 2023 is attached as **Appendix "C"**. The Company has reduced its outstanding receivables older than 60 days by \$150,922.70 since the Third Report, but the overall balance has increased by \$140,520.90 for a total balance of \$2,042,077.50. There have been no new collection issues on new projects. Collection of receivables related to old projects remains an issue and timelines are uncertain. ECC has taken legal action to pursue collections. A significant portion of the 31–60-day old receivables is the result of the Company billing out its holdback claims on several projects. Additional information on the status of accounts receivable include:
- a. Of the total AR balance - \$743,876 is considered at risk or subject to disputes;
 - b. Department of Transportation & Infrastructure - The Company and Department of Transportation and Infrastructure ("TI") are in a dispute related projects 12-21 PHC Avalon Culvert Replacement Rehab, 45-20PHP Stephenville Paving and 46-21 Central Paving and Bridge Rehab. The total amount of AR disputed with TI is \$359,480. These disputes are ongoing and resolution cannot be estimated at this time. There are no known issues with other projects with TI;
 - c. Town of Placentia – The Company, creditors, and the Town of Placentia have a dispute over the remaining \$237,785.76 holdback left from a water project. Competing applications will be brought before the Court on this matter.
 - d. Flat Bay Inc. – There is a dispute between the Company and the Department of Municipal Affairs and TI, the funding entities to the project. The customer, Flat Bay Band Incorporated short paid \$41,441.47, purportedly an amount approved by Department of Municipal Affairs. Department of Municipal Affairs agreed to withhold an amount from Flat Bay Band Incorporated on behalf of TI as a means of recovering a prefilling claim of \$31,500 arising from a contract between TI and ECC, contract 45-20. Settlement discussions have failed. ECC brought an application against Flat Bay Band Incorporated on January 31, 2023 to collect this amount from Flat Bay Band Incorporated plus damages. In correspondence to ECC on the application, Flat Bay Band Incorporated have agreed to pay the outstanding \$41,441.47.
30. Holdbacks as of January 31, 2023 total \$58,917.90 and are listed in **Appendix "C"**.
31. Recoverable liquated damaged related to TI projects are unchanged at \$363,378.69.
32. An updated trade accounts payable list is attached as **Appendix "D"**. The AP trial balance shows an increase in payables is related to the Ultramar supplier account. This cannot be accurate as Ultramar has ECC on COD via trust account cheque only. Certain invoices recorded in the ECC payables were purchased for Universal Environmental Services Inc. ("**UESI**"), for which UESI has prepaid. Adjusting entries are needed to match up prepayments on account made by UESI; that accounting had not yet taken place as of the date of this report.

The Monitor monitors the accounts payable and vendor accounts for unpaid invoices, or payment on pre-filing amounts. No significant changes were noted.

33. Bonding – As previously reported, Western Surety will not be providing any further bonding to the Company. The Company has not yet found a replacement service provider but has been bidding projects by using cash bonds and partnering with other entities.
34. WCB NL – The Company has an agreed payment plan in place to pay the WCB premiums due. WCB NL confirmed that the monthly payments were sufficient to pay the post filing projected payroll. Payments are current. The Monitor has reviewed the plan and payment and it does not appear to be paying pre-filing debts. The monthly payment effectively pays the premium due from the months estimated wages. The final amount due will be calculated in late February 2023 in the normal course.
35. The Company continues to pay post filing operating costs in the normal course. This includes the payment of the fees of the Monitor and legal counsel. The Monitor has been advised that Daimler Financial is owed \$32,233.36 in payments post July 20, 2022, but pre-initial order in the CCAA proceeding. The Company is looking into these missed payments and expects to resolve the issue shortly.
36. Updated internal financial statements to December 31, 2022 for ECC are attached hereto as **Appendix “E”**, for 51037 NL Inc. as **Appendix “F”**, H&E Designs Limited as **Appendix “G”**, and FGC Holdings Limited as **Appendix “H”**.
37. The Monitor notes the following related party transaction:
 - a. The due from shareholders in FGC has increased by \$39,000. The management fee income earned by Frank Collins from EUSI flows through FGC and is the reason for the increase in the due from shareholder’s account. A copy of the actual cash flows to January 6, 2023 is attached in **Appendix “M”**; and
 - b. As previously reported, ECC is subcontractor to UESI on 2 monopile projects with the Port of Argentina. The trade accounts receivable stands at \$390,205 as of December 31, 2022. The Company has advised that the equipment rental agreement between ECC and UESI is at market terms. That project activity has substantially increased in December and January as expected.
 - c. The Monitor is unaware of any other changes to related party account or of any other related party transactions.

Equipment Update

38. The Company has proceeded to list certain equipment for sale with Ritchie Brothers (“RB”), per the contract terms identified in the Third Report. The items for sale began to be listed live on December

8, 2022. To date, not all equipment previously identified as “sell now” has been listed, and most of the equipment listed to date has not received an acceptable offer. A list of the equipment being sold by RB and its sale status as of January 25, 2023, is attached as **Appendix “I”**. The items are listed for offers for a two week period. Offers received at the end of those 2 weeks are sent to the Company, with copy to the Monitor for review. Counteroffers are prepared and submitted or offers are accepted.

39. RB provides bi-weekly updates on the sale status of each piece of equipment. As of the January 25, 2023 report approximately 53 pieces of equipment have been listed for sale. Items are listed for sale for a 2 week period. Most offers received have been significantly below the target price for those assets. Those assets have been or will be re-listed with a later auction expiry date to give the assets more exposure to the market.
40. Inspections of 20 pieces of equipment were pending, and 6 pieces of equipment were awaiting proof of ownership documents so they can be listed.
41. Only one piece has been sold at values that was satisfactory to the Company. The sales are within the terms established by the ARIO.
42. The Monitor spoke with RB in advance of this report to get an update. RB provided the following update:
 - The overall market for equipment is down from previous high prices;
 - There is a lot of action on the listed equipment;
 - Bidders to date have mostly been local. They know the seller and are looking for a deal;
 - The time of year has been a challenge – starting to list over Christmas, and the time of year is slow for equipment sales / slow period in construction; and
 - The rural location is a challenge.
43. In response to the market feedback, the Company has reduced its targeted sales price expectations.
44. RB is also going to make a purchase proposal for the “sell now” assets, segregating the asphalt assets from the rest. That proposal is expected within the next few weeks.
45. The Company has disclaimed one piece of equipment to date as referenced in paragraph 17. Additional pieces previously identified as surplus by the Company, and unlikely to have any equity, have not yet been disclaimed or released. Those assets are indicated below:

Creditor	Lessor	Equipment	Balance Owning
De Lage Landen Financial Services Canada Inc.	Edward Collins Contracting Ltd.	2014 Wirtgen W200i Milling Machine Cold Planer	\$ 267,419.55
Caterpillar Financial	Edward Collins Contracting Ltd.	2016 Caterpillar 272DXHP Skid Steer Loader(s/n CAT0272DLMD200479)	\$ 28,613.70
Nissan Finance Canada	H&E Designs Ltd.	2019 Infiniti QX80 (VIN JN8AZ2NE2K9235111)	Unknown

46. Caterpillar has requested that the Company disclaim that lease and the Company has agreed. In addition, H&E is in the process of disclaiming the Nissan lease, in coordination with Nissan.
47. The 2008 Astec Self-Erect Silo is a key component of the asphalt plant and will be grouped with those assets. The 2018 John Deere 030G Compact Excavator is being used on contract and the lease being paid.
48. The Company intends to sell further equipment, estimated in February 2023 and June 2023. These items will be used in contract work expected to be completed by this date. Traveler's is aware of the plan and the ability to sell and repay Traveler's on an item-by-item basis has been agreed.
49. The Company has been making monthly lease payments since the date of the Initial Order for leased equipment it intends on keeping.

Sale of Real Estate

50. The Company determined that 35 Bonaventure Avenue, Unit 121 (owned by Classic) and 30 Reid's Lane (owned by ECC) are surplus and will be sold for the benefit of creditors.
51. The lots owned by H&E known as Morrissey's Place Subdivision in Placentia, NL (<https://www.morrisseysplace.com/>) remains listed for sale with Royal LePage in St. John's, NL (as it has been for some time). No lots have been sold since the date of insolvency. The development has 28 of 32 lots remaining to sell.
52. The Company has not made any further decisions on the sale of additional real property.

35 Bonaventure Avenue, Unit 121

53. Classic – 35 Bonaventure Avenue Unit 121. Classic is selling this unit for the benefit of its creditors. After originally listing the unit on October 29, 2022 at an asking price of \$449,900 it has since been reduced to an asking price of \$409,900. Classic is not a borrower in the proposed refinancing. The unit continues to be listed for sale with RE/Max Realty Specialists. The realtor has been provided with a copy of the ARIO. The Monitor continues to update RBC and CRA on the listing of the asset

and the feedback from the realtor. The sales process continues within the parameters established by both CRA and RBC.

30 Reid's Lane

54. ECC – The Company has a pending offer for 30 Reid's Lane in Deer Lake, NL. The sale of that property has yet to be finalized. There is an issue with lot 28 next door to the property, which is part of the offer. The title search on that lot shows it remains in the name of Evergreen Enterprises. The Company is working through that issue with the purchaser and have contacted legal counsel for Evergreen Enterprises to resolve the issue. No adjustment to the deal has been made and the purchaser remains very interested to acquire.

Canada Revenue Agency

55. The Company continues to file and remit to CRA in the normal course for HST and payroll remittances. All payroll and HST payable since July 20, 2022, has been remitted. A copy of the remittances made since the Third Report are attached as **Appendix "J"**.
56. HST returns have been filed for all periods between July 21 to December 31, 2022. Returns filed for October through December did not require a remittance due to the Company recording its HST collected and applying any unused input tax credits from prior periods to reduce the balance owing to \$nil in a given period. The January 2023 HST return is not due until February 28, 2023.
57. The Monitor has recalculated the total amounts owing to the CRA to July 20, 2022, plus interest and penalties to November 23, 2022. The recalculation applies past remittances across the different types of deductions in accordance with CRA's internal policies which was different than in the previous calculation presented in the Third Report (previous calculations were a worst-case scenario). The recalculation reduces the Deemed Trust portion of the amounts owing for payroll deductions by \$200,882. The Monitor has shared this recalculation with CRA's legal counsel who has indicated the Monitor's calculations are mostly consistent with CRA's. CRA is proposing adjustments to FGC corporate tax payable amount to \$22,433.54 and FGC's HST account to #23,151.81. These adjustments do NOT impact the deemed trust calculation for the Traveler's refinancing. The Monitor has not received a formal notice from CRA regarding the FGC amount as such these proposed changes have not yet been reflected in the Monitor's calculation. A copy of the Monitor's recalculation is attached as **Appendix "K"**.
58. The Monitor had previously asked CRA to clarify their position regarding the payroll processed through Classic Security Ltd. between May 1 and July 20, 2022. CRA's position is that the payroll was for ECC employees, and its source deduction obligations belong to ECC. The unpaid source deductions related to this period are included as a debt of ECC in the Monitor's calculation in Appendix "K" to align with CRA's position.

59. An HST audit of Classic resulted in an assessment of additional \$38,486.22 in HST payable. If it is recorded in Classic there should be a corresponding adjustment to reduce ECC's HST payable by the same amount. This will impact the pre-filing HST due by ECC by reducing the pre-filing HST amount by \$38,486.22. This is outstanding.
60. The Monitor has received a notice from CRA dated January 16, 2023, regarding a proposed change to HST ITC's claimed by ECC prior to the date of the CCAA proceeding. The letter estimates the approximate amount of ITC's, possibly claimed by ECC on previous HST returns, associated with the debts on the Company's list of creditors. The proposed change is to increase ECC's HST owing by \$501,567.11. This amount relates to pre-filing debt. A copy of the letter is attached as **Appendix "L"**.
61. ECC intends to dispute the reassessment on the basis that paragraph 296 (1) is not appropriate. Paragraph 296(1)(b) of the ETA allows the Minister to assess tax payable to a purchaser in unusual circumstances such as, where the person has claimed input tax credits ('ITCs') with respect to a purchase, did not pay the tax to the supplier, becomes bankrupt, and the supplier writes amounts off on account of bad debt. This is not the case. In addition, the calculation proposed by CRA is based on the Monitor's unsecured creditors as listed on the CCAA proceeding website. This list was created as required by the CCAA and was not intended to be used for tax filing purposes.
62. The Monitor acknowledges it is not likely that all the suppliers will be paid in full and therefore there is some adjustment required. The adjustment is related to HST amounts owing which do not impact Traveler's refinancing. It is the Monitor's view that once a proposed plan of arrangement is developed, a calculation can be completed on these ITC's and the amount added to CRA's claim.
63. The Monitor is of the opinion that the deemed trust amount is materially accurate. It has been shared with Traveler's and RBC.

Cash Flow Variance Report

64. The Monitor has prepared a budget to actual analysis for the 19 weeks ending January 27, 2023. That is attached as **Appendix "M"**.
65. The budget applies the revised cash flow forecast amounts presented in the Third Report, which reforecast amounts from December 3, 2022, onward. The variances in this cash flow report have accumulated during the eight weeks from December 3, 2022, to January 27, 2023.
66. Highlights of the cash flow statement include:
- a. Cash receipts of \$2,924,928 which is \$624,375 behind plan. The Company continues to experience delays in collection on existing projects. The largest differences during the eight-week period ending January 27, 2023, were:
 - i. Bryant's Cove project (\$109,110 behind plan);

- ii. Fox Harbour Armour Stone (\$177,586 behind plan);
 - iii. Freshwater Outfall (\$220,129 behind plan)
 - b. The Fox Harbour Armour Stone project (Town of Fox Harbour) was completed on November 4, 2023. Payment is outstanding (no payments have been made to date on this project). The Freshwater Outfall project (Town of Placentia) has been deferred to the spring of 2023. Bryant's Cove is a holdback outstanding related to a complete project.
 - c. Direct expenses disbursements are \$144,058 over budget. The Company has advised the over budget amounts relating to materials and subcontractors and fuel are related to the increased activity from the monopile projects.
 - d. Operating disbursements were \$2,836 under budget excluding HST remittances which were \$132,130 under budget. The main driver of the variance is lower than expected HST remittances related to slower than expected collection of cash and expenses largely on target. Other notable variances in operating disbursements include:
 - i. Repairs and Maintenance costs were \$65,978 greater than forecasted due to getting the equipment ready for lease into the monopile project; and
 - ii. Legal fees and Monitor fees are showing under budget, but after accounting for accrued WIP will be at least on budget. The Monitor fees were paid after Week 19.
 - e. Additional over or unbudgeted disbursements include \$24,646 in net contract bid deposits and \$250,000 paid into the Monitor pursuant to the Order of this Honourable Court dated December 14, 2022.
67. The overall variance to plan is an unfavourable variance of \$853,307; however adjusting for the \$250,000 paid into the Monitor, which was not contemplated in the revised budget, adjusting for the proposed payment of \$141,200 to a lien claimant from the funds held in trust by the Monitor, and unpaid legal and professional fees of \$70,000 the adjusted operating variance would be \$810,507 ($\$853,307 - \$250,000 + \$141,200 + \$70,000$), largely the negative variance from slower than forecasted collection of accounts receivable which was \$630,294.

Legal Disputes

68. The Company is involved in the following litigation/disputes related to ongoing projects. An update on open litigation files is as follows:
- a. Town of Placentia – Water Systems – this project is the subject of a dispute between the bonding company, Western Surety, the Town of Placentia, and ECC. The Monitor requested documents from both Western and ECC in this matter. Western provided the documents and ECC has not. That dispute is ongoing and will likely have competing applications. Western Surety has advised parties that it intends to bring an application to complete/enforce settlements in place between ECC, Crane, Rodco, and Western on

February 10, 2023 as provided in the ARIO. ECC filed an application pursuant to the Mechanics Lien Act on February 2, 2023. The amount of the holdback is \$237,785.76 and is being held by the Town of Placentia. Information on this dispute is attached as **Appendix “N”**.

- b. Town of Humber Arm South – The Monitor, together with the Company, a lien claimant and the Town of Humber Arm South have come to an agreement on a process to resolve claims over payments and the collection of the outstanding account receivable related to this project. The agreed plan is to pay the funds to the Monitor, who will review claims against the funds and seek directions from the court on claims and distribution. The Monitor has received the full amount of \$185,495.79 and is holding those funds in trust. The Town of Humber Arm South has retained the 10% holdback. There is a lien claimed against those funds in an amount of \$149,503.01. The Monitor has reviewed the lien claim and has determined that \$141,200 of the funds in trust should be paid to the lien claimant, with the balance of \$44,295.79 paid to ECC on the condition the existing lien is removed. The Monitor has shared the results of its review with both ECC and Rodco. Information on this dispute is attached as **Appendix “O”**.
- c. Flat Bay Inc. / TI /Municipal Affairs – ECC brought an application against Flat Bay Band Incorporated on January 31, 2023 to collect \$41,441.47 from Flat Bay Band Incorporated plus damages. In correspondence to ECC on receiving the application, Flat Bay Band Incorporated have agreed to pay the outstanding \$41,441.47. . Information on this dispute is attached as **Appendix “P”**.
- d. 12-21 PHC (Avalon Culvert Replacement) – PNL issued a notice of default in relation to this contract and ECC has not performed (or been permitted to perform by PNL) any further work on this project. PNL advised that on October 21, 2022 the culvert was inspected by PNL Department of Transportation and Works. The inspection concluded there was an immediate need for an emergency culvert replacement citing safety concerns. PNL used a replacement contractor and completed the project. ECC has taken the position it was ready, willing, and able to complete the work. The project is complete and subject to litigation as between ECC and PNL. Information on this dispute is attached as **Appendix “Q”**.
- e. 46-21 PHP (Central Paving and Bridge Rehabilitation) – Defaults have been issued by both parties. The Company has advised that PNL has awarded a portion of this contract to a third party. No progress has been achieved in resolving the dispute and it is likely this contract will also proceed to litigation.
- f. Intact Insurance Company (“Intact”) / Contract 012-19TSB with Province of Newfoundland and Labrador Department of Transportation Works – On October 24, 2022, Intact filed a statement of claim against ECC and other defendants to indemnify Intact for amounts paid out pursuant to the Intact bonding facility on this project. Intact is a secured creditor of ECC and is subrogated to the bond claims it has paid. The statement of claim is stayed as against

ECC, but not the other defendants. The impact, if any, on the CCAA proceeding is unknown at this time. Information on this dispute is attached as **Appendix "R"**.

- g. Town of Bryants Cove – Certain claims have been settled and the funds received by ECC legal counsel, certain claims remain outstanding.
69. The Company and TI appear to be heading to litigation over projects 12-21 PNC (Avalon Culvert Replacement), 46-21 PHP (Central Paving and Bridge Rehabilitation), and 45-20PHP (Stephenville Paving). The Company is of the view it has taken the required action to preserve its rights under the contract. The preservation of the Company's rights does benefit the estate. ECC has filed a mechanic lien in the amount of \$201,175.49 in relation to project 12-21 PNC.
70. The Company was name plaintiff by counter claim in an action filed by Dollard Holdings Inc. et al against Universal Environmental Services Inc. (2022 01G 4023)(**"UESI"**). The counter claim by the Company against Dollard Holdings Inc. et al includes a claim for damages related to losses suffered by the Company defending the RBC receivership application. The Monitor understands all parties are defending the claims, and UESI is funding the litigation. Information on this dispute is attached as **Appendix "S"**.
71. Given the volume of litigation and dispute related to project holdbacks, stakeholders and the court should consider agreeing to a court supervised claims process to expediate the resolution of the issues in a cost-effective manner for all parties. This could be the most efficient way to deal with various claims in an efficient way given:
- a. Likely competing legal proceedings to deal with the Town of Placentia Water Project holdback from ECC and Western Surety; and
 - b. PNL requesting the Monitors view on the status of various claims by ECC with TI.

Refinancing Update

72. The Company continues to work thought the information required by Traveler's. The due diligence is ongoing with an update attached as **Appendix "T"**. It is easier to list what is left to provide, including any new requests by Traveler's:

Key

- a. Definitive equipment list by February 7, 2023 that will be financed (accounting for equipment sales with RB, disclaimers, etc.), acknowledging that certain equipment is listed for sale and will continue to be listed for sale after the refinancing (should it proceed). TCC will allow ECC to continue to sell after submission but subject to fees to get releases after TCC's PPSA registration;
- b. The sources and uses shortfall, while not resolved, will not delay the submission of the proposed transaction to underwriting. It will be a pre-condition to disbursement;

Other

- c. Quarry appraisal was completed. ECC is completing a survey at Traveler's request. The survey is ongoing and the engineer is line up to complete the third party reserve estimate. The target date for this report is February 14, 2023. Traveler's is prepared to submit to underwriting prior to receipt of this report;
 - d. Updated breakdown of holdbacks receivable by February 7, 2023;
 - e. Traveler's would like financial information on E&T Investments Limited;
 - f. Go forward contracting strategy and bonding strategy to go with the proforma financial statements;
 - g. Copies of the constituting documents;
 - h. Brief description of the nature and purpose of each borrowing entity; and
 - i. Additional information on the HASCAP loan
73. Traveler's has indicated they remain interested in moving toward completing the refinancing. They have reconfirmed that with the receipt of the above noted information by February 7, 2023 the previously reported timeline of a credit decision by the end of February 2023 remains reasonable.
74. Life Insurance – the Company has provided the Monitor with \$250,000 to be put toward closing the Travelers financing gap, pursuant to the Order issued by this Honourable Court on December 14, 2022.
75. The Monitor has prepared re-calculated the amounts to be refinanced by Traveler's under two scenarios given the recently conducted real estate appraisals and updated RBC balances owing as of December 7, 2022:
- a. Scenario 1 contemplates continuing with the plan to attempt to sell certain equipment, as identified in previous reports. The estimated funding gap, after removing sold assets and the debts associated with them, is \$131,662.
 - b. Scenario 2 contemplates abandoning the equipment sales and refinancing all the equipment except those pieces which have been or will be disclaimed and released. The estimated funding gap by refinancing all equipment is \$668,627.
 - c. The calculation for both scenarios is attached as **Appendix "U"**.
 - d. The updated calculation of the funding gap includes a revised CRA deemed trust claim amount, as well as an updated refinancing amount for real property based on the conclusions of updated appraisals, and updated payout information from RBC to December 7, 2022.
 - e. The Monitor has estimated the costs on the sale of the real estate and equipment selling costs to be \$23,250 and \$165,296 respectively.

76. The sale of 30 Reid's Lane is pending. An agreement on purchase price has been reached, but an agreement of purchase and sale has yet to be signed.
77. The equipment slated for immediate sale, with the exception of the asphalt plant, has few encumbrances (outside of RBC and CRA). The net proceeds of the sale by Ritchie Brothers would be paid to the Monitor to be held in trust, to be used toward closing the refinancing gap.
78. The anticipated sale proceeds of the asphalt plant will result in a shortfall on the RBC loan securing it. The gap analysis takes the position that the net proceeds from the sale of other equipment will be needed to pay out the remainder of the associated asphalt loan to RBC in order to secure a release of that loan.
79. The Company will have to realize cash from the collection of debt due to it, or generate cash from operations, to assist in closing the gap. The current analysis is that funds from the collection of accounts receivable and holdback receivable will be required to close the funding gap. The analysis contemplates that the \$250,000 from each source is insufficient to completely close the gap under both Scenario 1 and 2.
80. The cashflow results through Week 19 do not appear to indicate sufficient cash flow will be generated from operations to cover the funding gap.
81. Risks/opportunities related to the gap analysis:
 - a. Costs and expenses of the secured creditors continue to accrue. RBC provided updated payout statement as of December 7, 2023 which has accrued interest and accrued claim for protective disbursements of \$288,529. No other creditor balance due has been updated. Certain secured creditors balances would be reduced on account of payments;
 - b. Actual performance to date does not support the assumption that the funding gap could be financed with cash from operations;
 - c. With the appraisals complete, no additional financing can be obtained on the value of the real property or equipment of the Company to close the refinancing gap;
 - d. The Company has indicated it is willing to sell additional equipment to assist in closing the financing gap; however, preliminary results of the equipment sale indicate a slow market during the winter months. Relying on equipment sales to close the funding gap may require additional time beyond the Traveler's refinancing timelines. This could be alleviated / partially alleviated with an acceptable liquidation proposal from RB.
82. With all the appraisals completed and the CRA deemed trust claim materially determined, the critical path on determining whether the refinancing will proceed has narrowed significantly and is as follows:

- a. The Company needs to accelerate the collection of accounts receivables and holdbacks. The Company has an accounts receivable collection issue. The sources and uses analysis still has \$250,000 from each of accounts receivable and holdback that needs to be monetized to be available to fund the Traveler's transaction in the timelines proposed by Traveler's;
- b. The sale of 30 Reid's Lane needs to close;
- c. A final determination on how to fund the gap needs to be determined (assuming a positive decision from the Traveler's underwriters). The recent financial results indicate that it may not come from operations or the sale of equipment. It could come from / partially come from a liquidation proposal from RB;
- d. The Company or another party provides a financial contribution to close the funding gap.

83. The security position of the primary secured creditors does not appear to be deteriorating:

- a. CRA continues to be paid in the normal course;
- b. The appraised values of the real estate assets to be included in the Traveler's refinancing have reported values greater than originally estimated by a net increase of \$485,500 since the Third Report;
- c. I high level analysis of the secured creditor position is as follows (with comparison to information in the Third Report):

	4th Report	3rd Report
Accounts Receivable	\$ 2,042,077	\$ 1,901,557
Holdback	58,918	265,689
Liquidated Damages	363,379	363,379
Less: Disputed/Doubtful	- 1,107,254	- 1,107,254
	\$ 1,357,120	\$ 1,423,371
Real Property	4,065,500	3,580,000
Equipment	4,607,000	4,607,000
Assets	\$ 10,029,620	\$ 9,610,371
CRA - Deemed Trust	2,130,704	2,331,417
RBC	5,273,636	4,945,453
Bank of Nova Scotia	15,675	15,675
Brandt Finance	205,057	205,057
Caterpillar Financial	-	-
CWB National Leasing	-	-
De Lage Landen Financial	120,630	120,630
Diamler Truck Financial	370,672	370,672
Honda Financial	10,158	10,158
John Deere Financial	762,405	762,405
Wells Fargo	213,279	213,279
Secured Creditors	9,102,216	8,974,746

Debtor Conduct

84. The Monitor is of the opinion that the Company continues to act with due diligence and in good faith.

Material Adverse Change

85. The Monitor is not aware of any issue or condition that could be considered a Material Adverse Change pursuant to s.23(1)(d)

86. The Monitor continues to be of the opinion that s.23(1)(h) does NOT apply and it would be more beneficial to the Company's creditors to continue with the Company's partial liquidation within the CCAA proceeding.

Monitors Activities

87. The Monitor's activities since the date of the last report include:

- a. Communications to secured creditors and lessors, Western Surety, PNL, various customers and unsecured creditors, including their advisors;
- b. Continuing discussions with Traveler's, and assisting the Company pull together the information required to satisfy the conditions precedent, and respond to queries as made;
- c. Working with the Company's management and legal counsel to:
 - i. Refine operation planning;
 - ii. Refine plans to sell non-core assets and develop a sales process that could maximize benefit to the creditors, and engage with those service providers on the process and terms of the ARIO;
 - iii. Assisting in cash flow reporting;
 - iv. Cash flow monitoring;
 - v. Monitor the reporting of and payment of statutory remittances (CRA and WCB NL);
 - vi. Assist with the review of the CRA trust exam and communications between the parties;
 - vii. Work with stakeholder to assist in the resolution of disputes for the benefit of the estates stakeholders; and
 - viii. The preparation of the Monitor's Third Report and this Fourth Report as required by the ARIO.

Dated at Halifax, Nova Scotia the 3rd day of February 2023.

Grant Thornton Limited,
in its capacity as Monitor of
EDWARD COLLINS CONTRACTING LIMITED, H & E DESIGNS LTD., CLASSIC SECURITY LTD.,
FGC HOLDINGS LTD. AND 51037 NEWFOUNDLAND & LABRADOR INC.
and not in its personal capacity

Per:



Phil Clarke, CPA, CA, CIRP, LIT
Senior Vice President

Appendix “A”

2022 01G 1964
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the Companies Creditor Arrangement Act, R.S.C. 1985 c.C-36 as amended (the "CCAA"); and

AND IN THE MATTER OF an application of Edward Collins Contracting Ltd., Classic Security Limited, FGC Holdings Ltd., 51037 Newfoundland and Labrador Inc., and H & E Designs Ltd. (collectively "ECC" or the "Company").

STAY EXTENSION ORDER

Before the Honourable Justice Alexander MacDonald on December 14, 2022:

THIS APPLICATION, made by Edward Collins Contracting Limited, Classic Security Ltd., FGC Holdings Ltd., 51037 Newfoundland and Labrador Inc. and H & E Designs Ltd. (collectively, the "Applicants") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order extending the Stay Period (as defined herein) up to and including March 31, 2023, was heard on December 14, 2022.

ON READING the affidavits of Josh Collins, sworn December 8 and 12, 2022, and the Exhibits thereto; the affidavit of David Savoie dated August 8, 2022, the report of Grant Thornton Limited dated December 8 and 13, 2022 in its capacity as monitor of the Applicants (the "Monitor");

ON HEARING the submissions of counsel for the Applicants, the Monitor, the Royal Bank of Canada, and such other counsel that were present:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the materials filed, as set out in the Affidavit of Service, is hereby deemed adequate notice so that this Motion is properly returnable today and hereby dispenses with further service thereof.

STAY OF PROCEEDINGS

2. **THIS COURT ORDERS** that the Stay Period, as defined in the Order of the Honourable Justice Alexander MacDonald dated October 17, 2022 (the "Initial Order"), is hereby extended up to and including April 6, 2023.

INTERIM MATTERS

3. **THIS COURT ORDERS** that:

- (a) the Monitor shall file with the Court an updating report on or before February 3, 2023 (the "Monitors Interim Report");
- (b) any materials to be filed in reply to the Monitors Interim Report must be filed by February 10, 2023;
- (c) that the Parties shall return for an interim hearing on February 17, 2023, to review the contents of the Monitors Interim Report;
- (d) the Company shall pay to the Monitor the amount of \$250,000.00 to be held by the Monitor, in trust, pending an application to this Honourable Court for distribution and a determination of entitlement to such amounts recognizing the relative priorities of the parties to such amounts as at the date of the stay of proceedings in the Initial Order; and
- (e) the comeback hearing in this matter shall be scheduled for 10:00 a.m. on March 17, 2023.

GENERAL

4. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Newfoundland time on the date of this Order.

ISSUED at St. John's, Newfoundland and Labrador this 15th day of December 2022.


COURT OFFICER



Receipt Number: R202301G00117

Supreme Court of Newfoundland and Labrador
St. John's General Division

Receipt Date: Jan-09-2023 Amount Received: \$300.00

Payment Type: Cheque Cheque Number: 000055

Received From: O'Keefe & Company

Notes:

On Behalf Of	Classification	Event Type	Case		Amount
	Case Related	Order Filed	202201G1964	(5)	\$300.00
Total:					\$300.00

Julia Hann

SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

This receipt is your only proof of payment, please retain.

Appendix “B”

ECC - Summary of Contracts as of January 31, 2023			
Status of Contract	Number of Contracts	Total Value of Contracts	Estimated Remaining Work to be Completed
Contracts in Progress (no default)	20	\$ 12,241,662	\$ 5,564,792
Contracts in Default	5	11,986,002	5,749,100
Contracts Awaiting to be Awarded	1	-	760,888
Total	26	\$ 24,227,664	\$ 12,074,780

ECC Contract List as of January 31, 2023

Contracts in progress (not in default):

Contract		Value	Est. Value of work to be completed	Holdback	% Complete	Status	Included in Cashflow	Outstanding Details	Comment	Amount remaining after expenses
Town of Hunter Arm Lift Station	The Town of Hunter Arm South along on the Town (See Commem	\$ 370,170.05	\$ 164,080.33	\$ 20,594.55	80%	Awarded	YES	Issued by ECC	Town has delayed completion of this project because Nt. Power and easement permits were not in place	\$ 62,562.00
Chim Waters Asphak	Fat Bay Inc.	\$ 115,671.50	\$ -	\$ 11,547.15	100%	Awarded	YES	None	Completed and awaiting payment	\$ 70,287.00
Canadian Coast Guard Remediation	Canadian Coast Guard	Complete	-	-	100%	Awarded	NO	None	Project Complete with no issues	Completed and paid
Western Waste Management	Western Waste Management	On Going - July 2023	\$ 7,980,000.00	\$ 2,755,000.00	66%	Awarded	YES	None	On-Going with no issues	Approximately 225,000/Month
Town of Brant's Cove Slope Stabilization	The Town of Brant's Cove	Complete	\$ 1,028,424.00	\$ -	100%	Awarded	YES	Rectified	Completed	500,000.00
Extreme East Metals	Extreme East Metals	Dec 12, 2022 - Dec 15, 2022	\$ 75,000.00	\$ 29,613.00	60%	Awarded	YES	None	On-Going with no issues	30,000.00
US Navy Security	US Navy	On-Going - Aug 2023	\$ 960,000.00	\$ -	19%	Awarded	YES	None	On-Going with no issues	Approximately 32,500/Month
Integrated Logistics - Limb Transport	Integrated Logistics	On-Going	\$ 200,000.00	\$ -	On-Going	YES	YES	None	On-Going with no issues	25% Profit/Month
Inverac - Building Rental	International Contractors	On-Going	\$ 46,000.00	\$ -	On-Going	YES	YES	None	On-Going with no issues	75% Profit/Month
Husky White Rose Project	SDP	On-Going	\$ 475,000.00	\$ -	On-Going	YES	YES	None	On-Going with no issues	70% Profit/Month
Cadillac Construction Inc. - Building Construction Argentina	Cadillac Construction Inc.	Complete	-	\$ -	100%	Awarded	YES	None	Project Complete with no issues	
61-18PS - St. Ambrose Sheva Lift Bridge	The Department of Transportation and Infrastructure	On-Going - Jan 31, 2023	Standing Offer	\$ -	On-Going	Awarded	YES	None	On-Going with no issue - Contract will be replaced with contract 103-22PS	5-30% Profit depending on services required
East Coast Snow Clearing (addition of Eastern Health snow clearing has increased the amount on this item)	Various Owners (The Town of Placentia, Integrated Logistics, Star Hail, Eastern Health Care)	On-Going	Monthly	\$ 225,005.00	-	Awarded	YES	None	On-Going with no issues	50 - 70% Profit depending on snow fall amounts
West Coast Snow Clearing	The Department of Infrastructure	On-Going - April 15, 2023	Monthly	\$ 29,595.00	-	Awarded	YES	None	On-Going with no issues	35 - 55% Profit depending on snow fall amounts
T1 Sand Contract (Placentia/St. Brides)	The Department of Transportation and Infrastructure	Complete	\$ 121,412.20	\$ -	100%	Awarded	YES	None	Completed	\$ 41,255.00
Building Demolition Dunville	The Town of Placentia	Complete	\$ 34,460.00	\$ -	100%	Awarded	NO	None	Completed without issue	\$ 3,800.00
Freshwater Outfall	The Town of Placentia	Spring 2023	\$ 210,155.00	\$ 210,159.00	0%	Awarded	NO	None	Will schedule to complete in the Spring	\$1,025.00
For Harbour Amour Stone	The Town of Placentia	Complete	\$ 188,904.80	\$ -	100%	Awarded	YES	None	Completed and awaiting payment	\$1,405.00
Monopole Road Widening Argentina, NL	Universal Environmental Services Inc.	Nov 2022 - Mar 2023	\$ 150,000.00	\$ 50,000.00	50%	Awarded	YES	None	On-Going with no issues	\$ 150,000.00
Monopole Farm Construction (includes Maintenance, Contract)	Universal Environmental Services Inc.	Nov 2022 - Jun 2023	\$ 875,000.00	\$ 600,000.00	31%	Awarded	YES	None	On-Going with no issues	725,000.00
Total:		\$ 12,251,662.15	\$ 5,564,792.33	\$ 141,251.69						

Contracts in default:

Contract		Value	Est. Value of work to be completed	Holdback	% Complete	Status	Included in Cashflow	Outstanding Details	Comment	Amount remaining after expenses
Placentia Wellness Centre	Olympic Construction	N/A	\$ 907,810.00	\$ -	-	Awarded	NO	Issued by both Parties	The Contract has been terminated and outstanding amounts owing have been paid	N/A
12-21PHC Avalon Culvert Replacement Rehab	The Town of Hunter Arm South	N/A	\$ 1,561,208.95	\$ 123,050.00	-	Awarded	NO	Issued by both Parties	T1 terminated the contract when they hired another contractor to complete the work	N/A
45-20PHP Stephenville Paving	The Department of Transportation and Infrastructure	N/A	\$ 2,949,517.68	\$ 188,324.58	-	Awarded	NO	Issued by both Parties	Interact surety awarded the remainder of the work to another contractor	N/A
46-21PHP Central Paving and Bridge Rehab	The Department of Transportation and Infrastructure	N/A	\$ 6,263,549.00	\$ 5,749,100.00	10% 7	Awarded	NO	Issued by both Parties	T1 hired another contractor to complete a portion of the work on this contract from terminated without notice once ECC was on site to complete	N/A
Town of Huggins Brook Sheet Improvement	The Town of Huggins Brook	N/A	\$ 303,916.25	\$ 5,749,100.00	-	Awarded	NO	Issued by both Parties		N/A
Total:		\$ 11,986,001.88	\$ 5,749,100.00	\$ 359,480.78						

Contracts awarded in January:

Contract		Value	Est. Value of work to be completed	Holdback	% Complete	Status	Included in Cashflow	Outstanding Details	Comment	Amount remaining after expenses
103-22PS - St. Ambrose Sheva Lift Bridge	The Department of Transportation and Infrastructure	Feb 1, 2023 - Feb 1, 2025	Standing Offer	\$ 602,887.50	\$ -	0%	Awarded	Issued by both Parties	Starting Feb 1, 2023 this contract will replace project 61-18PS	50%-70% Profit (All line items were increased from the previous contract 61-18PS)
Town of Placentia, Harbour Drive Phase 2 Amour Stone	The Town of Placentia	March 15, 2023 - April 15, 2023	\$ 158,000.00	\$ 158,000.00	\$ -	0%	Awarded	None		50% Profit
Total:		\$ -	\$ -	\$ 760,887.50	\$ -					
Grand Total:		\$ 24,227,664.03	\$ 12,074,779.63	\$ 500,732.47						

Appendix “C”

Edward Collins Contracting Limited
Aged Overdue Sales Invoices Summary As at 31.01.23

Name	Total Due	1 to 30 Overdue	31 to 60 Overdue	61+ Overdue
Accounts Payable Eastern Health	17,025.75	17,025.75	0.00	0.00
Bird Heavy Civil Ltd	4,025.00	4,025.00	0.00	0.00
Brook Construction	8,234.57	0.00	0.00	8,234.57
Cahill Fabrication Structural	862.50	0.00	0.00	862.50
CAN-AM Platforms & Construction Ltd.	7,013.25	0.00	0.00	7,013.25
Department of Transportation & Infrastructure	465,420.23	45,971.55	359,480.78	59,967.90
DFB Driver	1,840.00	0.00	0.00	1,840.00
DFO-Accounts Payable	230.00	0.00	0.00	230.00
EXP	-103.50	0.00	0.00	-103.50
Extreme East Metals Inc.	26,473.00	1,150.00	5,968.50	19,354.50
Flat Bay Band Inc.	108,240.88	0.00	0.00	108,240.88
Fusion Elevator Inc.	132.02	0.00	0.00	132.02
Harvey's Salt	5,622.00	0.00	0.00	5,622.00
Integrated Logistics	12,296.41	11,247.00	0.00	414.00
National Diabetes Trust Corp.	230.00	115.00	115.00	0.00
Newco Metals	776.25	0.00	0.00	776.25
Provincial Ready Mix	137,756.78	0.00	0.00	137,756.78
Q.N.H Excavating & Landscaping Ltd.	3,714.50	0.00	3,714.50	0.00
SNC-Dragados-Pennecon G.P	161,506.00	55,464.50	68,517.00	37,524.50
Star of the Sea Association	1,178.75	776.25	0.00	402.50
TMSI Limited	97.75	0.00	97.75	0.00
Town of Bryants Cove	109,109.99	0.00	109,109.99	0.00
Town of Deer Lake	57,070.50	0.00	0.00	57,070.50
Town Of Fox Harbour	218,863.98	19,896.72	198,967.26	0.00
Town of Humber Arm South	29,938.54	0.00	20,594.55	9,343.99
Town of Placentia	258,591.51	18,054.95	237,785.76	2,750.80
TSMI Limited	2,663.33	0.00	0.00	2,663.33
Tulk Tire & Service Ltd.	13,062.16	0.00	0.00	13,062.16
Universal Environmental Services Inc	390,205.35	34,500.00	62,455.35	0.00
Total outstanding:	2,042,077.50	208,226.72	1,066,806.44	473,158.93

Edward Collins Contracting Limited
Holdback Accounts As at 31.01.23

Account Number	Account Description	Debits	Credits
1131	Holdback winter sand Bishop Falls	11,832.00	0.00
1132	Holdback winter sand - Badger	10,763.31	0.00
1139	Holdback Town of Long Harbour	9,006.05	0.00
1140	Holdbacks receivable-Town of Placen	12,937.51	0.00
1147	Holdback - Argentia small vessel st	2,352.00	0.00
1156	Holdback - paving Codroy Valley	12,027.03	0.00
		<u>58,917.90</u>	<u>0.00</u>

Appendix “D”

Edward Collins Contracting Limited
Aged Overdue Purchase Invoices Summary As at 31.01.23

Name	Total Due	1 to 30 Overdue	31 to 60 Overdue	61+ Overdue
2085107 Alberta Inc.	5,650.00	0.00	0.00	5,650.00
A & B Construction Limited	65,716.76	0.00	0.00	65,716.76
A. St. George & Sons Ltd.	22,149.00	0.00	0.00	22,149.00
Ace Cement Finishing Ltd.	2,012.50	0.00	0.00	2,012.50
Adam's Electrical Contracting	66,202.66	0.00	0.00	66,202.66
Adventure Quest Outfitters	11,569.00	0.00	0.00	11,569.00
AFN Engineering Inc.	2,287.35	0.00	0.00	2,287.35
Aggregate Equipment (Atlantic) Limited	9,406.81	0.00	0.00	9,406.81
Air Liquide Canada Inc.	13,158.17	0.00	0.00	13,158.17
AirCo Sheetmetal Inc.	2,673.75	0.00	0.00	2,673.75
All Rock Consulting Ltd.	19,271.08	0.00	0.00	19,271.08
Allstar Rebar Limited	7,609.70	0.00	0.00	7,609.70
Apex Construction Specialties Inc.	33,866.75	0.00	0.00	33,866.75
Argentia Freezers & Terminals	5,651.91	0.00	0.00	5,651.91
Argentia Port Corporation	11,845.00	0.00	0.00	11,845.00
Armtec Canada Culvert	114,791.00	0.00	0.00	114,791.00
Atlantic Container Line AB	-0.01	0.00	0.00	-0.01
Atlantic Ready Mix	7,282.37	0.00	0.00	7,282.37
Atlantic Tiltload	4,539.56	0.00	0.00	4,539.56
Ault	2,171.55	0.00	0.00	2,171.55
Auto Parts Network	632.50	0.00	0.00	632.50
Avalon Ready Mix	18,692.10	0.00	0.00	18,692.10
Aylwards Home Centre	30,183.55	0.00	0.00	30,183.55
B & S Trucking Ltd.	140,036.52	0.00	0.00	140,036.52
BABB Sales & Services	460.21	0.00	0.00	460.21
Battlefield Equipment Rentals	64,151.88	0.00	0.00	64,151.88
Baysteel Inc.	160.43	0.00	0.00	160.43
Belfor	1,787.10	0.00	0.00	1,787.10
Bell Aliant	10,300.94	568.16	0.00	9,732.78
Bennett's Construction and Supplies (2011) Ltd.	29,095.00	0.00	0.00	29,095.00
Black Ridge Construction Ltd.	3,845.65	0.00	0.00	3,845.65
Bond's Courier	17.25	0.00	0.00	17.25
Botwood Tire & Retread Ltd. (Nortop)	29,953.16	0.00	0.00	29,953.16
Brandt	133,650.46	0.00	0.00	133,650.46
Bruce Enterprises Limited	5,577.50	0.00	0.00	5,577.50
Bumper to Bumper	3,723.15	0.00	0.00	3,723.15
Burton Appraisal NL	-575.00	0.00	0.00	-575.00
C. Russell & Sons Limited	2,742.78	0.00	0.00	2,742.78
Cahill Technical Services	5,813.25	0.00	0.00	5,813.25
Cansel	122.06	0.00	0.00	122.06
Capital Ready Mix Limited	9,599.05	0.00	0.00	9,599.05
CBS Glass	-661.25	0.00	0.00	-661.25

Central Landscaping	860.78	0.00	0.00	860.78
Central Precast & Ready Mix	19,305.05	0.00	0.00	19,305.05
Certified Laboratories	3,471.15	0.00	0.00	3,471.15
C-Gas Management Inc.	11,075.60	0.00	0.00	11,075.60
City of St. John's	3,730.18	0.00	0.00	3,730.18
Clarenville Rentals Ltd.	1,179.08	0.00	0.00	1,179.08
Clarke's Trucking & Exc. Ltd.	624.89	0.00	0.00	624.89
Concrete Products Limited	2,874.77	0.00	0.00	2,874.77
Construction Signs Limited	46,709.66	0.00	0.00	46,709.66
Control Works Inc.	4,887.94	0.00	0.00	4,887.94
Corner Brook Industrial Sales and Service	5,006.62	0.00	0.00	5,006.62
Crane Supply	46,853.67	0.00	0.00	46,853.67
Cummins Eastern Canada Inc.	2,744.23	0.00	0.00	2,744.23
Cummins Sales and Service	2,155.10	0.00	0.00	2,155.10
D.C. Alternator & Starter Ltd.	183.94	0.00	0.00	183.94
Dawe & Tuck	45,905.00	0.00	0.00	45,905.00
Day & Ross Inc.	506.02	0.00	0.00	506.02
Deer Lake Home Hardware	4,573.54	0.00	0.00	4,573.54
Deer Lake Truck and Tirecraft	57,175.94	0.00	0.00	57,175.94
Deloitte	44,783.98	0.00	0.00	44,783.98
Deluxe	1,406.13	0.00	0.00	1,406.13
Dennis Porter Trucking Limited	74,184.77	0.00	0.00	74,184.77
Devan Holdings Inc.	13,778.73	0.00	0.00	13,778.73
Dicks & company	498.46	0.00	0.00	498.46
DMG Consulting Ltd.	7,262.25	0.00	0.00	7,262.25
Double G Trucking & Repair Ltd.	2,472.50	0.00	0.00	2,472.50
Drive Line Machine Shop	3,409.68	0.00	0.00	3,409.68
Dyna Noble Canada Inc.	80,555.85	0.00	0.00	80,555.85
East Coast Hydraulics	2,474.83	0.00	0.00	2,474.83
East Coast International Trucks	-1,208.32	0.00	0.00	-1,208.32
ECO Contracting Ltd.	19,532.75	0.00	0.00	19,532.75
Eddy Services	2,445.25	0.00	0.00	2,445.25
Edison Electronics Inc.	8,316.81	0.00	0.00	8,316.81
Edison Security Services Inc.	5,095.08	0.00	0.00	5,095.08
EMCO Limited	210,554.84	0.00	0.00	210,554.84
EMM Hardchrome & Hydraulics Ltd.	4,047.77	0.00	0.00	4,047.77
Exploits Home Building Centre	1,223.53	0.00	0.00	1,223.53
Exploits River Motel	14,155.55	0.00	0.00	14,155.55
Exploits Valley Paving Ltd.	6,969.00	0.00	0.00	6,969.00
Express Signs Ltd.	2,842.24	0.00	0.00	2,842.24
F.A Haynes Transport Ltd.	6,362.90	0.00	0.00	6,362.90
Fortis Concrete Inc.	3,636.30	0.00	0.00	3,636.30
G & B Construction	40,491.50	0.00	0.00	40,491.50
Gales Septic Cleaning	2,357.50	0.00	0.00	2,357.50
GCR Tire Centres - (72)	918.72	0.00	0.00	918.72
Genevieve Bay Inn	10,239.00	0.00	0.00	10,239.00
Gillis Truckways Inc.	5,299.68	0.00	0.00	5,299.68

Grant Thornton Limited	20,000.00	0.00	0.00	0.00
Green Bay Waste Authority	20.00	0.00	0.00	20.00
H&F Electrical Ltd.	15,870.00	0.00	0.00	15,870.00
Heavy Civil Association of N.L.	2,530.00	0.00	0.00	2,530.00
Hebdraulique N.L.	6,082.73	0.00	0.00	6,082.73
Hickey's Greenhouse & Nursery	225.35	0.00	0.00	225.35
Hitech Communications Ltd	3,129.15	1,931.77	0.00	1,197.38
Hi-Tech Scales Ltd.	5,352.50	0.00	0.00	5,352.50
Hi-Vis Traffic Control Inc.	4,580.24	0.00	0.00	4,580.24
Horizon Machining Incorporated	3,157.90	0.00	0.00	3,157.90
Howley Tourist Lodge	1,656.00	0.00	0.00	1,656.00
Humber Arm Contracting Inc.	2,041.25	0.00	0.00	2,041.25
Humber Machine and Hydraulic Ltd.	7,517.47	0.00	0.00	7,517.47
Hunt's Concrete Ltd.	27,348.13	0.00	0.00	27,348.13
Irving Oil Commercial GP	99,839.55	0.00	0.00	99,839.55
Island Hose & Fittings Ltd.	73.12	0.00	0.00	73.12
Johnny Seay / Johnnys Lawn & Garden	2,050.00	0.00	0.00	2,050.00
Kal Tire	6,708.78	0.00	0.00	6,708.78
KC Reid Enterprises Limited	60.90	0.00	0.00	60.90
Kennedy's Disposal Services Ltd.	2,702.50	0.00	0.00	2,702.50
Keyano Motel	11,800.00	0.00	0.00	11,800.00
Major's Contracting Limited	5.14	5.14	0.00	0.00
Major's Logging	290.17	0.00	0.00	290.17
Marble RV	1,456.61	0.00	0.00	1,456.61
Margaret's Safety Services	898.99	0.00	0.00	898.99
McKay's Waste Management	184.00	0.00	0.00	184.00
Meridian Engineering Inc.	8,002.97	0.00	0.00	8,002.97
Mike Kelly & Sons Ltd.	3,146.06	0.00	0.00	3,146.06
Modern Paving Limited	10,184.75	0.00	0.00	10,184.75
Modern Pest Control Services LTD.	303.04	0.00	0.00	303.04
Mountainside General Store	1,196.20	0.00	0.00	1,196.20
Newco Metal and Auto Recycling	776.25	0.00	0.00	776.25
Newfoundland Power Inc.	49,528.91	4,508.79	0.00	45,020.12
Newport Capital Corp.	272,933.05	0.00	0.00	272,933.05
NLCSA	925.75	0.00	0.00	925.75
NORTHRIDGE DEVELOPMENTS LTD.	333.50	0.00	0.00	333.50
Notre Dame Drilling & Blasting	28,546.99	0.00	0.00	28,546.99
Nova Truck Centres	4,135.96	0.00	0.00	4,135.96
Oceanview Estates	8,241.58	0.00	0.00	8,241.58
Oil Filtration Solutions Ltd.	9,402.29	0.00	0.00	9,402.29
OMB Parts & Industrial Ltd.	82.55	0.00	0.00	82.55
OMB Parts & Industrial Ltd.1	696.20	0.00	0.00	696.20
On Grade Construction	15,194.38	0.00	0.00	15,194.38
On The Spot Welding Ltd.	1,460.15	0.00	0.00	1,460.15
Oram's Ready Mix	4,461.83	0.00	0.00	4,461.83
Orkin Canada Corporation	801.85	160.37	160.37	481.11
Paint Shop Placentia	7,856.27	0.00	0.00	7,856.27

Panatrol Automation and Controls	570.00	0.00	0.00	570.00
Patterson's Steel Products	3,947.19	0.00	0.00	3,947.19
Pinnacle Office Solutions	195.88	139.62	0.00	56.26
Placentia Area Chamber of Commerce	230.00	0.00	0.00	230.00
Placentia Rowing Club	57.50	0.00	0.00	57.50
PMW Newfoundland and Labrador Limited	2,357.50	0.00	0.00	2,357.50
Port Aux Basques Snow Clearing Limited	155.25	0.00	0.00	155.25
Port of Argentina	52,020.98	11,845.00	0.00	40,175.98
Port of Stephenville	10,626.00	0.00	0.00	10,626.00
Powers Gas Bar	43,462.19	0.00	0.00	43,462.19
Power's Oil	27,520.17	0.00	0.00	27,520.17
Power's Placentia Esso	42,533.30	0.00	0.00	42,533.30
PREMIUM ENTERPRISES	17,911.41	0.00	0.00	17,911.41
Pretty's Island Wide Concrete Inc.	3,749.00	0.00	0.00	3,749.00
Provall Parts Ltd.	57,622.37	0.00	0.00	57,622.37
Provincial Fence Products Ltd.	20,468.80	0.00	0.00	20,468.80
Provincial Ready Mix	52,789.94	0.00	0.00	52,789.94
Pure Water Sales	93.75	0.00	0.00	93.75
R&D Performance Center	634.40	0.00	0.00	634.40
Redline Automotive Supplies	26,324.43	0.00	0.00	26,324.43
Reinforced Earth Company Ltd.	59,880.50	0.00	0.00	59,880.50
Rigid Trucking and Excavating Ltd.	598.00	0.00	0.00	598.00
Riverview Motors	47.94	0.00	0.00	47.94
Rodco Mechanical (2014) Ltd.	189,849.99	0.00	0.00	189,849.99
Rogers Enterprises Ltd.	2,277.00	0.00	0.00	2,277.00
Royal Freightliner	706.90	88.07	550.68	68.15
Rudy's Gas Bar	4,640.89	0.00	0.00	4,640.89
SANCTON	29.90	0.00	0.00	29.90
Sharron's Sales & Services Ltd.	766.82	0.00	0.00	766.82
Simmons Tire and Service Centre Ltd.	847.32	0.00	0.00	847.32
SMS Equipment	14,950.00	0.00	0.00	14,950.00
South Coast Construction	103,842.79	4,511.54	0.00	99,331.25
Stantec Consulting Ltd.	4,249.88	0.00	0.00	4,249.88
Stephenville Truck Center 1991 LTD.	3,467.43	0.00	0.00	3,467.43
Subsurface Geotech Inc.	20.00	0.00	0.00	20.00
Taylor's Welding	1,667.50	0.00	0.00	1,667.50
The Cylinder Shoppe	3,646.04	0.00	0.00	3,646.04
Titan Environmental Containment Ltd.	733.70	0.00	0.00	733.70
Titan GPS	6,073.07	0.00	0.00	6,073.07
TNT Truck & Tractor Repair Ltd.	2,798.02	0.00	0.00	2,798.02
Tony's Diesel Repairs	7,144.91	0.00	0.00	7,144.91
Toromont Cat	49,141.14	0.00	0.00	49,141.14
Town of Deer Lake	5,923.86	5,923.86	0.00	0.00
Town of Placentia	14,928.32	0.00	0.00	14,928.32
TRACTION (UAP)	27,743.46	0.00	0.00	27,743.46
Tulk Tire & Service Ltd.	12,220.04	0.00	0.00	12,220.04
Ultramar (Badger)	-70,231.50	0.00	0.00	-70,231.50

Ultramar (Garage)	171,387.75	114,634.99	49,213.70	7,539.06
Ultramar (Stephenville)	94,601.71	0.00	0.00	94,601.71
United Rentals of Canada Inc.	39,249.21	0.00	0.00	39,249.21
Universal Fabricators Inc.	2,333.82	0.00	0.00	2,333.82
Valero Energy Inc.	96,952.39	0.00	0.00	96,952.39
Verna Mercer	2,050.00	0.00	0.00	2,050.00
VIC MOBILIER	10,087.97	0.00	0.00	10,087.97
Wajax Industrial Components LP	14,008.20	0.00	0.00	14,008.20
Wajax Mount Pearl	27,618.86	0.00	0.00	27,618.86
Walsh's Mechanical Services Inc.	2,010.40	0.00	0.00	2,010.40
Wayne Kelly	3,450.00	0.00	0.00	3,450.00
Weir's Construction Limited	207,470.16	0.00	0.00	207,470.16
Western Hydraulic and Mechanical Ltd.	13,359.62	0.00	0.00	13,359.62
Western Lock Inc.	1,333.98	0.00	0.00	1,333.98
Western Petroleum	1,700.00	0.00	0.00	1,700.00
Western Steel Works Inc.	2,695.42	0.00	0.00	2,695.42
Western Wood Works Incorporated	5,606.25	0.00	0.00	5,606.25
William Perry Trucking	12,420.00	0.00	0.00	12,420.00
Xplore Inc.	160.98	0.00	0.00	160.98
Zealous Heating & Cooling Inc.	10,084.03	0.00	0.00	10,084.03
Total outstanding:	3,914,699.38	144,317.31	49,924.75	3,700,457.32

Appendix “E”

Edward Collins Contracting Limited
Balance Sheet As at 31.12.22

ASSETS

CURRENT ASSETS

Total Cash		104,397.16
Total Holdbacks		58,918.27
Bid deposits		110,354.00
Accounts receivable	1,954,773.51	
Miscellaneous receivables	3,200.00	
Receivable from 51037 (\$ store)	(123,721.67)	
Due from H & E	167,925.00	
Due from Classic Security Limited	527,885.24	
REC FROM FGC	59,217.95	
A/R - Placentia Mall	(461,949.29)	
E & T Investments	(5,000.00)	
OCEAN FLOOR GRANITE INC	5,980.96	
O'Keefe trust account	239,761.16	
Grant Thornton trust account	185,296.29	
Receivable for liquidated damages, Dept of Trans	357,878.69	
Work in progress	152,012.00	
Allowance for d/f accts	(366,973.44)	
Total receivables		2,696,286.40
Total prepaids		86,306.00
Gravel pits		615,935.00
TOTAL CURRENT ASSETS		3,672,196.83

TOTAL CAPITAL ASSETS (net of accumulated amortization)	6,268,207.21
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OTHER ASSETS

Investment - Placentia Mall	180,000.00
Receivable from directors	139,065.29

TOTAL OTHER ASSETS	319,065.29
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TOTAL ASSETS	10,259,469.33
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Edward Collins Contracting Limited
Income Statement 01.08.22 to 31.12.22

TOTAL REVENUE 3,423,913.18

DIRECT COSTS

Casual labour	4,735.22
Materials	237,956.21
Equipment rentals	44,256.04
Sub contracts	141,047.05
Total payroll expense	803,020.22
TOTAL DIRECT COSTS	<u>1,231,014.74</u>

GENERAL AND ADMINISTRATIVE

Total professional fees	249,066.03
Advertising and donations	675.00
Amortization	409,255.00
Bad debts	357,878.69
Freight/courier services	2,895.20
Bank charges and interest	12,879.34
Electrical Service	38,006.06
Fees, dues, and licenses	15,908.31
Fuel-oil-gas	249,988.07
Insurance	42,658.10
Miscellaneous	34,505.64
Municipal taxes	2,540.82
Office	28,189.16
Rent	69,495.56
Repairs and maintenance	198,846.48
Telephone & Cell Phone	19,394.99
Meals and entertainment	4,137.22
Training	795.00
Travel	14,175.50
Meals	818.84

TOTAL GENERAL AND ADMIN EXPENSES 1,752,109.01

TOTAL EXPENSES 2,983,123.75

NET INCOME 440,789.43

Appendix “F”

51037 NL INC
BALANCE SHEET
DECEMBER 31, 2022

ASSETS

CURRENT

Due from corporate shareholders	\$ 126,569
LONG TERM INVESTMENTS	45,000
DUE FROM SHAREHOLDERS	<u>4,779</u>
	<u>\$ 176,348</u>

LIABILITIES

CURRENT

Bank indebtedness	\$ 892
Accounts payable	37,139
Royal Bank of Canada line of credit	51,993
Harmonized sales tax payable	31,315
Employee deductions payable	<u>6,270</u>
	127,609
LONG TERM DEBT	40,000
DUE TO RELATED PARTIES	<u>36,298</u>
	<u>203,907</u>

SHAREHOLDERS' DEFICIENCY

SHARE CAPITAL	133
DEFICIT	<u>(27,692)</u>
	<u>(27,559)</u>
	<u>\$ 176,348</u>

51037 NL INC
STATEMENT OF LOSS AND DEFICIT
YEAR ENDED DECEMBER 31, 2022

EXPENSES	
Interest and bank charges	\$ 10,325
Miscellaneous	1,100
Office	<u>957</u>
	<u>12,382</u>
NET LOSS	(12,382)
DEFICIT - BEGINNING OF YEAR	<u>(15,310)</u>
DEFICIT - END OF YEAR	<u>\$ (27,692)</u>

Appendix “G”

H & E DESIGNS LIMITED
BALANCE SHEET
DECEMBER 31, 2022

ASSETS

CURRENT

Cash	\$ 258
Accounts receivable	211
Inventory	<u>507,715</u>
	<u>\$ 508,184</u>

LIABILITIES

CURRENT

Royal Bank demand loan	\$ 290,000
Harmonized sales tax payable	<u>5,424</u>
	295,424

DUE TO RELATED PARTIES

376,625

672,049

SHAREHOLDERS' DEFICIENCY

SHARE CAPITAL

1

DEFICIT

(163,866)

(163,865)

\$ 508,184

H & E DESIGNS LIMITED
STATEMENT OF LOSS AND DEFICIT
FIVE MONTH PERIOD ENDED DECEMBER 31, 2022

EXPENSES

Interest and bank charges	\$ 25
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NET LOSS	(25)
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DEFICIT - BEGINNING OF PERIOD	<u>(163,841)</u>
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DEFICIT - END OF PERIOD	<u>\$ (163,866)</u>
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Appendix “H”

FGC HOLDINGS LIMITED
BALANCE SHEET
DECEMBER 31, 2022

ASSETS

CURRENT	
Cash	\$ 4,126
Prepaid expenses	2,990
Due from shareholders	<u>474,849</u>
	481,965
PROPERTY AND EQUIPMENT <i>(Net of accumulated amortization)</i>	<u>516,829</u>
	<u>\$ 998,794</u>

LIABILITIES

CURRENT	
Accounts payable	\$ 5,000
Income taxes payable	22,246
Harmonized sales tax payable	<u>29,379</u>
	56,625
LONG TERM DEBT	230,079
OBLIGATIONS UNDER CAPITAL LEASE	245,366
DUE TO RELATED PARTIES	<u>269,678</u>
	<u>801,748</u>

SHAREHOLDERS' EQUITY

SHARE CAPITAL	100
RETAINED EARNINGS	<u>196,946</u>
	<u>197,046</u>
	<u>\$ 998,794</u>

FGC HOLDINGS LIMITED
STATEMENT OF INCOME AND RETAINED EARNINGS
TWO MONTH PERIOD ENDED DECEMBER 31, 2022

REVENUES	\$ 37,500
EXPENSES	
Interest and bank charges	<u>51</u>
NET INCOME	37,449
RETAINED EARNINGS - BEGINNING OF PERIOD	<u>159,497</u>
RETAINED EARNINGS - END OF PERIOD	<u>\$ 196,946</u>

Appendix “I”

Edward Collins Contracting Limited
Ritchie Bros. Equipment Sale
As of January 25, 2023

Item #	Description	VIN #	Target Price	High Offer	Status
8444606	2005 CAT CB-335E	CATCB335TC5F00120		9,500	auction ended -
8444608	2005 CAT CB-534SXW	CATCB534HEAA00161		12,200	auction ended -
8444613	2015 John Deere 310SK	1T0310SKLEE273089		25,200	auction ended -
8444614	Lintec 50T Hot Asphalt Silo	48285400317-50TS-DM110		1,000	auction ended -
8444615	2002 CAT PS-150B	CATPS150C3XR00606		3,700	auction ended -
8444643	NPK G-26 Concrete Crusher	50010451		2,250	auction ended -
8444669	2007 Skyjack SJ 3219	22000315		250	auction ended -
8444671	2016 CAT BA118C Skid Steer Broom	BX801323		1,200	auction ended -
8444672	72" Skid Steer Sweeper	215		600	auction ended -
8444620	2006 Fontaine 48'	13N24830061533598			auction period expires January 26th;
8444650	2006 Transcraft Eagle	1TTF4830661079884			auction period expires January 26th;
8444607	2013 CATCS54B	CATCS54BPMJ500108		26,600	item re-listed , auction period expires January 25th;
8444602	2009 CAT AP655D	CATAP655AGNZ00312		60,169	item re-listed , auction period expires January 25th;
8444609	1993 Ingersol Rand 750P	130081		-	item re-listed , auction period expires January 25th;
8444610	2005 Roadtec SB-2500C	SB2500C806		500	item re-listed , auction period expires January 25th;
8444611	1998 Roadtec SB-2500	SB2500359		-	item re-listed , auction period expires January 25th;
8444617	1997 JC Trailer	2J9J3A1H2VK001036		5,000	item re-listed , auction period expires January 25th;
8444630	2001 Manac 53' Drop Step Deck Trailer	2M513161311073773		1,000	item re-listed , auction period expires January 25th;
8444632	1999 Manac 53' Drop Step Deck Trailer	2M5121557X1059228		100	item re-listed , auction period expires January 25th;
8444641	2006 Manac 53' Drop Step Deck Trailer	2M512161161105663		18,000	item re-listed , auction period expires January 25th;
8444644	2006 Midland End Dump Trailer	2MFB2R6C56R003767		3,200	item re-listed , auction period expires January 25th;
8444645	2012 Cross Country 28' End Dump Trailer	2C9EUL221CM183758		1,500	item re-listed , auction period expires January 25th;
8444646	2007 Larochelle End Dump Trailer	2P9R9A82672036591		3,100	item re-listed , auction period expires January 25th;
8444648	1995 Ford LTS900 Dump Truck	1FTYY90BXSVA06735		6,200	item re-listed , auction period expires January 25th;
8444663	2013 Chevrolet 2500HD	1GB1KVCG9DF225545		550	item re-listed , auction period expires January 25th;
8444664	2014 GMC 3500HD	1GT423CG0EF173933		4,300	item re-listed , auction period expires January 25th;
8444670	1992 Dynapac CA251A	58310724		8,100	item re-listed , auction period expires January 25th;
8444675	2011 Chevrolet Equinox	2CNFLCEC9B6380158		200	item re-listed , auction period expires January 25th;
8444676	1995 Advance B-Train Tanker Trailer	2AEABPCFXSR000271, 2AE		100	item re-listed , auction period expires January 25th;
8444677	2003 Advance 48000L Quad Tanker Trailer	2AEASZCK23R000162		3,000	item re-listed , auction period expires January 25th;
8444678	1989 Remtec 38500L Quad Tanker Trailer	2R9S1A8EXKC010070		-	item re-listed , auction period expires January 25th;
8444681	2013 Peterbilt 579	1XPBDP9XODD195391		9,000	item re-listed , auction period expires January 25th;
8490635	48' Conveyor			-	item re-listed , auction period expires January 25th;
8444603	Lintec Ixon DMI	1001		-	item re-listed , auction period expires January 25th;
8444628	2005 Manac	2M512146451097622			Auction pending
8444666	2014 GMC 3500HD	1GT423CG9EF173557			Auction pending
8444661	2012 Chevrolet 3500	1GC4KZCG3CF163056			Auction pending
8444622	2005 Manac	2M513161061107241			Auction pending
8444605	2008 Landoll 35T Step Deck Trailer	1LH930VH781C16402			Auction pending
8444642	2006 BWS	2B953HD3461006789			Auction pending
8444639	1995 JC Trailers	2J9U3X3E7SK001046			Auction pending
8444635	2007 Reitnouer	1RND53A298R020403			Auction pending
8444633	2000 Manac	2M5131461Y1063672			Auction pending
8444631	2005 Manac	2M512161351100141			Auction pending
8444629	2006 Transcraft	1TTE4820561078741			Auction pending
8444621	2000 Wilson	4WWFG0805YN604621			Auction pending
8444668	2000 Raglan	2R9A453G2Y1011431			Auction pending
8444637	2005 Fontaine	13N24830X51528164			Auction pending
8444618	1989 Trail King 48' Step Deck Trailer	1TKS04826KM084691			Auction pending
8444660	1990 Transcraft	1TKS04837LM066808			Auction pending
8444656	2000 Manac	2M5121466Y1065095			Auction pending
8444653	2003 Transcraft Eagle	1TTF4430X32009939			Auction pending
8444682	2009 12' End Dump Trailer	5LEBC162491007267			Auction pending
8444619	1995 Talbert 48' Step Deck Trailer	40FL0482151011559			Asset not inspected - not yet listed
8444623	2006 Fontaine	13N24630561533595			Asset not inspected - not yet listed
8444624	1992 Manac 48' Step Deck Trailer	2M5131465N1026233			Asset not inspected - not yet listed
8444625	2000 Load King 48' Step Deck Trailer	2LDS04821YA034488			Asset not inspected - not yet listed
8444626	2000 Wilson 50' Step Deck Trailer	4WWFG0805YN604621			Asset not inspected - not yet listed
8444627	2006 Load King Step Deck Trailer	2LDS053316A043503			Asset not inspected - not yet listed
8444634	2007 BWS 53' Step Deck Trailer	2B953HD3671001028			Asset not inspected - not yet listed
8444636	2005 Transcraft 53' Step Deck Trailer	1TTE5130X51076145			Asset not inspected - not yet listed
8444638	1997 Lode King 48' Step Deck Trailer	2LDS04827V9028031			Asset not inspected - not yet listed
8444640	2012 Doonan 53' Step Deck Trailer	1D9BG5324C1209702			Asset not inspected - not yet listed
8444649	1987 International Dump Truck				Asset not inspected - not yet listed
8444652	2003 Transcraft 48' Flatbed Trailer	1TTF4830732012837			Asset not inspected - not yet listed
8444654	2011 Manac 53' Flatbed Trailer	2M513161581126670			Asset not inspected - not yet listed
8444655	Manac 53' Flatbed Trailer	2M51214645109998			Asset not inspected - not yet listed
8444657	2004 Doepker 53' Flatbed Trailer	2DEADC22041015024			Asset not inspected - not yet listed
8444658	Utility 48' Flatbed Trailer				Asset not inspected - not yet listed
8444659	Tri County 48' Flatbed Trailer				Asset not inspected - not yet listed
8444662	2011 Chevrolet 3500	1GB4KZCG4BF123426			Asset not inspected - not yet listed
8444665	2014 GMC 3500HD	1GT423CG7EF177557			Asset not inspected - not yet listed

Edward Collins Contracting Limited
Ritchie Bros. Equipment Sale
As of January 25, 2023

Item #	Description	VIN #	Target Price	High Offer	Status
8444680	2009 Peterbilt	1XPXD49XX9N777391			Asset not inspected - not yet listed
8444647	1988 Volvo Dump Truck	8804V91638			Requires ownership documents - not yet listed
8444667	2010 Kenworth T370	2NKHNN8X6AM944365			Requires ownership documents - not yet listed
8444673	2003 Sterling L8500	2FZHAWBS03AL93012			Requires ownership documents - not yet listed
8444674	2011 Ford Edge	2FMDK4JC4ABB54668			Requires ownership documents - not yet listed
8444683	2007 Chevrolet Express Cargo Van	1GBJG316271231835			Requires ownership documents - not yet listed
8444680	2009 Peterbilt	1XPXD49XX9N777391			Requires ownership documents - not yet listed
Total			2,475,940	206,519	

Appendix “J”

Edward Collins Contracting Limited
CRA Remittances - July 20, 2022 to January 25, 2023

Payroll

Cheque	Date	Total	Account	EI	CPP	Tax	Tax Year	Week-Ending
34691	3-Aug-22	16,488.33	101582641 RP0001	1,702.26	4,622.96	10,163.11	2022	29-Jul-22
34732	10-Aug-22	12,979.20	101582641 RP0001	1,364.33	3,624.90	7,989.97	2022	05-Aug-22
34794	17-Aug-22	12,538.05	101582641 RP0001	1,377.70	3,602.26	7,558.09	2022	12-Aug-22
34842	24-Aug-22	10,983.66	101582641 RP0001	1,224.05	3,248.54	6,511.07	2022	19-Aug-22
34939	31-Aug-22	10,322.01	101582641 RP0001	1,157.59	2,955.16	6,209.26	2022	02-Sep-22
34949	7-Sep-22	12,913.63	101582641 RP0001	1,379.21	3,635.10	7,899.32	2022	26-Aug-22
35071	14-Sep-22	13,626.83	101582641 RP0001	1,511.87	3,841.56	8,273.40	2022	09-Sep-22
35123	21-Sep-22	16,333.94	101582641 RP0001	1,752.51	4,509.88	10,071.55	2022	16-Sep-22
35173	29-Sep-22	15,082.52	101582641 RP0001	1,620.94	4,211.50	9,250.08	2022	23-Sep-22
35208	6-Oct-22	13,959.53	101582641 RP0001	1,531.10	4,035.82	8,392.61	2022	30-Sep-22
35261	12-Oct-22	11,095.60	101582641 RP0001	1,239.16	3,284.78	6,571.66	2022	07-Oct-22
35305	19-Oct-22	9,616.29	101582641 RP0001	1,064.61	2,930.54	5,621.14	2022	14-Oct-22
35322	25-Oct-22	11,256.92	101582641 RP0001	1,229.88	3,396.58	6,630.46	2022	21-Oct-22
35426	2-Nov-22	13,731.12	101582641 RP0001	1,531.85	3,807.78	8,391.49	2022	28-Oct-22
35482	9-Nov-22	12,729.66	101582641 RP0001	1,401.96	3,622.70	7,705.00	2022	04-Nov-22
35514	16-Nov-22	13,358.87	101582641 RP0001	1,448.43	3,577.88	8,332.56	2022	11-Nov-22
35612	23-Nov-22	11,043.49	101582641 RP0001	1,218.13	3,089.52	6,735.84	2022	18-Nov-22
35673	1-Dec-22	11,656.48	101582641 RP0001	1,274.26	3,381.64	7,000.58	2022	25-Nov-22
35744	8-Dec-22	12,070.06	101582641 RP0001	1,335.44	3,595.20	7,139.42	2022	02-Dec-22
35785	14-Dec-22	11,593.50	101582641 RP0001	1,304.51	3,370.31	6,918.68	2022	09-Dec-22
35876	21-Dec-22	8,878.22	101582641 RP0001	994.59	2,741.86	5,141.77	2022	16-Dec-22
35888	3-Jan-23	8,005.39	101582641 RP0001	892.02	2,407.11	4,706.26	2023	30-Dec-22
35949	11-Jan-23	7,057.11	101582641 RP0001	798.26	2,176.78	4,082.07	2023	06-Jan-23
36001	18-Jan-23	7,466.25	101582641 RP0001	851.18	2,244.64	4,370.43	2023	13-Jan-23
36041	25-Jan-23	8,093.47	101582641 RP0001	943.50	2,428.88	4,721.09	2023	20-Jan-23
Total:		292,880.13		32,149.34	84,343.88	176,386.91		

Payroll Remittance	292,880.13	32,149.34	84,343.88	176,386.91
--------------------	------------	-----------	-----------	------------

HST

Period Start	Period End	Filing Date	Net Tax	Paid	Date Paid	Unpaid
21-Jul-22	31-Jul-22	31-Aug-22	22,907.35	22,907.35	29-Nov-22	-
01-Aug-22	31-Aug-22	06-Oct-22	38,310.40	38,310.40	29-Nov-22	-
01-Sep-22	30-Sep-22	01-Nov-22	21,148.75	21,148.75	29-Nov-22	-
01-Oct-22	05-Oct-22	08-Nov-22	42,848.20	42,848.20	29-Nov-22	-
06-Oct-22	31-Oct-22	29-Nov-22	-	-	N/A	-
01-Nov-22	30-Nov-22	13-Dec-22	-	-	N/A	-
01-Dec-22	31-Dec-22	12-Jan-23	-	-	N/A	-
Total			125,214.70	125,214.70		-

* There is no HST activity in any of the other legal entities since July 20, 2022



Royal Bank of Canada
PO BOX 70
PLACENTIA, NL
A0B 2Y0

Transaction Record

Transit: 09403
Date: 08 Dec 2022
Time: 14:47:02

Reference #: 8223424782277209403

Items Received

Cheque

12070.06 CAD

Other Payments
Miscellaneous

12070.06 CAD

Thank you for choosing RBC Royal Bank.

Les auteurs de versements du seuil 2 doivent verser les retenues sur la paie (RPC, AE, impôt) par voie électronique ou en personne à leur institution financière canadienne.

un signe en établissant un accord de débit automatisé à canada.ca/mont-dossiers-entreprises; en personne, en présentant votre pièce de versement à votre institution financière encaissante; en payant en personne à un point de vente au détail de Postes Canada avec un chèque de débit. Valable à partir du 1^{er} septembre 2014.

Remarque : Le code QR contient toutes les informations requises pour effectuer votre paiement en argent comptant ou par carte de débit dans un point de vente au détail de Postes Canada. Le code QR ne peut pas être utilisé pour payer l'impôt sur le revenu.

For more information on how to make a payment, go to canada.ca/payments

Account No.	10158 2641 RP0001	Date	Dec. 8 / 22
N° de compte		Tax	
Fertilizing Period	Nov. 30 - Nov. 30	Impôt	7,139.42
Période de versement			
Payroll	35,663.41	CRP	3,595.20
Remuneration		RPC	
Employees	35	AE	1,335.44
Employés		Payment	12 070.06
Chèque no.		Payment	
N° de chèque			

ROYAL BANK OF CANADA

DEC 08 2022

PLACENTA, NL
09403-003



Transaction Record

Reference #: 0223484342015909403

Items Received
Cheque

11593.50 CAD

Other Payments
Miscellaneous

11593.51 CAD

Thank you for choosing RBC Royal Bank.

Account No. N. de compte	10158 2641 RP0001	Date	
Remitting period Période de versement	NOV. 27 - Dec 3	Tax Impôt	6,918.68
Payroll Remunération	34,401.36	C.P.P. R.P.C.	3,370.32
Employees Employés	35	E.I. A-E	1,304.51
Cheque no. N. de chèque		Payment Paiement	11,543.51

en ligne à canada.ca/moroc-maroc-paiement-ar, en ligne et télécharger le record de débit préautorisé à canada.ca/moroc-dossier-entrepreneur-ar, en ligne et télécharger votre inscription financière comprenant ou par carte de débit. Une personne résidant au pays de destination à l'adresse de Poste Canada avec un compte bancaire valide peut effectuer un paiement à l'adresse de Poste Canada sans avoir besoin d'un compte DR. Pour effectuer un paiement à l'adresse de Poste Canada, il suffit de suivre les liens pour créer un compte DR ou pour effectuer un paiement à l'adresse de Poste Canada.

Remarque : Le code DR contient toutes les informations requises pour effectuer votre paiement en argent comptant ou par carte de débit dans un point de vente au détail de Poste Canada.

Pour en savoir plus sur les façons de faire un paiement, allez à canada.ca/paiements. Les auteurs de versements du seul 2 doivent verser les revenus sur la ciale (RFC, AE, Impôt) par voie électronique. Les personnes à leur institution financière canadienne.

on bills or by phone calling a Canada Revenue Centre toll-free number. For more information on how to make a payment, go to canada.ca/payments.

For more information on how to make a payment, go to canada.ca/payments.

Threshold 2: rentiers must remit payroll deductions (CPP, EI and income tax) electronically or in person at their Canadian financial institution.

PLACENTIA BRANCH
DEC 14 2022
PLACENTIA, NL
08403-003



Royal Bank of Canada
PO BOX 70
PLACENTIA, NL
A0B 2Y0

Transaction Record

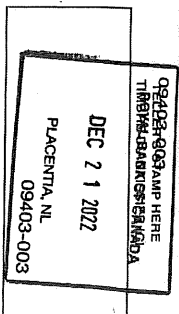
Transit: 09403
Date: 21 Dec 2022
Time: 12:23:57

Reference #: 6223653923878809403

Items Received
Cheque 8878.22 CAD
Other Payments
Miscellaneous 8878.22 CAD

Thank you for choosing RBC Royal Bank.

Account No.	10158 2641 RP0001	Date	Dec. 21 / 2022
N° de compte		Tax	5,141.77
Period of payment	Dec 4 - Dec 10	CPP	2,741.86
Remuneration	20,227.32	E.I.	994.59
Payroll		A-E	
Employees	28		
Cheque no.	35876	Payment	8,878.22
N° de chèque			





D

Royal Bank of Canada
 PO BOX 70
 PLACENTIA, NL
 A0B 2Y0

Transaction Record

Transit: 09403
 Date: 03 Jan 2023
 Time: 11:45:29

Reference #: 9230033692932609403

Items Received
 Cheque 8005.39 CAD
 Other Payments
 Miscellaneous 8005.39 CAD

Thank you for choosing RBC Royal Bank.

Account No. N° de compte	10158 2641 RP0001	Date	January 3rd, 2023
Remitting period Période de versement	Dec 18 - 24th / 23	Tax Impôt	4,706.26
Payroll Rémunération	23,523.74	CPP RPC	2,407.11
Employees Employés	27	E.I. A-E	892.02
Cheque no. N° de chèque	35888	Payment Paiement	8,005.39

For more information on how to use your RBC Royal Bank account, visit www.rbc.ca.
 Pour plus d'informations sur l'utilisation de votre compte RBC Royal Bank, visitez www.rbc.ca.

Note: The QR code on the back of the cheque is used for automatic payment processing. Please ensure the QR code is not damaged or obscured.
 Note: Le code QR sur le verso du chèque est utilisé pour le traitement automatique des paiements. Veuillez vous assurer que le code QR n'est pas endommagé ou masqué.

ROYAL BANK OF CANADA
 PLACENTIA BRANCH
 JAN 03 2022
 PLACENTIA, NL
 09403-065

Royal Bank of Canada
P.O. BOX 70
PLACENTIA, NL
A0B 2Y0



Transaction Record

Transit: 09403
Date: 11 Jan 2023
Time: 11:24:53

Reference #: 3230113569400709403

Items Received	7057.11 CAD
Cheque	
Other Payments	
Miscellaneous	7057.11 CAD

Thank you for choosing RBC Royal Bank.

Account no.	10158 2641 RP0001	Date	January 11, 2003
N de compte		Tax	
Remitting period	Dec 25-Dec 31	Unit	4,082.07
Période de versement		GPP	2,176.78
Remuneration	21,051.39	PPC	
Employees	23	E	798.26
Change no.	35949	Payment	7,057.11
N de change		Payment	

CA00135-04-5

Comment faire vos versements ?
Vous pouvez effectuer vos versements :

- en ligne par Webphone en utilisant les services d'une institution financière canadienne; en ligne par carte de crédit; ou
- en ligne par mandat de paiement en ligne à canada.collegesuisse.com/etudes/epargne-epargne-epargne;

en ligne en établissant un accord de débit automatique avec une institution financière canadienne; par mandat de paiement en ligne à canada.collegesuisse.com/etudes/epargne-epargne-epargne;

par remise en personne à un point de vente au détail de l'Agence Canada avec un chèque de débit. Remarque : le page 600 contient l'adresse de l'Agence Canada.

Le versement doit être effectué par l'Agence Canada à l'Agence Canada avec un chèque de débit. Le code OR contient toutes les informations requises pour effectuer votre paiement en argent comptant ou par carte de débit. Le code OR contient un point de vente au détail de l'Agence Canada.

Pour en savoir plus sur les façons de faire un paiement, allez à canada.collegesuisse.com.

Les versements effectués par carte de crédit ou par mandat de paiement en ligne sont retenus sur la paie (RPP, AE, Impôt) par votre employeur ou par l'institution financière canadienne.

How do you remit?
You can remit;
online or by phone using a Canadian financial institution's services
or by selling up a pre-authorized debit agreement at my-cra-business-account
in person at your Canadian financial institution with the remittance voucher
number and the 16-digit remittance identifier. You can also make a Payment
Note. Select Pay at Canada Post and follow the links to create a QR code
or a remittance slip. The QR code contains all the information required to make your payment with cash or
debit at a Canada Post retail outlet.

For more information on how to make a payment, go to canada.ca/payments.
Threshold 2 remitters must remit payroll deductions (CPP, EI and income tax) electronically or

094068689 S TAIMP MEME
RUMBER ANKOR SATHANAL

JAN 11 2022
PLACENTIA, NL
09403-003



Royal Bank of Canada
PO BOX 70
PLACENTIA, NL
A0B 2Y0

Transaction Record

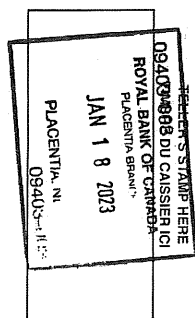
Transit: 09403
Date: 18 Jan 2023
Time: 14:25:03

Reference #: 5230184650472909403

Items Received
Cheque 7466.25 CAD
Other Payments
Miscellaneous 7466.25 CAD

Thank you for choosing RBC Royal Bank.

Account No	10158 2641 RP0001	Date	Jan. 18, 2023
N° de compte		Pay To	4,370.43
Remitting period	Jan. 15 - Jan. 13	Impôt	
Period of payment		CRP	
Payroll	22,446.52	RFC	2,244.64
Remuneration		EIE	851.18
Employees		Payroll	
Employés	24	Payroll	
Chèque No.		Payroll	
N° de chèque		Payroll	



no information on how to make a payment, go to www.rbc.ca or call 1-800-387-2222. For more information on how to make a payment, go to www.rbc.ca or call 1-800-387-2222.

For more information on how to make a payment, go to www.rbc.ca or call 1-800-387-2222. For more information on how to make a payment, go to www.rbc.ca or call 1-800-387-2222.



Transit: 09403
Date: 25 Jan 2023
Time: 11:53:15
Reference #: 1230

Items Received	8093.47 CAD
Cheque	
Other Payments	8093.47 CAD
Miscellaneous	
Thank you for choosing RBC Royal Bank.	

Account No.	10158 2641 RP0001	Date	January 25, 2023
N° de compte		Tax	
Remitting period	Jan. 8 - Jan. 14, 23	Import	4,721.09
Période de versement		C/P	2,428.88
Remuneration	24,118.04	R/C	
Employees		E.I.	943.50
Employés	25	A-E	
Cheque no.		Payment	8,093.47
N° de chèque		Paiement	

TELLER'S STAMP HERE
TIMBRE DU CAISSIER ICI

Comment faire vos versements ?

Vous pouvez effectuer vos versements :

- en ligne ou par téléphone en utilisant les services d'une institution financière canadienne;
- en ligne en établissant un **compte-paiement-à-ri**;
- en ligne en établissant un **compte-paiement-à-ri**;
- en personne, en présentant votre **carte de débit préautorisée à canada.com-dossier-entreprises.ca**, en payant en personne à un point de vente au détail de votre institution financière canadienne;
- en personne, en présentant votre **carte de débit préautorisée à canada.com-dossier-entreprises.ca**, en payant en personne à un point de vente au détail de votre institution financière canadienne;

Remarque : Le code QR contient toutes les informations requises pour effectuer votre paiement en argent comptant ou par carte de débit dans un point de vente au détail de Postes Canada.

Pour en savoir plus sur les façons de faire un paiement, allez à **canada.ca/paiements**.

Les valeurs de versements du **total 3** doivent verser les retenues sur la paie (RPC, AE, impôt) par voie électronique ou en personne à leur institution financière canadienne.

How do you remit?
You can remit:
online or by phone using a Canadian financial institution's services online at canada.ca/rem-pay
online by setting up a pre-authorized debit agreement at canada.ca/my-ca-business-account
in person at your Canadian financial institution with the remittance voucher
attached to a Canada Post retail outlet with cash or debit. Go to the CRA Make a Payment page, select Pay at Canada Post and follow the links to create a QR code.
Note: The QR code contains all the information required to make your payment with cash or debit at a Canada Post retail outlet.

For more information on how to make a payment, go to canada.ca/payments.
Threshold 2 remitters must remit payroll deductions (CPP, EI and income tax) electronically or in person at a Canadian financial institution.



Canada Revenue
Agency

Agence du revenu
du Canada

Canada

GST/HST NETFILE - confirmation

H

Your return has been successfully filed.

Your confirmation number is: **281295**.

Thank you for using GST/HST NETFILE.

Business number: **101582641 RT0001**

Business name: **EDWARD COLLINS CONTRACTING LIMITED**

Reporting period: **2022-11-01 to 2022-11-30**

Filing date: **2022-12-13**

Line 101 - Sales and other revenue	\$206,492.46
Line 135 - Total GST/HST new housing rebates (included in line 108)	\$0.00
Line 136 - Deduction for pension rebate amount (included in line 108)	\$0.00
Line 105 - Total GST/HST and adjustments for period	\$30,973.87
Line 108 - Total ITCs and adjustments	\$30,973.87
Line 109 - Net tax	\$0.00
Line 110 - Instalments and other annual filer payments	\$0.00
Line 111 - Rebates (note: rebate forms must be mailed separately)	\$0.00
Line 205 - GST/HST due on purchases of real property or purchases of emission allowances	\$0.00
Line 405 - Other GST/HST to be self-assessed	\$0.00
Line 114 - Refund claimed	\$0.00
Line 115 - Amount owing	\$0.00



Canada Revenue
Agency

Agence du revenu
du Canada

Canada

GST/HST NETFILE - confirmation

1

Your return has been successfully filed.

Your confirmation number is: 986093.

Thank you for using GST/HST NETFILE.

Business number: 101582641 RT0001

Business name: EDWARD COLLINS CONTRACTING LIMITED

Reporting period: 2022-12-01 to 2022-12-31

Filing date: 2023-01-12

Line 101 - Sales and other revenue	\$297,569.06
Line 135 - Total GST/HST new housing rebates (included in line 108)	\$0.00
Line 136 - Deduction for pension rebate amount (included in line 108)	\$0.00
Line 105 - Total GST/HST and adjustments for period	\$44,635.36
Line 108 - Total ITCs and adjustments	\$44,635.36
Line 109 - Net tax	\$0.00
Line 110 - Instalments and other annual filer payments	\$0.00
Line 111 - Rebates (note: rebate forms must be mailed separately)	\$0.00
Line 205 - GST/HST due on purchases of real property or purchases of emission allowances	\$0.00
Line 405 - Other GST/HST to be self-assessed	\$0.00
Line 114 - Refund claimed	\$0.00
Line 115 - Amount owing	\$0.00

Appendix “K”

Edward Collins Construction Ltd. et al
CRA Debt: November 23, 2022

	Program Account						
Company	RC	RT	RP			Total	Total
			Deemed	Employer	Int. & Penalty		
ECC	-	940,004	2,126,446	499,703	488,989	3,115,138	4,055,142
FGC	15,065	19,402					34,467
H&E	-	6,144					6,144
51037	-	31,315	4,258	927	1,039	6,224	37,539
Classic Security	-	210,713	361,270	89,919	197,890	649,080	859,793
	15,065	1,207,579	2,491,975	590,549	687,918	3,770,442	4,993,085

ECCL							
Payroll Arrears by Year							
	EI		CPP		Tax	Interest and Penalties	Total
	Employee	Employer	Employee	Employer			
2020 Remittances	52,281.34	73,193.88	160,070.29	160,070.29	802,718.94	235,999.57	1,484,334.31
	(6,587.51)	(9,097.03)	(21,874.79)	(21,874.79)	(100,881.64)		(160,315.76)
	45,693.83	64,096.85	138,195.50	138,195.50	701,837.30	235,999.57	1,324,018.55
2021 Owing	58,200.13	81,480.18	184,994.47	184,994.47	893,154.98	226,446.72	1,629,270.95
2021 Remittances	(2,214.58)	(3,058.24)	(6,750.63)	(6,750.63)	(36,829.82)		(55,603.90)
	55,985.55	78,421.94	178,243.84	178,243.84	856,325.16	226,446.72	1,573,667.05
2022 Owing (up to Jul. 20th)	11,128.75	15,580.48	35,957.42	35,957.42	140,540.25	26,543.01	265,707.33
2022 Remittances	(2,439.49)	(3,368.83)	(7,424.50)	(7,424.50)	(27,597.32)		(48,254.64)
	8,689.26	12,211.65	28,532.92	28,532.92	112,942.93	26,543.01	217,452.69
Total Arrear:	110,368.63	154,730.45	344,972.26	344,972.26	1,671,105.39	488,989.30	3,115,138.29
Payroll Arrears Summary							
Deemed Portion	110,368.63		344,972.26		1,671,105.39		2,126,446.28
Non-Deemed Portion		154,730.45		344,972.26		488,989.30	988,692.01
Total Arrear:	110,368.63	154,730.45	344,972.26	344,972.26	1,671,105.39	488,989.30	3,115,138.29
CSL							
Payroll							
	EI		CPP		Tax	Interest and Penalties	Total
	Employee	Employer	Employee	Employer			
2019 Owing	38,293.34	53,611.47	105,843.40	105,843.40	518,071.69	195,552.17	1,017,215.47
2019 Remittances	(17,189.39)	(23,737.72)	(45,798.08)	(45,798.08)	(239,788.58)		(372,311.85)
	21,103.95	29,873.75	60,045.32	60,045.32	278,283.11	195,552.17	644,903.62
2020 Owing	5,778.19	8,089.64	16,866.97	16,866.97	77,292.50	2,338.10	127,232.37
2020 Remittances	(5,778.19)	(8,089.64)	(15,029.02)	(16,866.97)	(77,292.50)		(123,056.32)
	-	-	1,837.95	-	-	2,338.10	4,176.05
Total Arrear:	21,103.95	29,873.75	61,883.27	60,045.32	278,283.11	197,890.27	649,079.67
Payroll Arrears							
Deemed Portion	21,103.95		61,883.27		278,283.11		361,270.33
Non-Deemed Portion		29,873.75		60,045.32		197,890.27	287,809.34
Total Arrear:	21,103.95	29,873.75	61,883.27	60,045.32	278,283.11	197,890.27	649,079.67
51037							
Payroll							
	EI		CPP		Tax	Interest and Penalties	Total
	Employee	Employer	Employee	Employer			
2019 Owing					169.26	27.94	197.20
2019 Remittances							-
	-	-	-	-	169.26	27.94	197.20
2020 Owing	643.72	643.72	202.24	283.14	3,243.18	1,010.66	6,026.66
2020 Remittances	643.72	643.72	202.24	283.14	3,243.18	1,010.66	6,026.66
Total Arrear:	643.72	643.72	202.24	283.14	3,412.44	1,038.60	6,223.86
Payroll Arrears							
Deemed Portion	643.72		202.24		3,412.44		4,258.40
Non-Deemed Portion		643.72		283.14		1,038.60	1,965.46
Total Arrear:	643.72	643.72	202.24	283.14	3,412.44	1,038.60	6,223.86
All 3 Entities							
Payroll Arrears							
Deemed Portion	132,116.31		407,057.77		1,952,800.94		2,491,975.02
Non-Deemed Portion		185,247.91		405,300.72		687,918.17	1,278,466.80
Total Arrear:	132,116.31	185,247.91	407,057.77	405,300.72	1,952,800.94	687,918.17	3,770,441.82

Edward Collins Contracting Ltd. et al
HST Account Balances at November 23, 2022

Company	Statement Balance	As of July 20-22	As of Oct 5-22	O/S Returns	
ECC	1,065,353.89	940,003.87	940,003.87	Nov 1-30, 2022	(1)
51037	31,315.33	31,315.33	31,315.33	Nov 1-30, 2022	
H&E	6,144.43	6,144.43	6,144.43	N/A	
FGC	21,276.81	19,401.81	19,401.81	N/A	(2)
Classic	210,713.08	210,713.08	210,713.08	Nov 1-30, 2022	

1. \$125,350.02 incurred since July 20 will be paid; pending payment clearing.
2. October return was amended to \$0.00 from initial \$1,875; not yet processed by CRA.

Edward Collins Contracting Ltd. et al
Corporate Taxes Owing at November 23, 2022

Company	Statement Balance	Return Status	Next Return Due
ECC	-	Current	28-Feb-23
51037	-	Overdue	30-Jun-21
H&E	-	Current	28-Feb-23
FGC	15,064.81	Current	30-Apr-23
Classic	-	Overdue	30-Sep-21

Appendix “L”

Canada Revenue
AgencyAgence du revenu
du Canada

PROTECTED B

January 16, 2023

Allan MacDonald
Monitor for Edward Collins Contracting Limited
Grant Thornton Limited
Suite 1000 1675 Grafton Street
Halifax NS B3J 0E9

Dear Allan MacDonald:

**Subject: Proposed change to the goods and services tax / harmonized sales tax
(GST/HST) return**
Audit period: October 1, 2022 to October 5, 2022
Account number: 10158 2641 RT0001

We understand the major personal and economic effects of COVID-19 on Canadians. We are aiming to be responsive and work in a way that balances these realities with our duty to manage Canada's tax laws and the obligations of all Canadians to follow them.

Further to our telephone conversation on January 10, 2023, the GST/HST return of Edward Collins Contracting Limited (the "registrant") for the above period was chosen for review. Our records show that Grant Thornton Limited was appointed as Monitor, when an Initial Order under the Companies' Creditors Arrangement Act (CCAA) was filed on October 5, 2022.

Based on information on the list of creditors filed for Edward Collins Contracting Limited, we are proposing to make a (re)assessment as shown below.

Under section 165 of the Excise Tax Act, every recipient of a taxable supply made in Canada is required to pay the GST/HST charged for that supply. The registrant has not paid the GST/HST owed to their suppliers, based on the list of creditors that was filed. Under paragraph 296(1)(b) of the Act, we are proposing to increase the registrant's tax payable by the amount of GST/HST owed on taxable supplies that they received where the tax was not paid to their suppliers.

Period ending	Description	Proposed change
2022-10-05	Increase to tax payable under 296(1)(b)	\$ 501,567.11

PROTECTED B

The proposed amount of **\$501,567.11** is based on calculations we made in the enclosed Schedule A -- Calculation of GST/HST Included in Unpaid Amounts. Our calculations are based on the list of creditors provided in the creditor's package dated October 13, 2022, which was the most recent list available to us.

Please make sure that all input tax credits (ITCs) have been properly claimed in the registrant's GST/HST returns. If amounts were eligible and not previously claimed for purchases made on or before the CCAA date of October 5, 2022, they can be claimed as ITCs in a reporting period before that date if they are within the four-year time limit specified by subsection 225(4) of the Act. Amounts should be claimed in the proper reporting period because of the different policies and filing procedures in effect before and after the CCAA date.

If you have information that we should consider about the proposed changes, you can send it electronically with our "Submit documents" secure online service. You must be registered for My Business Account or Represent a Client. For more information, go to canada.ca/cra-submit-documents-online. Use **case number 95277051** to make sure your documents are sent properly. Failure to use the case number can result in delays with finalizing your file. You may use the same case number with our "Audit Enquiries" secure online service if you have any questions.

You can also send information by fax or mail to my attention and marked "Personal and confidential" using my contact information at the end of this letter.

We will consider any representations received on or before **February 16, 2023**. If you do not respond by that date, we will (re)assess the registrant's return based on the proposed change.

See the enclosed Schedule B -- List of Recommended Representations, if you need help. We might ask for more information later.

To help you prepare for the audit, search our publications at canada.ca/cra-forms and get Pamphlet RC4188, What You Should Know About Audits. To help you understand your rights as a taxpayer, see Guide RC17, Taxpayer Bill of Rights, which you can get at canada.ca/taxpayer-rights.

PROTECTED B

If you have any questions or concerns during the audit, please call me at 587-338-9081.
My team leader, Rachael Simpson, can be reached at 587-341-7644 if I am not available.

Sincerely,

M. Ward

Maegan Ward
GST/HST Audit Division
Alberta Tax Services Office

Telephone: 587-338-9081
Facsimile: 780-495-7369
Address: Suite 10 9700 Jasper Avenue
Edmonton AB T5J 4C8
Website: canada.ca/taxes

Enclosures

PROTECTED B

Schedule A

Calculation of proposed audit adjustments for Edward Collins Contracting Limited:

Total amount unpaid to suppliers	14,160,380.48
Less: Total amount where GST/HST was not charged or owed (A)	10,315,032.63
Total amount unpaid to suppliers where GST/HST was charged	3,845,347.85
Calculate GST/HST included at 15%	x 15/115
Total GST/HST included in unpaid amounts	<u>501,567.11</u>

List of unsecured creditors where no GST/HST was charged or owed:

Name of supplier	Unpaid amount
Bank of Nova Scotia	13,630.00
Brandt	133,650.46
Brandt Finance	205,056.94
Canada Revenue Agency	4,102,749.00
Caterpillar Financial	24,489.10
De Lage Landen Financial Services Canada Inc.	381,008.94
Diamler Truck Financial	322,323.50
Honda Financial	8,832.90
Intact Insurance Company	1.00
John Deere Financial	575,354.27
Royal Bank of Canada	4,336,201.25
Wells Fargo	211,735.27
Total amount where GST/HST was not charged or owed	10,315,032.63 (A)

PROTECTED B

Schedule B – List of Recommended Representations

Subject: Proposed change to the goods and services tax / harmonized sales tax (GST/HST) return for the audit period October 1, 2022 to October 5, 2022

You can include information from this list with your representations. If possible, please send electronic files in spreadsheet format (.xls or .xlsx) or as a text file (.csv) for listings, and in PDF format for all other documents.

1. If you want to claim input tax credits (ITCs) that might be eligible for purchases made up to October 5, 2022, and they were not claimed previously, give a detailed listing that includes this information for each purchase:
 - a. date of transaction
 - b. name of supplier
 - c. description of goods or services purchased
 - d. purchase amount
 - e. amount of GST/HST charged
2. An updated listing of all accounts payable as of October 5, 2022, for Edward Collins Contracting Limited.
3. Copies of original purchase documents for transactions from your listing of accounts payable where GST/HST was not charged, that includes this information for each purchase:
 - a. date of transaction
 - b. name of supplier
 - c. description of goods or services purchased
 - d. purchase amount
 - e. explanation of why GST/HST was not charged
4. Information about payments made after October 5, 2022, that would affect your listing of accounts payable, including proof of payments.
5. Information about accounts that you expect will be paid after October 5, 2022, and the sources of funds for those payments. Please include a schedule of payments to be made at certain intervals that were approved by the Monitor.
6. List of suppliers to be paid that are considered critical for continuing business operations.

Appendix “M”

Edward Collins Contracting Ltd., H & E Designs Ltd., Classic Security Ltd., FGC Holdings Ltd., 51037 Newfoundland & Labrador Inc. (collectively, "ECC et al")
Budget vs Actual to January 27, 2023 (\$CAD)

		Actual								Comparison		
		WEEK 12	WEEK 13	WEEK 14	WEEK 15	WEEK 16	WEEK 17	WEEK 18	WEEK 19	Actual to	Budget to	Variance to
Beginning Period		2022-12-03	2022-12-10	2022-12-17	2022-12-24	2022-12-31	2023-01-07	2023-01-14	2023-01-21			
Ending Period		2022-12-09	2022-12-16	2022-12-23	2022-12-30	2023-01-06	2023-01-13	2023-01-20	2023-01-27	2023-01-27	2023-01-27	2023-01-27
	NOTE											
Cash Receipts												
Existing Project Receipts	1, 2, 14	972		117,631	109,271		113,599	126,500	403,840	2,049,676	2,679,970	(630,294)
Management fees (FGC Holdings)	15									5,750	28,750	(23,000)
Rental Income						2,892		1,429	2,848	133,915	116,968	16,947
Miscellaneous Receipts	3	18,427		1,351						195,077	183,105	11,972
Collection of Accounts Receivable	4			2,344			9,627			25,000	25,000	-
RBC Loan Augmentation										515,510	515,510	-
Life Insurance	10											
Total Receipts from Operations		19,399	-	121,326	109,271	2,892	123,227	127,929	406,688	2,924,928	3,549,304	(624,375)
Direct costs												
Materials and Subcontracts		9,838	13,093	20,499		27,100	8,304	18,096	33,174	353,056	277,867	75,188
Direct Wages and Benefits		28,630	18,513	29,961		12,639	14,294	11,609	16,059	457,189	480,839	(23,650)
Fuel		25,939	23,462	1,542		393	474	818	57,518	282,527	216,417	66,111
Equipment Rental				11,500		3,984			13,800	29,284	-	29,284
Intersac AMA Fees										-	2,875	(2,875)
Direct Disbursements		64,407	55,068	63,503	-	44,115	23,072	30,523	120,550	1,122,056	977,998	144,058
Cash Flow Before Operating Activities		(45,008)	(55,068)	57,823	109,271	(41,223)	100,155	97,406	286,138	1,802,872	2,571,305	(768,433)
Operating expenses												
Business taxes, licences, memberships		289							11,598	12,168	3,081	9,087
Insurance	5									-		
Bank fees (Interest & Charges)		610	195	180		1,057	135	225	135	4,395	2,158	2,236
Office		8,419	518	54		2,145	2,222	1,198	8,514	30,944	12,374	18,569
Professional fees	6	5,000				6,210			9,028	50,129	49,891	238
Property taxes										-		
Rentals							12,679			20,134	8,175	11,959
Repairs & Maintenance		11,207	23,923	3,824		24,814	1,449	772	59,989	201,718	135,740	65,978
Workers compensation (WHSCC NL)							9,470			37,619	46,779	(9,160)
Salaries and wages		2,946	2,922	6,584		3,244	2,758	2,981	3,260	67,852	84,557	(16,705)
Travel		500	7,187	6,029		500	500	500	147	20,431	9,068	11,363
Utilities & Telephone		5,581	86			3,732	651		6,780	17,139	10,908	6,231
Vehicle										-		
Garage wages and benefits		5,271	6,743	12,599		5,372	7,014	9,939	7,672	112,067	122,857	(10,790)
Equipment Lease Payments			12,962	30,488		4,594	3,135	10,981	7,043	155,402	170,199	(14,798)
Miscellaneous / Contingency		5,000								37,103	44,103	(7,000)
Legal Fees						300				32,743	62,443	(29,700)
Restructuring Fees	7	10,000				29,656				119,489	159,833	(40,344)
Admin Charge	8									-		
HST Remitted (Refunded)	12									125,350	257,480	(132,130)
Operating Disbursements		54,823	54,537	59,757	-	81,624	40,012	26,595	114,166	1,044,681	1,179,647	(134,967)
Bid Deposits / Bonding	11	(52,500)	(5,000)			32,854				(60,000)	(35,354)	(24,646)
O'Keefe & Co Opening Bal. Adjustment		(20,000)								(20,000)	-	(20,000)
Deposit Held With Monitor	13							(250,000)		(250,000)	-	(250,000)
Net Cash Contribution (Use)		(172,332)	(114,605)	(1,934)	109,271	(89,993)	60,143	(179,189)	171,972	428,192	1,356,304	(928,113)
Opening Cash Position		719,664	547,333	432,727	430,793	540,065	450,072	510,215	331,026	74,806	74,806	74,806
Closing Cash Position		547,333	432,727	430,793	540,065	450,072	510,215	331,026	502,997	502,997	1,431,110	(853,307)
ECC Bank Balance		120,231	26,024	25,835	129,926	78,897	141,129	81,477	57,182			
O'Keefe Bank Balance		257,261	239,761	239,761	239,761	239,461	229,992	109,992	304,567			
GT Bank Balance		185,496	185,496	185,496	185,496	186,616	186,616	186,616	186,616			
Balance per Bank (all accounts)		562,988	451,281	451,092	555,183	504,974	557,737	378,084	548,365			
o/s Transactions	9	(15,656)	(18,553)	(20,298)	(15,118)	(54,903)	(47,522)	(47,059)	(45,368)			
Reconciled Balance		547,333	432,727	430,793	540,065	450,072	510,215	331,026	502,997			
Variance												

NOTES:

- Receipts collected from active / budgeted projects (awarded contracts).
- Funds received to \$USD account transferred to \$CAD operating account on day of receipt.
- Receipts for one-off jobs not related to a specific projects.
- Collection of pre-July 20 Accounts Receivable not related to active projects. Collectibility and timing of collection is presently unknown.
- Insurance has been prepaid for the coming year.
- Fees for external accounting services.
- Includes fees of Proposed Monitor and its legal counsel for financial restructuring / CCAA proceeding.
- No admin charge or DIP financing.
- Cheques issued but not yet cleared.
- RBC deposited \$25,000 with memo "Loan Augmentation"
- Current (refundable) deposits for contract bids and performance bonding total \$77,500 and include:
 - Town of Placentia - \$5,000
 - Eastern Health - \$15,000
 - Eastern Health - \$5,000
 - Province of NL - \$52,500
- HST remittances were made on time electronically but were unable to process. A cheque for the to cover outstanding HST since July 21, 2022 was issued in November 2022
- Per Court Order dated December 14, 2022
- Certain SNC receivables collected directly by Frank Collins and used to pay business expenses since Sep 17 were accounted for in Week 19.
- See supplementary cash flow report for management fees collected by FGC and disbursements associated with those funds.

FCG Holdings Ltd.
Cash Flow Report to January 6, 2023

		WEEK 1	WEEK 2	WEEK 3	WEEK 4	WEEK 5	WEEK 6	WEEK 7	WEEK 8	WEEK 9	WEEK 10	WEEK 11	WEEK 12	WEEK 13	WEEK 14	WEEK 15	WEEK 16	Total
Beginning Period		2022-09-17	2022-09-24	2022-10-01	2022-10-08	2022-10-15	2022-10-22	2022-10-29	2022-11-05	2022-11-12	2022-11-19	2022-11-26	2022-12-03	2022-12-10	2022-12-17	2022-12-24	2022-12-31	
Ending Period		2022-09-23	2022-09-30	2022-10-07	2022-10-14	2022-10-21	2022-10-28	2022-11-04	2022-11-11	2022-11-18	2022-11-25	2022-12-02	2022-12-09	2022-12-16	2022-12-23	2022-12-30	2023-01-06	
	NOTE																	
Cash Receipts																		-
Management Fees	2																	-
Other																		149,425.00
																		-
total Receipts		-	55,125	-	-	-	-	-	-	-	-	43,125	-	-	-	-	51,175	149,425
Cash Disbursements																		-
Payroll	3	4,000	55,000	10								39,020					31,010	129,029.85
Bank Fees & Interest								7				23					9	49.23
HST Remittance								1,875				1,875						3,750.00
Other																		-
																		-
Total Disbursements		4,000	55,000	10	-	-	-	1,882	-	-	-	40,918	-	-	0	-	31,018	132,829
Net Cash Contribution (Use)		(4,000)	125	(10)	-	-	-	(1,882)	-	-	-	2,207	-	-	(0)	-	20,157	16,596
Opening Cash Position		7,686	3,686	3,811	3,802	3,802	3,802	3,802	1,919	1,919	1,919	1,919	4,126	4,126	4,126	4,126	4,126	7,686
Closing Cash Position		3,686	3,811	3,802	3,802	3,802	3,802	1,919	1,919	1,919	1,919	4,126	4,126	4,126	4,126	4,126	24,282	24,282

Notes:

1. Online bank activity is unavailable; cash flow goes to the date of the last bank statement received.
2. Management fees are paid by Universal Environmental Services Inc.
3. Compensation paid to Frank Collins for management services to Universal Environmental Services Inc.

Appendix “N”

O'KEEFE & SULLIVAN

BY COURIER

The Supreme Court of Newfoundland and Labrador
P.O. Box 937
313 Duckworth Street,
St. John's, NL
A1C 5M3

02 February 2023

To the Registry of the Supreme Court:

Re: 2022 01G 0563
In Re: Rodco Mechanical (2014) Inc. v. Edward Collins Contracting Ltd. et. al.

Please find the following documents enclosed herewith:

1. Interlocutory Application;
2. Supporting Affidavit of Darren D. O'Keefe; and
3. Our firm cheque in the amount of \$13.00.

We trust the foregoing is satisfactory.

Regards,



DARREN D. O'KEEFE
dokeefe@okeefesullivan.com

2022 01G 0563

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER OF the *Mechanics' Lien Act*, Chapter M-3, of the Revised Statutes of Newfoundland and Labrador, 1990

- AND -

IN THE MATTER OF a claim for lien of a claim of lien by Rodeo Mechanical (2014) Ltd. against certain property of the Town of Placentia, as Owner, and against Edward Collins Contracting Limited, as General Contractor;

BETWEEN: RODCO MECHANICAL (2014) INC.

PLAINTIFF

AND: EDWARD COLLINS CONTRACTING LTD.

FIRST DEFENDANT

AND: THE TOWN OF PLACENTIA

SECOND DEFENDANT

SUMMARY OF CURRENT DOCUMENT	
Court File Number (s):	2022 01G 0563
Date of Filing of Document:	02 February 2023
Name of Filing Party or Person:	Edward Collins Contracting Ltd.
Application to which Document being filed relates:	Application pursuant to s. 5, 6, 12.4(1), 23(4) and 26(2)(b) of the <i>Mechanics' Lien Act</i> , R.S.N.L. 1990, c.M-3, as amended (the " Act ") for an order that certain holdback funds (the " Holdback ") held pursuant to s.6 of the Act be paid into Court and that the Second Defendant be released from any further obligation under the Act or connection with this proceeding.
Statement of purpose in filing:	To seek an order for Holdback funds to be paid into Court and the release of the Second Defendant in the within matter.
Court Sub-File Number, if any:	N/A

INTERLOCUTORY APPLICATION

The Interlocutory Application of Edward Collins Contracting Ltd. ("ECC"), seeks an order as follows:

1. Pursuant to sections 5, 6, 12.4(1), 23(4) and 26(2)(b) of Act that:
 - (a) the Second Defendant be ordered to pay the Holdback into this Honourable Court in satisfaction of its obligations under the Act;
 - (b) Pursuant to section 26(2) of the Act, that upon payment of the Holdback into this Honourable Court, an Order that Mechanics' Lien No. 19963 registered on 03 December 2021 be vacated pursuant to section 12.4(1) of the Act;
 - (c) That payment of the Holdback as aforesaid shall discharge the Second Defendant of any further obligation or liability as it relates to the claim of the Plaintiff in the within action; and
 - (d) That upon payment of the Holdback into this Honourable Court, and the discharge of the lien as aforesaid, any interested party may apply to this Honourable Court for a determination of the ownership of the Holdback, including but not limited to any application concerning the correct procedural forum to resolve any disputes with respect to ownership of the Holdback.

MATERIAL FACTS:

2. The Plaintiff is a body corporate, duly incorporated and existing pursuant to the laws of the Province of Newfoundland and Labrador, and has its registered address situate at 257 Conception Bay Highway, in the Town of Conception Bay South, in the Province of Newfoundland and Labrador, with postal code AOA 2R0.
3. The First Defendant is a body corporate, incorporated and existing pursuant to the laws of the Province of Newfoundland and Labrador, and has its registered office situate at

Main Road, P.O. Box 51, in the Town of Jerseyside, Placentia Bay, in the Province of Newfoundland and Labrador, with postal code A0B 2G0.

4. The Second Defendant is a municipality, incorporated and existing under the *Municipalities Act*, 1999, SNL 1999, c.M-24, as amended, with its address at P.O. Box 99, 21 Patterson Drive, in the Town of Placentia, in the Province of Newfoundland and Labrador, with postal code A0B 2Y0. At all times material and relevant to the within action the Second Defendant was the "Owner" of the subject Property (defined below) within the meaning of the Act.
5. The Plaintiff alleges that under a contract between the Plaintiff and the First Defendant (the "**Contract**"), the Plaintiff agreed to supply materials and labour in connection with the construction, development and improvement of the municipal water system and associated structures upon the Owner's land or their interest in same (hereinafter referred to as the "**Property**"), and more particularly:
 - (a) Pressure reducing building and associated structures situate at the corner of Harbour Drive and Route 100, in the Town of Placentia, in the Province of Newfoundland and Labrador;
 - (b) Pressure reducing building and associated structures situate at the corner of Fox Harbour Road and Route 100, in the Town of Placentia, in the Province of Newfoundland and Labrador; and
 - (c) Clarkes Pond pump house and associated structures situate at the corner of Route 100 and the entrance to the Town of Placentia, in the Province of Newfoundland and Labrador.
6. The Plaintiff further alleges that it supplied materials and labour to the First Defendant under the terms of the Contract up to and including 10 November 2021.
7. On 03 December 2021, pursuant to the provisions of the Act, the Plaintiff registered a Mechanics' Lien (bearing No. 19963) upon the interest of the Defendants in the Property (hereinafter the "**Lien**"). The total amount of the Lien was Five hundred eight thousand,

two hundred seventy-one dollars and fifty cents (\$508,271.50), inclusive of HST, plus interest.

8. On 02 February 2022 the Plaintiff filed a Certificate of Action along with the within Statement of Claim.
9. The Plaintiff acknowledges having received a payment in the amount of One hundred thirty-five thousand dollars (\$135,000.00) since the registration of the Lien.
10. The Plaintiff alleges that there remains due and owing from the Defendants to the Plaintiff, in respect of the said Contract, the amount of Three hundred eighty-one thousand, nine hundred fifty dollars and twenty-four cents (\$381,950.24), plus interest at the invoiced rate, and that despite demand, the Defendants have failed to pay this remaining amount to the Plaintiff.
11. Since the date of the Certificate of Action and within claim, no further steps have been taken in the within proceeding.
12. On 15 July 2022, the First Defendant applied for creditor protection under the provisions of the *Company Creditors Arrangement Act* R.S.C 1985 (the "**CCAA**"). This Honorable Court granted an interim order under Rule 22 of the *Rules of the Supreme Court*, 1986 on 20 July 2022, followed by a first day CCAA order on 05 October 2022, and an amended and restated first day order (the "**ARIO**") on 17 October 2022.
13. As of the date hereof, the First Defendant is still subject to the ARIO.
14. Sometime between 01 December 2021 and 15 July 2022, the Plaintiff made a claim against the labour and materials bond of the First Defendant, in place with Western Surety Company of Canada ("**Western**") in the amount of \$381,950.24, being the same amount claimed in the within action (the "**Bonding Claim**").
15. That sometime between 15 July 2022 and the date hereof, Western paid the Bonding Claim. Western alleges that during this period it obtained an assignment of the Plaintiff's lien rights.

16. That Western, the First Defendant and the Second Defendant have not been able to agree as to who is entitled to the Holdback given (i) the intervening ARIO and related CCAA proceedings; (ii) the payment of the Bonding Claim, and (iii) the alleged assignment of the Plaintiff's lien rights.
 17. The First Defendant further says that the parties cannot agree as to which proceeding governs the adjudication of the payment of the Holdback, whether it be the within proceeding, or the CCAA proceeding.
 18. The Second Defendant has indicated it has no interest in the Holdback, other than it does not wish to be part of any ongoing legal dispute concerning the payment of the Holdback. As a result, the Second Defendant has not paid the Holdback.
 19. The First Defendant has no reason to further involve the Second Defendant in the within proceeding concerning ownership of the Holdback and says the dispute is between the First Defendant, Western (as alleged as assignee of Plaintiff) and any other person who may have an interest in the Holdback.
 20. On the basis of the foregoing, the First Defendant seeks an order as follows:
 - (a) That the Second Defendant be ordered to pay the Holdback into this Honourable Court in satisfaction of its obligations under the Act;
 - (b) That pursuant to section 26(2) of the Act, upon payment of the Holdback into this Honourable Court, Mechanics' Lien No.19963 registered on 03 December 2021 shall be vacated as the Owner has met its obligations under section 12.4(1) of the Act;
 - (c) That payment of the Holdback as aforesaid shall discharge the Second Defendant of any further obligation or liability as it relates to the claim of the Plaintiff and the within proceedings; and
-

- (d) That upon payment of the Holdback into this Honourable Court, and the discharge of the Lien as aforesaid, any interested party may apply to this Honorable Court for a determination of the ownership of the Holdback, including but not limited to an application concerning the correct procedural forum to resolve any disputes with respect to ownership of the subject Holdback.

All of the foregoing is respectfully submitted.

DATED at St. John's, Newfoundland and Labrador, this 02 day of February, 2023.

O'KEEFE & SULLIVAN



DARREND O'KEEFE

Solicitors for Second Defendant
Edward Collins Contracting Ltd.
Suite 202, 80 Elizabeth Ave.
St. John's, NL
A1A 1W7

TO:

ISSUED at St. John's, Newfoundland and Labrador, this _____ day of _____, 2023.

2022 01G 0563

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER OF the *Mechanics' Lien Act*,
Chapter M-3, of the Revised Statutes of
Newfoundland and Labrador, 1990

- AND -

IN THE MATTER OF a claim for lien of a claim of
lien by Rodeo Mechanical (2014) Ltd. against
certain property of the Town of Placentia, as
Owner, and against Edward Collins Contracting
Limited, as General Contractor;

BETWEEN: RODCO MECHANICAL (2014) INC.

PLAINTIFF

AND: EDWARD COLLINS CONTRACTING LTD.

FIRST DEFENDANT

AND: THE TOWN OF PLACENTIA

SECOND DEFENDANT

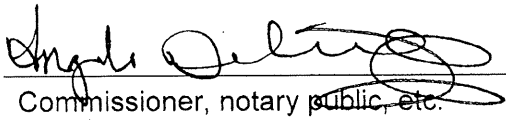
AFFIDAVIT

I, Darren D. O'Keefe, Solicitor for the ECC Group, of the City of St. John's, in the Province
of Newfoundland and Labrador, MAKE OATH AND SAY THAT:

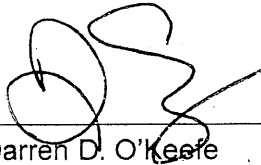
1. I have consulted with Josh Collins, Vice President of the ECC Group, who has provided the affidavit attached hereto as Schedule "A" to confirm that he is familiar with and status of the within application.
2. That to the best of my knowledge and belief, based on my discussions with Josh Collins, he has reviewed the within application and the facts as stated therein are true to the best of his knowledge, information and belief as set out in the attached affidavit.
3. That the original of the affidavit attached as Schedule "A" will be delivered to the Court within three (3) business days of the date hereof.
4. I make this affidavit in support of ECC's position in the within application and for no other or improper purpose.

[Signature page to affidavit of Darren O'Keefe dated 02 February 2023]

SWORN at St. John's, Newfoundland and
Labrador, on the 02 day of February
2023, before me



Commissioner, notary public, etc.



Darren D. O'Keefe

ANGELA De CARIA
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2025

SCHEDULE "A"

2022 01G 0563

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

IN THE MATTER OF the *Mechanics' Lien Act*, Chapter M-3, of the Revised Statutes of Newfoundland and Labrador, 1990

- AND -

IN THE MATTER OF a claim for lien of a claim of lien by Rodeo Mechanical (2014) Ltd. against certain property of the Town of Placentia, as Owner, and against Edward Collins Contracting Limited, as General Contractor;

BETWEEN: RODCO MECHANICAL (2014) INC.

PLAINTIFF

AND: EDWARD COLLINS CONTRACTING LTD.

FIRST DEFENDANT

AND: THE TOWN OF PLACENTIA

SECOND DEFENDANT

AFFIDAVIT

I, Josh Collins, Vice President of the First Defendant, resident of the Town of Placentia, in the Province of Newfoundland and Labrador, make oath and say as follows:

1. That I have reviewed the content of the within application, and the same is true to best of my knowledge information and belief.
2. I make this Affidavit truthfully, knowing it to be an offence to willfully swear a false affidavit.

SWORN TO at St. John's,
Newfoundland and Labrador,
this ____ day of February, 2023.
before me:

JOSH COLLINS

Appendix “O”

FORM 31

Proof of Claim

(Section 50.1, subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1),
and paragraphs 51(1)(e) and 66.14(b) of the Act)

All notices or correspondence regarding this claim must be forwarded to the following address:
257 conception bay Highway, PO BOX 169, Holyrood NL, A0A 2R0

In the matter of the bankruptcy (or the proposal, or the receivership) of edward collins contracting Ltd (name of debtor) of
Placentia, NL (city and province) and the claim of Rodco Mechanical (2014) Ltd. creditor.

I, Stephen Puddicombe (name of creditor or representative of the creditor), of
Holyrood, NL (city and province), do hereby certify:

1. That I am a creditor of the above-named debtor (or that I am President (state position or title) of Rodco Mechanical (2104) Ltd (name of creditor or representative of the creditor)).

2. That I have knowledge of all the circumstances connected with the claim referred to below.

3. That the debtor was, at the date of bankruptcy (or the date of the receivership, or in the case of a proposal, the date of the notice of intention or of the proposal, if no notice of intention was filed), namely the 22 day of July, 22 and still is, indebted to the creditor in the sum of \$ \$149,503.01 as specified in the statement of account (or affidavit) attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)

4. (Check and complete appropriate category.)

☐ A. UNSECURED CLAIM OF \$ _____

(other than as a customer contemplated by Section 262 of the Act)

That in respect of this debt, I do not hold any assets of the debtor as security and

(Check appropriate description)

☐ Regarding the amount of \$ _____, I claim a right to a priority under section 136 of the Act.

☐ Regarding the amount of \$ _____, I do not claim a right to a priority.

(Set out on an attached sheet details to support priority claim.)

☐ B. CLAIM OF LESSOR FOR DISCLAIMER OF A LEASE \$ _____

That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:

(Give full particulars of the claim, including the calculations upon which the claim is based.)

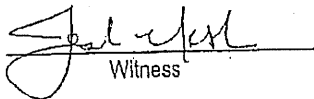
FORM 31 — Concluded

6. That the following are the payments that I have received from, the credits that I have allowed to, and the transfers at undervalue within the meaning of subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of subsection 2(1) of the Act: (Provide details of payments, credits and transfers at undervalue.)

(Applicable only in the case of the bankruptcy of an individual.)

- ☐ I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at Holyrood, this 20th day of Oct / 2022.


Witness

 - Rodco
Creditor mechanical

Phone Number: (709)728-2155
Fax Number: _____
Email Address: steve@rodcomechanical.com

NOTE: If an affidavit is attached, it must have been made before a person qualified to take affidavits.

WARNINGS: A trustee may, pursuant to subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

Subsection 201(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

(d) Costs.

2. The name and address of the Lien Claimant is:

Rodco Mechanical (2014) Ltd.
257 Conception Bay Highway
PO Box 169
Conception Bay South, NL
A0A 2R0

3. The name and address of the person/party whom the Lien Claimant believes to be an Owner of the land, or the Owner of the buildings and erections upon the land, as defined in the *Mechanics' Lien Act* are:

Town of Humber Arm South
103 Hillview Road
P.O. Box 10
Benoit's Cove, NL A0L 1A0

4. The name and address of the General Contractor to whom the materials and appliances were supplied are:

Edward Collins Contracting Limited
Main Road, PO Box 51.
Jerseyside, Placentia Bay, NL
A0B 2G0

5. The materials and appliances were supplied to the party identified as the General Contractor for the purposes of constructing, developing, and improving the water system and associated structures situate upon the Owner's land or their interest in the same as of the date of July 14, 2022.

IN THE MATTER of the *Mechanics' Lien Act*,
R.S.N.L. 1990, c.M-3, as amended;

AND IN THE MATTER of a claim by Rodco
Mechanical (2014) Ltd., a body corporate,
carrying on business in the Province of
Newfoundland and Labrador, against property
of the Town of Humber Arm South, as Owner,
and against Edward Collins Contracting Limited,
a body corporate, of Jerseyside, in the Province
aforesaid, as General Contractor;

AFFIDAVIT

I, Stephen Puddicombe, of the Town of Conception Bay South, in the Province of Newfoundland
and Labrador, make oath and say as follows:

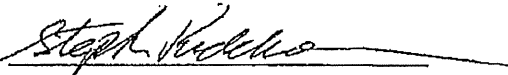
1. THAT I am the President of the Lien Claimant in the within matter, and I have full
knowledge of the facts set forth in the Claim attached hereto, and the said Claim is true to
the best of my knowledge, information and belief.

SWORN TO at the Town of
Conception Bay South, in the
Province of Newfoundland and
Labrador, this 22 day of
July, A.D., 2022, before me:



Witness

C. BRAD LEYTE
"A BARRISTER" (NL)



STEPHEN PUDDICOMBE

INVOICE



Rodco Mechanical (2014) Ltd.
257 Conception Bay Highway
Holyrood, NL A0A 2R0 - (P.O. Box 169)
709-231-2399
accounts@rodco-mechanical.com
HST # 824615371RT0001

Date: 2022-07-18

Invoice # 6028

Payment due in business 30 days

BILL TO

Edward Collins Contracting Ltd.
Contact: Josh Collins

PROJECT

Humber Arm South, NL
New Lift Station and Generator

DESCRIPTION	This Invoice	Pre Invoice	To Date	UNIT PRICE	TOTAL
As per Quote # 5177					
Supply and install new sewage lift station and generator	0.65	0.05	0.70	\$ 178,432.32	\$ 124,902.62
Remove existing lift station piping/equipment	0.00	0.00	0.00	\$ 4,200.00	\$

Remarks / Payment Instructions:

(1) The Payment Term is 30 days after receipt of invoice.
Interest at 2% per 30 days and 24% per annual will be charged on overdue accounts.

SUBTOTAL TO DATE \$ 124,902.62
PREVIOUS INVOICES \$ 8,921.62
SUBTOTAL THIS INVOICE \$ 115,981.00
TAX RATE 15.00%
TOTAL TAX \$ 17,397.15

Balance Due \$ 133,378.15

GOVERNMENT OF NEWFOUNDLAND AND LABRADOR
DEPARTMENT OF MUNICIPAL AND PROVINCIAL AFFAIRS
MUNICIPAL ENGINEERING SERVICES DIVISION
CONTRACT PAYMENT

CONTRACT PAYMENT				
Project: Town of Humber Arm South Lift Station Replacement - Part A				PAYMENT PERIOD FROM: June 10, 2022 15-Jul-22
Contractor: Edward Collins Contracting Ltd. P O Box 51, Jerseyside, NL A0B 2G0				JOB # 671696 DTI #17-RNC-20-00016
GST Registration Number: 101582641RT0001				PAYMENT No. One (1)
Owner: Town of Humber Arm South				
Consultant: SNC-Lavalin Inc.				
ORIGINAL CONTRACT (not including HST) \$241,754.00	ADDITIONS/EXTRAS	DEDUCTIONS	HST \$36,263.10	TOTAL AUTHORIZED \$278,017.10
1. (a) Total Value Work Completed				\$112,007.98
(b) Less (10%) Hold Back				\$11,200.80
(c) Sub-Total Work Completed				\$100,807.18
2. (a) Total Value of Material Delivered on Site				\$0.00
(b) Less (10%) Hold Back				\$0.00
(c) Sub-Total Materials				\$0.00
3. (a) Total Value Force Account				\$0.00
(b) Less (10%) Hold Back				\$0.00
(c) Sub-Total Force Account				\$0.00
4. (a) Total Value, Work & Materials (1a,2a,3a)				\$112,007.98
(b) Less Hold Back, Work & Materials (1b,2b,3b)				\$11,200.80
(c) Net Total, Work & Materials (1c,2c,3c)				\$100,807.18
(d) Less Previous Payments (Item 4(c) from previous claim)				
(e) Amount Due				\$100,807.18
(f) Harmonized Sales Tax 15% (of Item 4(e))				\$15,121.08
TOTAL GST TO DATE:				
NET AMOUNT DUE:				\$115,928.26
DATE SEPT. 13/2022 DATE SNC-LAVALLIN INC. CONTRACTOR DATE MUNICIPALITY OR DEPARTMENT				

PROJECT: TOWN OF HUMBER ARM SOUTH LIFT STATION REPLACEMENT

JOB #: DTI# 17-RNC-20-00016 | SNCL# 671696

SCHEDULE "A" - QUANTITIES AND PRICES

SECTION	DESCRIPTION	UNITS	AUTHORIZED	THIS PERIOD	TO DATE	UNIT PRICE	TOTAL
02233	SELECTED GRANULAR BASE & SUB-BASE MATERIALS Class "A" Granular Base	M ³	25.00	25.00	25.00	\$45.00	\$1,125.00
02601	MANHOLES, CATCH BASINS, DITCH INLETS & VALVE CHAMBERS Supply & Placement of Manhole Inflow Protectors	EACH	1.00	0.00	0.00	\$200.00	\$0.00
	Remove Top Section of Existing Lift Station and Replace With Typical Manhole Top c/w Frame and Cover. Elevation of Frame/Cover to be 300mm Below Shoulder	EACH	1.00	0.00	0.00	\$16,000.00	\$0.00
02650	SEWERAGE PUMPING STATION Supply & Place Lift Station, (1.8m Diameter x 7.1m Depth) Pre-Cast Structure, Two 3hp Pumps, Electrical Mounting Structure & All Other Electrical/Mechanical Components including Legumac 220 Duplex Control Panel (or approved equal) And All Associated Works.	EACH	1.00	0.625	0.625	\$160,000.00	\$100,000.00
02702	PIPE SEWER CONSTRUCTION Supply & Place Sanitary Sewer Main Line PVC SDR 35 250 mm	M	16.00	8.00	8.00	\$200.00	\$1,600.00
	T.V. Camera Inspection Services	M	16.00	0.00	0.00	\$10.00	\$0.00
	Excavate Existing Overflow Pipe, Seal Manhole And Cap Existing 250mm Pipe.	EACH	1.00	0.00	0.00	\$6,000.00	\$0.00
	Break into & Connect to Existing Lift Station Including Rebenching as Required	EACH	1.00	0.00	0.00	\$6,000.00	\$0.00
	Locate & Connect to Existing Sewer Force Mains Including 150mm Megalug c/w Joint Restraints	EACH	1.00	0.00	0.00	\$6,000.00	\$0.00
02724	SEWAGE FORCEMAINS Supply & Install Sewage Forcemain 150 mm HDPE-DR-11	M	18.00	8.00	8.00	\$200.00	\$1,600.00
	Supply & Installation of Fittings: Bends 150 mm	EACH	2.00	1.00	1.00	\$200.00	\$200.00
	Less 10% Sanitary Sewer Test Allowance (on related Sections) 02702						(\$160.00)
	Less 10% Forcemain Test Allowance (on related Sections) 02724						\$90.00
	Less 5% Manhole Test Allowance (on related Sections) 02601						\$0.00
	Less 10% Water Main Test Allowance						\$0.00
	Less 5% Maintenance Hole Test Allowance						\$0.00
	Less 5% Reinstatement Holdback (on all Sections)						(\$6,027.55)
	Less Additional Engineering (See Invoice)						(\$2,445.47)

J TOTAL - PART A

\$112,007.98



Shared by others



Humber Arm South Clearance Letter (1) PDF



Sign in



NL

Health Safety Compensation

Assessment Services Department

JULY 05 2022

EDWARD COLLINS CONTRACTING LIMITED
EDWARD COLLINS CONTRACTING LTD
P O BOX 51
JERSEYSIDE NL A08 2G0

Clearance Letter
Confirmation Number: 0642432

TO: TOWN OF HUMBER ARM SOUTH

RE: EDWARD COLLINS CONTRACTING LIMITED
T/A EDWARD COLLINS CONTRACTING LTD

Request Purpose: Contract Work - Current Year

This confirms that the above referenced employer is in good standing with WorkplaceNL as of today's date for contract work. This clearance is provided for the purposes of Section 120 of the *Workplace Health, Safety and Compensation Act* only, which indicates that a person using a contractor or subcontractor to perform work may be responsible for unpaid assessments of the contractor or subcontractor.

This clearance letter expires 45 days from the date of issue. If the contract work has not been completed by that date, we recommend that you request another clearance letter to protect your business from any potential assessment liability related to this employer.

If you have any questions, please call us at 709.778.2902 or you may use our toll free number 1.800.563.9000 (ext. 2902) if calling within Newfoundland and Labrador.

Sincerely,

Assessment Services Department

To alter this document constitutes fraud

WL1

PROJECT: TOWN OF HUMBER ARM SOUTH LIFT STATION REPLACEMENT**JOB #: DTI# 17-RNC-20-00016 | SNCL# 671696****SCHEDULE "A" - QUANTITIES AND PRICES**

SECTION	DESCRIPTION	UNITS	AUTHORIZED	THIS PERIOD	TO DATE	UNIT PRICE	TOTAL
<u>DIVISION #1</u>							
01010	MOBILIZATION & DEMOBILIZATION (Not greater than 5% if on the Island Or 10% if in Labrador, or 15% North of Cartwright of Item 2, "sub-total" on last page)	LS	UNIT	0.50	0.50	\$2,000.00	\$1,000.00
01020	CASH ALLOWANCE Contribution in Aid (Hydro)	LS	UNIT	0.00	0.00	\$1,000.00	\$0.00
1500	PROJECT SIGNS Project Sign	LS	UNIT	1.00	1.00	\$1,000.00	\$1,000.00
<u>DIVISION #2</u>							
01500	STATIONARY POWER SUPPLY - LIFT STATION Supply/Install & Commission One 120/208V, 150A, 40kW 3 Phase, Tier 2 Diesel Engine, Inc Concrete Works, Fencing Controls as per Technical Specifications, Emergency Power Supply Located at Lift Station Banquo Cove Less 10% Sanitary Sewer Test Allowance (on related Sections) Less 10% Storm Sewer Test Allowance (on related Sections) Less 10% Water Main Test Allowance Less 5% Maintenance Hold Test Allowance Less 5% Reinstatement Holdback (on all Sections) Less Additional Engineering	LS	1.00	0.20	0.20	\$76,000.00	\$15,200.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							(\$460.00)

a) TOTAL - PART B

\$16,340.00



Shared by others



Humber Arm South Clearance Letter (1) - PDF



Sign in



NL

Health Safety Compensation

Assessment Services Department

JULY 05 2022

EDWARD COLLINS CONTRACTING LIMITED
EDWARD COLLINS CONTRACTING LTD
P O BOX 51
JERSEYSIDE NL A08 2G0

Clearance Letter
Confirmation Number: 0642432

TO. TOWN OF HUMBER ARM SOUTH

RE EDWARD COLLINS CONTRACTING LIMITED
TIA EDWARD COLLINS CONTRACTING LTD

Request Purpose. Contract Work - Current Year

This confirms that the above referenced employer is in good standing with WorkplaceNL as of today's date for contract work. This clearance is provided for the purposes of Section 120 of the *Workplace Health, Safety and Compensation Act* only, which indicates that a person using a contractor or subcontractor to perform work may be responsible for unpaid assessments of the contractor or subcontractor.

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If you have any questions, please call us at 709 778.2902 or you may use our toll free number 1.800.563 9000 (ext. 2902) if calling within Newfoundland and Labrador.

Sincerely,

Assessment Services Department

To alter this document constitutes fraud

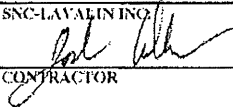
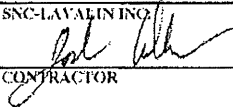
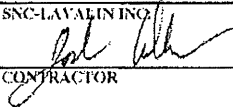
WL1

Project: 671696

Backup for Invoice for Contractor Delays

Item Date	Employee/Supplier	Comment	Hours	Billing Rate	Amount to Invoice
13-Jun-22	Morgan, Jason Ian	Travel from Mount Pearl to Site - Fuel			\$ 66.45
13-Jun-22	Morgan, Jason Ian	Meal - Per Diem Dinner in Grand Falls			\$ 18.87
14-Jun-22	Morgan, Jason Ian	Hotel - Overnight in Grand Falls on route to Site			\$ 157.93
15-Jun-22	Morgan, Jason Ian	Mount Peyton Hotel Booking Fee AMEX Global Travel			\$ 10.00
16-Jun-22	Morgan, Jason Ian	Airfare - Jason returned car rental and flew back due to delay in construction			\$ 475.57
17-Jun-22	Morgan, Jason Ian	Taxi - Travel from Airport to Home for Jason			\$ 65.22
17-Jun-22	Morgan, Jason Ian	Airfare Amex Booking Fee			\$ 20.00
17-Jun-22	Morgan, Jason Ian	Vehicle rental (Daily Rate for to Airport)			\$ 33.93
Expenses Subtotal					\$ 847.97
13-Jun-22	Morgan, Jason Ian	Travel to site as a result of Contractor revising scheduled start date from June 6/22. Jason originally was on West Coast ready to start inspection on June 6/22 but went back to Mt Pearl since Contractor was not ready. Contractor returned to site without prior notices and Jason was requested to leave asap to go to site. He left in the afternoon, drove to Grand Falls and then next morning to site. 5hrs travel claimed as Jason travelled part way to site and stayed overnight in Grand Falls(?) then left next morning and travelled to site.	5	\$ 54.00	\$ 270.00
14-Jun-22	Morgan, Jason Ian	Travel from Grand Falls to site	3	\$ 54.00	\$ 162.00
17-Jun-22	Morgan, Jason Ian	Travel from Site to Mt. Pearl Return to home base after inspection.	7	\$ 54.00	\$ 378.00
Additional Contract Administration After Contractual Number of Working Days Expired					
23-Jun-22	Pike, Lesa M.	Request project update from contractor and Temporary Water Supply Request	0.5	\$ 105.00	\$ 52.50
24-Jun-22	Pike, Lesa M.	Contract Admin & Construction Coordination and Follow-up as required.	0.5	\$ 105.00	\$ 52.50
04-Jul-22	Pike, Lesa M.	Review documents and emails and response to request for extension.	2	\$ 105.00	\$ 210.00
05-Jul-22	Pike, Lesa M.	Coordinate project signage requirements	0.75	\$ 105.00	\$ 78.75
15-Jul-22	Pike, Lesa M.	Inform Contractor of Upcoming Coverage for Vacation Time and Reminder of Previous Request for Temporary Water Supply Quotation.	0.25	\$ 105.00	\$ 26.25
02-Aug-22	Pike, Lesa M.	Review revised Progress Claim - Claim was submitted in incorrect format. Revise the same again and discuss extra rock quantities with S Lundrigan. Contractor overclaimed on Rock Quantity as per Master Spec.	1	\$ 105.00	\$ 105.00
03-Aug-22	Pike, Lesa M.	Arrange inspection site visit to verify work completed and send info to inspector for project Larry Bussey	0.5	\$ 105.00	\$ 52.50
10-Aug-22	Pike, Lesa M.	Progress Claim revisions. Corrections to include Holdbacks and request for corrected Stat Dec (incorrect dates applied) and pics of Pumps in LS, etc.	1	\$ 105.00	\$ 105.00
10-Aug-22	Pike, Lesa M.	Review Holdbacks for claims and request additional info from Contractor i.e. Sign Pic that could not be opened.	1	\$ 105.00	\$ 105.00
Salaries Subtotal					\$ 1,597.50
TOTAL INVOICE					\$ 2,445.47

GOVERNMENT OF NEWFOUNDLAND AND LABRADOR
DEPARTMENT OF MUNICIPAL AND PROVINCIAL AFFAIRS
MUNICIPAL ENGINEERING SERVICES DIVISION
CONTRACT PAYMENT

CONTRACT PAYMENT												
Project: Town of Humber Arm South Lift Station Replacement - Part A				PAYMENT PERIOD FROM: July 16, 2022 28-Jul-22								
Contractor: Edward Collins Contracting Ltd. P.O. Box 51, Jerseyside, NL A0B 2G0												
GST Registration Number: 101582641RT0001				JOB # 671696 DTI #17-RNC-20-00016								
Owner: Town of Humber Arm South												
Consultant: SNC-Lavalin Inc.				PAYMENT No. Two (2) Rev 1								
ORIGINAL CONTRACT (not including HST) \$241,754.00	ADDITIONS/EXTRAS	DEDUCTIONS	HST \$36,263.10	TOTAL AUTHORIZED \$278,017.10								
1. (a) Total Value Work Completed				\$123,882.98								
(b) Less (10%) Hold Back				\$12,388.30								
(c) Sub-Total Work Completed				\$111,494.68								
2. (a) Total Value of Material Delivered on Site				\$0.00								
(b) Less (10%) Hold Back				\$0.00								
(c) Sub-Total Materials				\$0.00								
3. (a) Total Value Force Account				\$0.00								
(b) Less (10%) Hold Back				\$0.00								
(c) Sub-Total Force Account				\$0.00								
4. (a) Total Value, Work & Materials (1a,2a,3a)				\$123,882.98								
(b) Less Hold Back, Work & Materials (1b,2b,3b)				\$12,388.30								
(c) Net Total, Work & Materials (1c,2c,3c)				\$111,494.68								
(d) Less Previous Payments (Item 4(c) from previous claim)				\$100,807.18								
(e) Amount Due				\$10,687.50								
(f) Harmonized Sales Tax 15% (of Item 4(e))				\$1,603.13								
TOTAL GST TO DATE:				\$12,290.63								
NET AMOUNT DUE:				\$12,290.63								
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border-bottom: 1px solid black; text-align: center;">DATE</td> <td style="width: 50%; border-bottom: 1px solid black; text-align: center;">SNC-LAVALIN INC.</td> </tr> <tr> <td style="text-align: center;">OCT. 14 / 2022</td> <td style="text-align: center;"></td> </tr> <tr> <td style="border-bottom: 1px solid black; text-align: center;">DATE</td> <td style="border-bottom: 1px solid black; text-align: center;">CONTRACTOR</td> </tr> <tr> <td style="border-bottom: 1px solid black; text-align: center;">DATE</td> <td style="border-bottom: 1px solid black; text-align: center;">MUNICIPALITY OR DEPARTMENT</td> </tr> </table>					DATE	SNC-LAVALIN INC.	OCT. 14 / 2022		DATE	CONTRACTOR	DATE	MUNICIPALITY OR DEPARTMENT
DATE	SNC-LAVALIN INC.											
OCT. 14 / 2022												
DATE	CONTRACTOR											
DATE	MUNICIPALITY OR DEPARTMENT											

PROJECT: TOWN OF HUMBER ARM SOUTH LIFT STATION REPLACEMENT

JOB #: DTI# 17-RNC-20-00016 | SNCL# 671696

SCHEDULE "A" - QUANTITIES AND PRICES

SECTION	DESCRIPTION	UNITS	AUTHORIZED	THIS PERIOD	TO DATE	UNIT PRICE	TOTAL
02233	SELECTED GRANULAR BASE & SUB-BASE MATERIALS Class "A" Granular Base	M ³	25.00	0.00	25.00	\$15.00	\$1,125.00
02601	MANHOLES, CATCH BASINS, DITCH INLETS & VALVE CHAMBERS Supply & Placement of Manhole Inflow Protectors	EACH	1.00	0.00	0.00	\$200.00	\$0.00
	Remove Top Section of Existing Lift Station and Replace With Typical Manhole Top c/w Frame and Cover. Elevation of Frame/Cover to be 300mm Below Shoulder	EACH	1.00	0.00	0.00	\$16,000.00	\$0.00
02650	SEWERAGE PUMPING STATION Supply & Place Lift Station, (1.8m Diameter x 7.1m Depth) Pre-Cast Structure, Two 3hp Pumps, Electrical Mounting Structure & All Other Electrical/Mechanical Components Including Legions 220 Duplex Control Panel (or approved equal) And All Associated Works	EACH	1.00	0.075	0.700	\$160,000.00	\$112,000.00
02702	PIPE SEWER CONSTRUCTION Supply & Place Sanitary Sewer Main Line PVC SDR 35 250 mm	M	16.00	0.00	8.00	\$200.00	\$1,600.00
	T.V. Camera Inspection Services	M	16.00	0.00	0.00	\$10.00	\$0.00
	Excavate Existing Overflow Pipe, Seal Manhole And Cap Existing 250mm Pipe	EACH	1.00	0.00	0.00	\$6,000.00	\$0.00
	Break into & Connect to Existing Lift Station Including Rebarching as Required	EACH	1.00	0.00	0.00	\$6,000.00	\$0.00
	Locate & Connect to Existing Sewer Force Mains Including 150mm Megnug c/w Joint Restraints	EACH	1.00	0.00	0.00	\$6,000.00	\$0.00
02724	SEWAGE FORCEMAINS Supply & Install Sewage Forcemain 150 mm HDPE-DR-11	M	18.00	0.00	8.00	\$200.00	\$1,600.00
	Supply & Installation of Fittings Bands 150 mm	EACH	2.00	0.00	1.00	\$200.00	\$200.00
	Less 10% Sanitary Sewer Test Allowance (on related Sections) 02702						(\$160.00)
	Less 10% Forcemain Test Allowance (on related Sections) 02724						\$0.00
	Less 5% Manhole Test Allowance (on related Sections) 02601						\$0.00
	Less 10% Water Main Test Allowance						\$0.00
	Less 5% Maintenance Hole Test Allowance						\$0.00
	Less 5% Reinstatement Holdback (on all Sections)						(\$6,652.55)
	Less Additional Engineering to Date (See Invoice on Clam 1)						(\$2,445.47)

a) TOTAL - PART A

\$123,882.98



Assessment Services Department

OCTOBER 12 2022

EDWARD COLLINS CONTRACTING LIMITED
EDWARD COLLINS CONTRACTING LTD
P O BOX 51
JERSEYSIDE NL A0B 2G0

Clearance Letter
Confirmation Number: 0651767

TO: FLAT BAY BAND INCORPORATED
RE: EDWARD COLLINS CONTRACTING LIMITED
T/A EDWARD COLLINS CONTRACTING LTD

Request Purpose: Contract Work – Current Year

This confirms that the above referenced employer is in good standing with WorkplaceNL as of today's date for contract work. This clearance is provided for the purposes of Section 120 of the *Workplace Health, Safety and Compensation Act* only, which indicates that a person using a contractor or subcontractor to perform work may be responsible for unpaid assessments of the contractor or subcontractor.

This clearance letter expires 45 days from the date of issue. If the contract work has not been completed by that date, we recommend that you request another clearance letter to protect your business from any potential assessment liability related to this employer.

If you have any questions, please call us at 709.778.2902 or you may use our toll free number 1.800.563.9000 (ext. 2902) if calling within Newfoundland and Labrador.

Sincerely,

Assessment Services Department

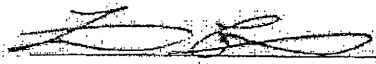
To alter this document constitutes fraud

WL1

Department of Municipal Affairs
Municipal Water Sewer and Roads Specifications
CONTRACT PAYMENT
Form 15

Project Name: Town of Humber Arm South Emergency Generator - Part B				Payment Period:	
Contractors Name: Edward Collins Contracting Ltd				From: 16 July '22	
Address: P.O. Box 51, Jerseyside, NL A0B 2G0				To: 28 July '22	
GST Registration Number: 101582641RT0001					
Owner's Name: Dept. of Municipal Affairs and Environment				Claim NO: 2	
Consultant's Name: SNC-Lavalin Inc.					
ORIGINAL CONTRACT (Not including HST)	ADDITIONS/EXTRAS	DEDUCTIONS	15% HST	TOTAL AUTHORIZED	
\$80,000.00	\$0.00		\$12,000.00	\$92,000.00	
1. (a) Total Value of the Work Done: _____ (b) Less: () % Hold Back _____ (c) Sub-Total Work Done: _____				\$55,200.00 \$5,520.00 \$49,680.00	
2. (a) Total Value of Material Delivered On Site: _____ (b) Less: () % Hold Back _____ (c) Sub-Total Material: _____				_____ _____ _____	
3. (a) Total Value Force Account: _____ (b) Less: () % Hold Back _____ (c) Sub-Total Force Account: _____				_____ _____ _____	
4. (a) Total Value Work & Material (1b, 2c, 3c): _____ (b) Less Hold Back, Work & Material (1b, 2b, 3b): _____ (c) Net Total Work & Material (1c, 2c, 3c): _____ (d) Less Previous Payments (Item 4c) from previous claim: _____ (e) Amount Due: _____ (f) Harmonized Sales Tax 13% (of item 4c): _____				\$55,200.00 \$5,520.00 \$49,680.00 \$14,580.00 \$35,100.00 5,265.00	
NET AMOUNT DUE: (e) + (f)				40,365.00	

DATE: 28 July '22
 DATE: _____
 DATE: _____

CONTRACTOR: 
 CONSULTANT: _____
 MUNICIPALITY OR DEPARTMENT: _____

Appendix “P”

O'KEEFE & SULLIVAN

BY COURIER AND EMAIL

Civil Division-Office of the Attorney General
Department of Justice and Public Safety
Government of Newfoundland and Labrador
Confederation Building
4th Floor, East Block
PO Box 8700
St. John's, NL, A1B 4J6
Attn: David Hearn, Solicitor
Email: DavidHearn@gov.nl.ca

Flat Bay Band Inc.
P.O Box Site 2 RR#1
Flat Bay, NL, A0N 1Z0
Email: flatbayband@gmail.com

31 January 2023

Dear Sirs:

Re: 2022 01G 1964
In Re: Edward Collins Contracting Ltd. et. al.

Calm Waters Mi'kmaw Park Development Phase 2
Parking Area Development
MI # 17-CCR-21-00009

Please find enclosed herewith the following documents that have been sent to the Supreme Court on today's date for filing:

1. Notice of Motion in matter 2022 01G 1964; and
2. Supporting Affidavit of Josh Collins

We trust the foregoing is satisfactory.

O'KEEFE & SULLIVAN LAWYERS

St. Johns: 80 Elizabeth Ave., Suite 202, St. John's, NL, A1A 1W7
Corner Brook: 40 Main Street, Corner Brook, NL, A2H 1C3
Main Office: (709) 800 6536 | Main Facsimile: (709) 700 0343
www.okeefesullivan.com

Regards

DARREN D. O'KEEFE
dokeefe@okeefesullivan.com

cc.

Phil Clarke
Grant Thornton Ltd.
phil.clarke@ca.gt.com

2022 01G 1964

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C-36 as Amended (the "**CCAA**"); and

AND IN THE MATTER OF an application of Edward Collins Contracting Ltd., Classic Security Limited ("**Classic**"), FGC Holdings Limited ("**FGC**"), 51037 Newfoundland and Labrador Inc. ("**51037**") and H&E Designs Ltd. ("**H&E**") (collectively, the "**ECC Group**" or the "**Company**").

NOTICE OF MOTION

A. PURPOSE OF THIS MOTION:

1. This motion is being filed pursuant to sections 9 (1), 11, and 18.6 (2) the CCAA.
2. The Applicant, Edward Collins Contracting Ltd. ("**ECC**"), is a body corporate created and existing under the laws of Newfoundland and Labrador, with its registered office at P.O. Box 51, Jerseyside, NL, Canada, A0B 2G0. ECC is a member of the ECC Group.
3. The ECC Group were granted a first day order for creditor protection pursuant to s.11 of CCAA on 05 October 2022 (the "**First Day Order**") with Grant Thornton Ltd. appointed as Monitor (hereinafter, the "**Monitor**"). The First Day Order was amended and restated by this Honourable Court on 17 October 2022 (hereinafter the "**ARIO**").
4. The First Respondent, Flat Bay Band Incorporated ("**FBBI**") is a corporation incorporated under the laws of the Province of Newfoundland and Labrador, with its registered office at P.O. Box 15, Site 2, RR #1, Flat Bay, NL, Canada, A0N 1Z0.

5. The Second Respondent His Majesty in Right of Newfoundland and Labrador acting through the Departments of Transportation and Infrastructure and Department of Municipal Affairs, each a division of the Government of Newfoundland and Labrador ("GNL") maintain a registered office at Ground Floor, Confederation Building, East Block, P.O. Box 8700, St. John's NL, A1B 4J6.
6. The within application concerns the recovery of assets of ECC for the benefit of the estate of the ECC Group's creditors. This includes money owed to ECC on the Calm Waters Project (defined below).
7. Specifically, the ECC Group seeks the assistance of this Honourable Court to recover the following:
 - a. Amounts owed to ECC by FBBI on the Calm Waters Project (defined below);
 - b. Punitive damages against GNL for acting in bad faith contrary to s.18.6 (1) of the CCAA, and knowingly breaching the ARIO, thereby causing harm to the estate of the ECC Group and its creditors.
8. And the ECC Group seeks an order, as follows:
 - a. The payment to ECC of \$40,441.47 from FBBI owed to ECC pursuant to the Contract (defined below);
 - b. Punitive Damages in the amount of \$25,000.00 or such other amount as this Honourable Court deems mete and just for the benefit of ECC's creditors who are being harmed through GNL's conduct and knowing breaches of the ARIO contrary to the terms of the ARIO and s.18(6)(2) of the CCAA;
 - c. Interest pursuant to the *Judgment Interest Act*, R.S.N. 1990 c. J-2;
 - d. Costs, together with any Harmonized Sales Tax or other taxes appertaining thereto on a fully indemnified basis; and
 - e. Such other relief as this Honourable Court deems just and equitable.

B. MATERIAL FACTS:

9. The Applicants ECC, H&E, Classic, FGC, and 51037 are each bodies corporate incorporated under the laws of the Province of Newfoundland and Labrador and members of the "**ECC Group**". ECC is the primary contracting entity in the ECC Group.
10. In August, 2021, ECC bid as a contractor for FBBI on a project known as the "Calm Waters Project" owned by FBBI (the "**Project**"). ECC bid on a lump sum basis, to undertake a significant scope of work including site services, excavation, backfill, and paving. The total price quoted was \$100,410.00 + HST.
11. The bid was accepted by FBBI on 25 August 2021 (hereinafter the "**Contract**").
12. The Contract is funded by the Department of Municipal Affairs ("**Municipal Affairs**"). Municipal Affairs are not party to the Contract.
13. ECC subcontracted part of the work under the Contract to Marine Contractors Inc. ("**MCI**"). ECC provided a direction to pay to FBBI to pay MCI from the amounts due and owing by it to ECC under the Contract. This direction to pay was provided on 09 September 2022 and was accepted by ECC, MCI and FBBI (the "**Direction to Pay**").
14. All work under the Contract was completed on 04 October 2022. MCI were paid in full for their work pursuant to the Direction to Pay.
15. The balance left owing to ECC upon completion of the Contract was \$40,441.47 which was due and payable on 11 October 2022 (the "**Final Amount**").
16. FBBI has not disputed the Final Amount is owed.
17. There are no liens registered against the Project.
18. On 11 October 2022 ECC issued notice to FBBI to make payment on the Final Amount as aforesaid. FBBI did not make the Final Payment. FBBI indicated that Municipal Affairs would not allow the payments to be made as they wished to set off against these payments for an amount allegedly owed by ECC to the Department of

Transportation and Infrastructure ("**Transportation and Infrastructure**") on Contract 45-20. Contract 45-20 was a Government of Newfoundland and Labrador paving contract and has absolutely no connection to the Contract in question. Like Municipal Affairs, Transportation and Infrastructure are not a party to the Contract in question.

19. There is no connection between Transportation and Infrastructure's allegations concerning amounts it says it is owed on Contract 45-20 and the Contract. These are completely unrelated matters. Further, even if the allegations of Transportation and Infrastructure were true (which allegations are specifically defined) these allegations relate to matters that pre-date the ARIO.
20. On 12 October 2022 ECC wrote to Municipal Affairs and Transportation and Infrastructure setting out that their interference with the Final Payment was wrongful and in breach of the ARIO. David Hearn, solicitor for the Government of Newfoundland and Labrador ("**Hearn**"), was copied on this email. Hearn had previously notified counsel for ECC that he was representing Transportation and Infrastructure in this matter.
21. Hearn was present during the CCAA proceedings and had full knowledge of the ARIO. As a result, Municipal Affairs and Transportation and Infrastructure had full knowledge of the ARIO.
22. In defiance of the ARIO and the Contract, Municipal Affairs has refused to allow FBBI make the final payment to ECC.
23. On 21 January 2023 ECC issued a second letter requesting payment from FBBI and indicated that if payment was not made an application would be brought to the Honourable Supreme Court. FBBI were also informed, again, they were acting in breach of the ARIO.
24. FBBI still failed to pay.
25. On 23 January 2023 FBBI wrote to Municipal Affairs seeking approval to release funds to ECC.
26. No approval was given.

27. On 30 January 2023 ECC wrote to FBBI and indicated the timeline for payment had expired and an application would be filed forthwith. FBBI wrote again to Municipal Affairs seeking approval to pay.
28. Again, no approval was given.
28. The ARIO states at paragraphs 16 and 17 as follows:

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Company or affecting the Business or the Property are hereby stayed and suspended except with the written consent of the Monitor and the Company, or leave of this Court, provided that nothing in this Order shall (i) empower the Company, to carry on any business which the Company is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Company, except with the written consent of the Monitor and the Company, or leave of this Court.
29. ECC therefore requests an Order as set out above.
30. ECC intends to rely upon the affidavit of Josh Collins filed herewith.

All of which is respectfully submitted.

DATED at St. John's, Newfoundland and Labrador, this 31 January 2022.

O'KEEFE & SULLIVAN


Counsel for the ECC Group
Whose address for service is:

Suite 202, 80 Elizabeth Ave.
St. John's, NL, A1A 1W7
Attn: Darren D. O'Keefe

TO:

FLAT BAY BAND INC.
P.O. Box 15, Site 2, RR #1,
Flat Bay, NL,
Canada, A0N 1Z0.

AND TO:

GOVERNMENT OF NEWFOUNDLAND AND LABRADOR
DEPARTMENT OF MUNICIPAL AFFAIRS
DEPARTMENT OF TRANSPORTATION AND INFRASTRUCTURE
Ground Floor, Confederation Building,
East Block, P.O. Box 8700,
St. John's NL, A1B 4J6
c/o David Hearn, Solicitor

2022 01G 1964
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C-36 as Amended (the "**CCAA**"); and

AND IN THE MATTER OF an application of Edward Collins Contracting Ltd., Classic Security Limited ("**Classic**"), FGC Holdings Limited ("**FGC**"), 51037 Newfoundland and Labrador Inc. ("**51037**") and H&E Designs Ltd. ("**H&E**") (collectively, the "**ECC Group**" or the "**Company**").

AFFIDAVIT

I, Josh Collins of the Town of Placentia, in the Province of Newfoundland and Labrador,
MAKE OATH AND SAY THAT:

1. I am Vice President of the ECC Group and am familiar with and status of the within application.
2. I have reviewed the Notice of Motion (the "**Notice of Motion**") and the facts as stated therein are true to the best of my knowledge, information and belief.
3. I make this affidavit in support of ECC's position in the within Notice of Motion and for no other or improper purpose.

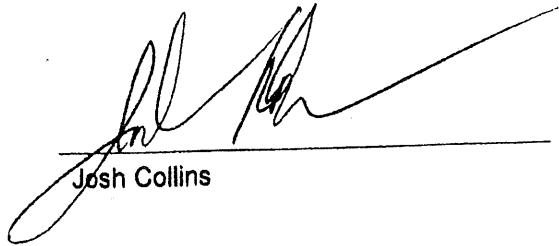
[Signature page follows]

[Signature page to affidavit of Josh Collins dated 31 January 2023]

SWORN at St. John's, Newfoundland and
Labrador, on the 31 day of January
2023, before me

A handwritten signature in black ink, appearing to be 'D O'Keefe', written over a horizontal line.

Commissioner, notary public, etc.
Darren D. O'Keefe, B.C.L., LL.B
Barrister, Solicitor, Notary Public
Newfoundland & Labrador, Canada

A handwritten signature in black ink, appearing to be 'Josh Collins', written over a horizontal line.

Josh Collins

Appendix “Q”

IN THE MATTER OF the *Mechanics'*
Lien Act, R.S.N. 1990, c. M-3

AND

IN THE MATTER OF a Claim for Lien of
Edward Collins Contracting Ltd. a body
corporate, duly incorporated under the
Laws of the Province of Newfoundland
against certain holdback funds held by
the His Majesty in right of
Newfoundland and Labrador acting
through Department of Transportation
and Works, a division of the Government
of Newfoundland and Labrador ("GNL")
for highway paving contract concerning
culvert replacements and rehabilitation on
the Trans-Canada Highway ("Contract
12-21").

MECHANICS LIEN

No. 20205

Registered 9th day of November

20 22 at 3:30 O'Clock p.m

Fee Paid \$ 24.00 Receipt No. 80007 N.D.S

Sean Zyl
Registrar of Deeds

CLAIM FOR LIEN

1. **Edward Collins Contracting Ltd.** (the "**Lien Claimant**"), of the Town of Placentia, in the Province of Newfoundland, under the *Mechanics' Lien Act*, claims a lien upon the holdback funds held by GNL with respect to Contract 12-21, in respect of the following work that is to say:

All goods, services and materials to complete the following scope of work for culvert replacements and rehabilitations on the Trans Canada Highway in the Avalon Region of Newfoundland pursuant to the tender documents for Project 12-21, including:

- Part "A" – Replacement of Trout Pond 1200mm CSP on the TCH km 29.5;
- Part "B" - Culvert Rehabilitation of Soldier's Pond 1200mm CSP on the TCH km 35.3;
- Part "C" - Replacement of Fannies Pond 1800mm CSP on the TCH km 44.2;
- Part "E" – Replacement of Unnamed Stream 1200mm CSP on the TCH km 55.0

2. The address for service of the Lien Claimant is:

c/o O'Keefe & Company
84B Airport Road,
St. John's, NL
A1A 4Y3

O'Keefe and Company

IN THE MATTER OF the Mechanics'
Lien Act, R.S.N. 1990, c. M-3

AND

IN THE MATTER OF a Claim for Lien of
Edward Collins Contracting Ltd. a
body corporate, duly incorporated under
the Laws of the Province of
Newfoundland against certain holdback
funds held by the His Majesty in right of
Newfoundland and Labrador acting
through Department of Transportation
and Works, a division of the
Government of Newfoundland and
Labrador ("GNL") for highway paving
contract concerning culvert
replacements and rehabilitation on the
Trans-Canada Highway ("Contract 12-
21").

CANADA
NEWFOUNDLAND AND LABRADOR
ST. JOHN'S

AFFIDAVIT

I, Josh Collins, of the Town of Placentia, in the Province of Newfoundland, make oath and say
as follows:

1. That I am the Vice-President of Edward Collins Contracting Ltd., the Lien Claimant, in
the within Claim for Lien.
2. That I have personal knowledge of the matters contained in the within Claim for Lien.
3. That the facts contained in the said Claim for Lien are true to the best of my knowledge,
information and belief.

SWORN TO at St. John's, in the
Province of Newfoundland and Labrador
aforesaid, this 9th day of November,
2022 before me:

CANDACE SEYMOUR
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador
My commission expires on December 31, 2022
Candace Seymour

Josh Collins

JOSH COLLINS

2022 01G 5603
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN: EDWARD COLLINS CONTRACTING LTD.

PLAINTIFF

AND: HIS MAJESTY IN RIGHT OF NEWFOUNDLAND
AND LABRADOR

DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff, Edward Collins Contracting Ltd. ("ECC"), is a body corporate created and existing under the laws of Newfoundland and Labrador, with its registered office at P.O. Box 51, Jerseyside, NL, Canada, A0B 2G0.
2. The Defendant, His Majesty in Right of Newfoundland and Labrador acting through the Department of Transportation and Works, a division of the Government of Newfoundland and Labrador ("GNL").
3. The Town is the owner of certain property situate at Trans-Canada Highway near Holyrood known as Project 12-21 (the "Property").
4. At the request of the Defendant the Plaintiff supplied materials, labour and services in the nature of materials and labour including the 13 October, 2022.
5. There is no agreement between the Plaintiff and the Defendant that the Plaintiff would not be entitled to a lien for the materials, labour and services supplied by the Plaintiff.
6. By reason of supplying the materials, labour and services the Plaintiff is entitled to a lien upon the holdback amount required to be held by GNL on the above noted contract, in the principal sum of \$201,175.49 together with interest thereon pursuant to the *Judgment Interest Act* and costs of this action pursuant to the provisions of the *Mechanics's Lien Act*, R.S.N. 1990, c. M-3 (the "Act").

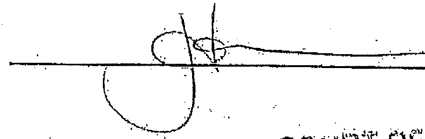


A1A 4Y3

TO:

Government of Newfoundland and Labrador
c/o Department of Justice and Minister of Justice
Confederation Building
4th Floor, East Block
PO Box 8700
St. John's, NL
A1B 4J6

ISSUED at St. John's, in the Province of Newfoundland, this 9th day of Dec, 2022.

**COURT OFFICER**

2022 01G
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN: EDWARD COLLINS CONTRACTING LTD.

PLAINTIFF

AND: HIS MAJESTY IN RIGHT OF NEWFOUNDLAND
AND LABRADOR

DEFENDANT

DRAFT

CERTIFICATE OF ACTION

I CERTIFY THAT the above named Plaintiff has commenced an action in the Supreme Court of Newfoundland, Trial Division, Judicial Centre of St. John's, to enforce against lands and/or holdback being **ALL THAT** piece or parcel of land known the TransCanada Highway, near Holyrood, Project 12-21, in the principal amount of **\$201,175.00** together with costs and interest pursuant to the *Judgment Interest Act*.

AND at the request of the Plaintiff, this Certificate is given for the purpose of registration pursuant to s. 23(2) of the *Mechanics' Lien Act*, R.S.N. 1990, c. M-3.

IN WITNESS WHEREOF this Certificate of Action has been duly executed on behalf of the Supreme Court of Newfoundland, Trial Division, Judicial Centre of St. John's, at St. John's, in the Province of Newfoundland this ____ day of December, 2022.

COURT CLERK

Appendix “R”

Form 5.03A

(rule 5.03)

File number: 20 22 91 G 4574

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

BETWEEN:	INTACT INSURANCE COMPANY	PLAINTIFF
AND:	EDWARD COLLINS CONTRACTING LIMITED	FIRST DEFENDANT
AND:	UNIVERSAL ENVIRONMENTAL SERVICES INC.	SECOND DEFENDANT
AND:	E. & T. INVESTMENTS LIMITED	THIRD DEFENDANT
AND:	EDWARD COLLINS	FOURTH DEFENDANT
AND:	THERESA COLLINS	FIFTH DEFENDANT
AND:	FRANCIS COLLINS	SIXTH DEFENDANT

Statement of Claim

Parties

1. The Plaintiff, Intact Insurance Company ("Intact"), is an insurer and surety operating throughout Canada. Intact was amalgamated with The Guarantee Company of North America ("GCNA") on April 1, 2021, and the legal entity resulting from said amalgamation is Intact.
2. The First Defendant, Edward Collins Contracting Limited ("ECCL"), is a body corporate incorporated pursuant to the laws of Newfoundland and Labrador, with a registered office and mailing address of P.O Box 51, Jerseyside, NL, A0B 2G0.
3. The Second Defendant, Universal Environmental Services Inc. ("UESI"), is a body corporate incorporated pursuant to the laws of Newfoundland and Labrador, with a registered office and mailing address of P.O Box 51, Jerseyside, NL, A0B 2G0.

4. The Third Defendant, E. & T. Investments Limited ("ETIL"), is a body corporate incorporated pursuant to the laws of Newfoundland and Labrador, with a registered office and mailing address of P.O Box 51, Jerseyside, NL, A0B 2G0.
5. The Fourth Defendant, Edward Collins, is an individual resident in Placentia, Newfoundland and Labrador and has a mailing address of P.O Box 51, Jerseyside, NL, A0B 2G0.
6. The Fifth Defendant, Theresa Collins, is an individual resident in Placentia, Newfoundland and Labrador and has a mailing address of P.O Box 51, Jerseyside, NL, A0B 2G0.
7. The Sixth Defendant, Francis Collins, is an individual resident in Placentia, Newfoundland and Labrador and has a mailing address of P.O Box 51, Jerseyside, NL, A0B 2G0.

Indemnity Agreements

8. On or about April 12, 2002, as a condition for GCNA providing a bonding facility to both or either ECCL and UESI; ECCL, UESI, Edward Collins and Theresa Collins provided a General Application and Indemnity Agreement ("Indemnity Agreement #1") for the benefit of GCNA, whereby; ECCL, UESI, Edward Collins and Theresa Collins agreed to, *inter alia*: indemnify GCNA for any expenses incurred in any way relating to the bonding of ECCL and UESI.
9. On or about May 15, 2020, as a condition for GCNA continuing to provide a bonding facility to both or either ECCL and UESI; ECCL, UESI, ETIL, and Francis Collins provided a General Application and Indemnity Agreement ("Indemnity Agreement #2") for the benefit of GCNA, whereby; ECCL, UESI, ETIL and Francis Collins agreed to, *inter alia*: indemnify GCNA for any expenses incurred in any way relating to the bonding of ECCL and UESI.
10. Intact seeks rectification for any misspelling of ETIL in Indemnity Agreement #2.

The Bonds and Payments

11. On or about June 7, 2019, ECCL entered into contract titled Project #: 021-19TSB ("**Contract #1**") with Department of Transport and Works ("**DTW**").
12. On or about June 14, 2019, GCNA issued Labour and Material Payment Bond No. HS4222400 to ECCL, with GCNA as Surety, ECCL as Principal, and DTW as Obligee/Trustee ("**Bond #1**").
13. Bond #1 bound GCNA and ECCL to DTW in the amount of \$888,520.19 such obligation being null and void if ECCL paid all claimants, as defined in Bond #1, for, labour and material provided in fulfillment of Contract #1.

14. Intact received a claim on Bond #1 from Apex Construction Specialties Inc. ("**Apex**"). Intact investigated the claim, determined it to be valid, and paid Apex \$33,866.75.
15. On or about July 22, 2020, ECCL entered into a paving contract titled Project 45-20PHP ("**Contract #2**") with DTW.
16. On or about July 24, 2020, GCNA issued Performance Bond No. HS4222419 to ECCL, with GCNA as Surety, ECCL as Principal, and DTW as Obligee ("**Bond #2**").
17. On or about July 24, 2020, GCNA issued Labour and Material Payment Bond No. HS4222419 to ECCL, with GCNA as Surety, ECCL as Principal, and DTW as Obligee/Trustee ("**Bond #3**").
18. Bond #2 bound GCNA and ECCL to DTW in the amount of \$1,306,537.57, such obligation being null and void if ECCL met its obligations pursuant to Contract #2.
19. Intact received a claim on Bond #2 from DTW. Intact investigated the claim, determined on an interim basis that the claim was valid, and paid, or will pay, the limit of Bond #2, being \$1,306,537.57, to DTW.
20. Bond #3 bound GCNA and ECCL to DTW in the amount of \$1,306,537.57, such obligation being null and void if ECCL paid all claimants, as defined in Bond #3, for labour and material provided in fulfillment of Contract #2.
21. Intact received a claim on Bond #3 from On Grade Construction ("**OGC**"). Intact investigated the claim, determined it to be valid, and paid OGC \$15,194.38.
22. On or about October 16, 2020, ECCL entered into contract titled Project #: 083 - 20PHG ("**Contract #3**") with Her Majesty the Queen in Right of the Province of Newfoundland and Labrador as represented by the Minister of Transportation and Infrastructure ("**HMQ**").
23. On or about October 20, 2020, GCNA issued Labour and Material Payment Bond No. HS4222428 to ECCL, with GCNA as Surety, ECCL as Principal, and HMQ as Obligee/Trustee ("**Bond #4**").
24. Bond #4 bound GCNA and ECCL to HMQ in the amount of \$139,736.66, such obligation being null and void if ECCL paid all claimants, as defined in Bond #4, for labour and material provided in fulfillment of Contract #3.
25. Intact received a claim on Bond #4 from Atlantic Industries Limited ("**AIL**"). Intact investigated the claim, determined it to be valid, and paid AIL \$61,642.67.

26. On or about October 28, 2020, ECCL entered into contract titled Project #: 084 - 20PHG ("**Contract #4**") with HMQ.
27. On or about October 30, 2020, GCNA issued Labour and Material Payment Bond No. HS4222430 to ECCL, with GCNA as Surety, ECCL as Principal, and HMQ as Obligee/Trustee ("**Bond #5**").
28. Bond #5 bound GCNA and ECCL to HMQ in the amount of \$99,458.90, such obligation being null and void if ECCL paid all claimants, as defined in Bond #5, for labour and material provided in fulfillment of Contract #4.
29. Intact received a claim on Bond #5 from AIL. Intact investigated the claim, determined it to be valid, and paid AIL \$42,993.13.
30. Alternatively, any reference to Intact above refers to GCNA.

Demand for Indemnification

31. Intact demanded indemnification from the Defendants for the above referenced payments, and the Defendants have failed to indemnify Intact; alternatively, Intact demands indemnification of the above reference payments by the service of the within Statement of Claim.

Intact therefore seeks the following relief for breach of Indemnification Agreement #1 and/or Indemnification Agreement #2 from the Defendants on a joint and several basis:

1. Judgment in the amount of \$1,460,234.50.
2. Costs.
3. Interest.
4. Rectification.
5. Other such relief as requested and deemed appropriate by this Honourable Court.

[signature page to follow]

DATED at St. John's, Newfoundland and Labrador, on the 21st of October, 2022.


**Trent Kulshar, Solicitor for
Plaintiff**

Whose address for service is:

Intact Financial Corporation
700, 10830 Jasper Avenue
Edmonton, AB T5J 2B3
c/o
Intact Financial Corporation
5th Floor, 20 Crosbie Place
St. John's, NL A1B 3Y8
Attn: Laura Brazil

TO: EDWARD COLLINS CONTRACTING LIMITED
P.O. Box 51
Jerseyside, NL A0B 2G0

AND TO: UNIVERSAL ENVIRONMENTAL SERVICES INC.
P.O. Box 51
Jerseyside, NL A0B 2G0

AND TO: E. & T. INVESTMENTS LIMITED
P.O. Box 51
Jerseyside, NL A0B 2G0

AND TO: EDWARD COLLINS
P.O. Box 51
Jerseyside, NL A0B 2G0

AND TO: THERESA COLLINS
P.O. Box 51
Jerseyside, NL A0B 2G0

AND TO: FRANCIS COLLINS
P.O. Box 51
Jerseyside, NL A0B 2G0

ISSUED at St. John's (city/town) in the Province of Newfoundland
and Labrador this 24th (day) of October (month), 2022 (year).

(Affix seal of the court)

Sgt. Stephanie Stevens
(signature)

Registrar/Registry Clerk

**COURT
OFFICER**

File number: 20 22 01 G 4574

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:	INTACT INSURANCE COMPANY	PLAINTIFF
AND:	EDWARD COLLINS CONTRACTING LIMITED	FIRST DEFENDANT
AND:	UNIVERSAL ENVIRONMENTAL SERVICES INC.	SECOND DEFENDANT
AND:	E. & T. INVESTMENTS LIMITED	THIRD DEFENDANT
AND:	EDWARD COLLINS	FOURTH DEFENDANT
AND:	THERESA COLLINS	FIFTH DEFENDANT
AND:	FRANCIS COLLINS	SIXTH DEFENDANT

(Modify title of proceeding as necessary.)

Notice to Defendant(s)

You are hereby notified that the plaintiff(s) may enter judgment in accordance with the statement of claim or such order as, according to the practice of the Court, the plaintiff is entitled to, without any further notice to you unless within ten (10) days, after service hereof upon you, you cause to be filed with the Supreme Court of Newfoundland and Labrador at St. John's a defence and unless within the same time a copy of your defence is served upon the plaintiff(s) or the plaintiff's solicitor(s) at the plaintiff's solicitor(s) stated address(es) for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of \$ 0 (or such sum as may be allowed on taxation) for costs to the plaintiff(s) or the plaintiff's solicitor(s) within ten (10) days from the service of this notice upon you, then this proceeding will be stayed.

TO: EDWARD COLLINS CONTRACTING LIMITED
P.O. Box 51
Jerseyside, NL A0B 2G0

AND TO: UNIVERSAL ENVIRONMENTAL SERVICES INC.
P.O. Box 51
Jerseyside, NL A0B 2G0

AND TO: E. & T. INVESTMENTS LIMITED
P.O. Box 51
Jerseyside, NL A0B 2G0

AND TO: EDWARD COLLINS
P.O. Box 51
Jerseyside, NL A0B 2G0

AND TO: THERESA COLLINS
P.O. Box 51
Jerseyside, NL A0B 2G0

AND TO: FRANCIS COLLINS
P.O. Box 51
Jerseyside, NL A0B 2G0

Appendix “S”

2022 01G 4023
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION (GENERAL)

BETWEEN

DOLLARD HOLDINGS INC.

**FIRST PLAINTIFF/
FIRST DEFENDANT BY
COUNTERCLAIM**

AND:

TERRY DOLLARD

**SECOND PLAINTIFF/
SECOND DEFENDANT BY
COUNTERCLAIM**

AND:

DOLLARD MANAGEMENT INC.

**THIRD DEFENDANT
BY COUNTERCLAIM**

AND:

PHILIP J. BUCKINGHAM

**FOURTH DEFENDANT
BY COUNTERCLAIM**

AND:

GOODLAND BUCKINGHAM

**FIFTH DEFENDANT
BY COUNTERCLAIM**

AND:

UNIVERSAL ENVIRONMENTAL SERVICES INC.

**FIRST DEFENDANT/
FIRST PLAINTIFF BY
COUNTERCLAIM**

AND:

FRANCIS COLLINS

**SECOND DEFENDANT/
SECOND PLAINTIFF BY
COUNTERCLAIM**

AND:

EDWARD COLLINS CONTRACTING LTD.

**THIRD PLAINTIFF BY
COUNTERCLAIM**

AND:

FGC HOLDINGS LTD.

**FOURTH PLAINTIFF BY
COUNTERCLAIM**

AND:

CLASSIC SECURITY LIMITED

**FIFTH PLAINTIFF BY
COUNTERCLAIM**

AND:

H&E DESIGNS LTD.

**SIXTH PLAINTIFF BY
COUNTERCLAIM**

AND:

51037 NEWFOUNDLAND AND LABRADOR INC.

**SEVENTH PLAINTIFF BY
COUNTERCLAIM**

STATEMENT OF DEFENSE AND COUNTERCLAIM

BACKGROUND

1. The First Plaintiff/Defendant by Counterclaim, Dollard Holdings Inc. ("**Dollard Holdings**"), is a corporation duly incorporated pursuant to the *Corporations Act* with its registered office located at 5 Cambridge Avenue, St. John's, Newfoundland and Labrador, A1A 3N5.
2. The Second Plaintiff/Defendant by Counterclaim, Terry Dollard ("**Dollard**"), is a resident of 5 Cambridge Avenue, St. John's, Newfoundland and Labrador, A1A 3N5.
3. The Third Defendant by Counterclaim, Dollard Management Inc. ("**Dollard Management**") is a corporation duly incorporated pursuant to *Corporations Act* with its registered office located at 5 Cambridge Avenue, St. John's, Newfoundland and Labrador, A1A 3N5. Dollard Management operated by Dollard who provided certain

management services to the First Defendant/Plaintiff by Counterclaim, Universal Environmental Services Inc. ("**UESI**").

4. The Fourth Defendant by counterclaim, Philip J. Buckingham ("**Buckingham**"), is a solicitor practicing in the Province of Newfoundland and Labrador, an officer of this Honorable Court, and a partner of the Fourth Defendant, with a principal place of business situate at 16 Forest Rd Suite 200, St. John's, NL, A1C 2B9.
5. The Fifth Defendant by counterclaim, Goodland Buckingham ("**Goodland Buckingham**"), is a partnership of solicitors governed by the *Partnership Act*, RSNL 1990 Chapter P-3 (the "*Partnership Act*"), with its principal place of business at 16 Forest Rd Suite 200, St. John's, NL, A1C 2B9.
6. The First Defendant/Plaintiff by Counterclaim, UESI is a corporation continued pursuant to *Corporations Act* with its registered office is located at P.O. Box 51, Jerseyside, Newfoundland and Labrador, A0B 2G0. UESI is an environmental company that operates primarily in soil remediation and treatment.
7. The Second Defendant/Plaintiff by Counterclaim, Francis Collins ("**Collins**") is a businessperson residing at 45 Morrissey's Lane, Southeast Placentia, NL, A0B 2Y0 and is the President and sole director of UESI.
8. The Third Plaintiff by Counterclaim, Edward Collins Contracting Ltd. ("**ECC**"), is a body corporate created and existing under the laws of Newfoundland and Labrador, with its registered office at P.O. Box 51, Jerseyside, NL, Canada, A0B 2G0.
9. The Fourth Plaintiff by Counterclaim, FGC Holdings Ltd. ("**FGC**"), is a body corporate created and existing under the laws of Newfoundland and Labrador, with its registered office at P.O. Box 51, Jerseyside, NL, Canada, A0B 2G0.
10. The Fifth Plaintiff by Counterclaim, Classic Security Limited ("**Classic**"), is a body corporate created and existing under the laws of Newfoundland and Labrador, with its registered office at P.O. Box 51, Jerseyside, NL, Canada, A0B 2G0.
11. The Sixth Plaintiff by Counterclaim, H&E Designs Limited ("**H&E**"), is a body corporate created and existing under the laws of Newfoundland and Labrador, with its registered

office at P.O. Box 51, Jerseyside, NL, Canada, A0B 2G0.

12. The Seventh Plaintiff by Counterclaim, 51037 Newfoundland and Labrador Inc. ("**51037**"), is a body corporate created and existing under the laws of Newfoundland and Labrador, with its registered office at P.O. Box 51, Jerseyside, NL, Canada, A0B 2G0.
13. ECC, FGC, Classic, 51037 and H&E are hereinafter referred to as the "**Collins Group**".

STATEMENT OF DEFENSE

14. With respect to paragraph 6 of the within Statement of Claim, UESI and Collins admit that a unanimous shareholders agreement was executed between the parties on November 8, 2002 (the "**USA**").
15. With respect to paragraph 7 of the within Statement of Claim, UESI and Collins admit that the shareholdings as set out therein were accurate as of the date of incorporation and upon execution of the USA.
16. UESI and Collins admit that an application was filed with the Honourable Newfoundland and Labrador Supreme Court pursuant to which an order was issued on May 26, 2020 (the "**Rectification Order**"). UESI and Collins each challenge the validity of the Rectification Order as the same was issued based on mistake, and fraud, the latter which was discovered after the date of the subject Rectification Order. UESI and Collins say that the shares as set out in paragraph 8 of the within Statement of Claim do not accurately reflect the shareholding of UESI, and that the shareholding of UESI remains unchanged from its original distribution as set out in paragraph 7 of the within Statement of Claim.
17. UESI and Collins deny the allegations set out in paragraph 9 of the within Statement of Claim and puts Dollard and Dollard Holdings to the strict proof thereof. UESI and Collins say that the allegations set out in paragraph 9 of the Statement of Claim are spurious, vexatious, and advanced to conceal the fraudulent actions of Dollard, and various breaches of fiduciary and other legal duty owed by Dollard and Dollard Management.
18. UESI and Collins agree with the general statements as to the reasonable expectations

of shareholders as set out in paragraph 10 but denies that any such reasonable expectations of Dollard or Dollard Holdings were breached by UESI or Collins, and if the same is alleged, puts Dollard and Dollard Holdings to the strict proof thereof.

19. With respect to paragraph 11 of the within Statement of Claim, UESI and Collins deny that they breached any fiduciary or other duty owed to Dollard or Dollard Holdings and puts Dollard and Dollard Holdings to the strict proof thereof.
20. UESI and Collins generally agree with paragraphs 12-14 of the within Statement of Claim.
21. With respect to paragraph 15 and 16 of the within Statement of Claim, Collins admits that various guarantees were signed with the Royal Bank of Canada ("**RBC**") for the Collins Group, including UESI, between the period of 1974 to present, however, puts Dollard and Dollard Holdings to the strict proof of establishing which guarantees are referred to in paragraph 15-16 of the within Statement of Claim, including as to the allegations that these alleged guarantees were signed without the approval of the UESI shareholders or the then existing board of directors.
22. With respect to paragraph 15 and 16 of the within Statement of Claim, UESI and Collins each say that *after* Dollard was appointed as a director of UESI, Dollard and Collins did attend meetings at RBC with John Snow ("**Snow**") in March of 2018. Snow was the joint account manager for UESI and the Collins Group. During these meetings Snow explained the various banking relationships in place between UESI and the Collins Group, including the cross corporate guarantees in place and the provision of a new line of credit in an amount of approximately \$750,000.00 for the benefit of UESI. UESI and Collins say that through these meetings Dollard had actual knowledge of the guarantees he now alleges were put in place without his knowledge. UESI and Collins also say that it was incumbent upon Dollard, as an incoming director of UESI, to educate himself on the companies' financial arrangements and banking arrangements with RBC and that he had plenty of opportunity to do so.
23. With respect to paragraph 17 and 24 of the within Statement of Claim, UESI and Collins deny that any guarantees signed were done without the approval of the UESI shareholders and directors and puts Dollard and Dollard Holdings to the strict proof

thereof. UESI and Collins repeat the foregoing and deny their actions were oppressive, unfairly prejudicial, and unfairly disregarded Dollard or Dollard Holding's interest as shareholders or stakeholders. Collins further denies that any actions taken by him in his capacity as a director, officer or shareholder of UESI was oppressive to Dollard or Dollard Holdings and puts Dollard and Dollard Holdings to the strict proof thereof.

24. With respect to paragraph 18, Collins denies that he has unduly used his position as a director to unfairly or improperly benefit himself (or the Collins Group) to the detriment of the shareholders of UESI as alleged. Collins further denies that his actions could be in breach of any reasonable expectation of Dollard or Dollard Holdings, are oppressive, or unfairly disregard or are unfairly prejudicial to Dollard or Dollard Holdings as shareholders.
25. With respect to paragraph 19 of the within Statement of Claim, UESI and Collins deny they breached any reasonable expectation that Dollard or Dollard Holdings could have had concerning UESI's guarantee of the debts of the Collins Group. The Collins Group, including UESI, had historically guaranteed the debts of each other and shared various banking products as part of the group's commercial relationship with RBC. Both UESI and Collins deny that they, or anyone acting on their behalf, breached any principles of corporate governance, good business judgment, the provisions of *Corporations Act*, or the USA, and puts Dollard and Dollard Holdings to the strict proof of each and every allegation thereof.
26. With respect to paragraph 20-21 of the within Statement of Claim, UESI and Collins each deny that there occurred any breach of the USA, or that any action taken by them on behalf of UESI or otherwise was oppressive, prejudicial, or unfairly disregarded Dollard or Dollard Holding's interest as a stakeholder and puts Dollard and Dollard Holdings to the strict proof thereof. UESI and Collins each deny that Dollard or Dollard Holdings have suffered any losses as alleged and puts each of them to the strict proof thereof.
27. With respect to paragraph 22-23 of the within Statement of Claim, UESI and Collins each deny the allegation that UESI was not a part of the Collins Group and puts Dollard and Dollard Holdings to the strict proof thereof. Further, Collins says that at no time did Dollard request that Collins "stop disseminating" the alleged "false connection" between UESI and the Collins Group.

28. With respect to paragraph 24 of the within Statement of Claim, UESI and Collins repeat the foregoing, and deny each and every allegation of fact contained therein and puts Dollard and Dollard Holdings to the strict proof thereof.
29. With respect to paragraph 25-31, UESI and Collins denies each and every allegation of fact as set out therein, and puts Dollard and Dollard Holdings to the strict proof thereof. Further, each of UESI and Collins repeats the foregoing and says that there was no indemnity agreement entered into with Western Surety. With respect to any alleged agreement with Intact Insurance, where the same is proven to exist, it would have been duly authorized by the directors and officers of UESI and would have been for the benefit of UESI and the Collins Group. UESI and Collins repeat the foregoing and say that the allegations contained within paragraph 25-31 are frivolous, vexatious, and designed to obfuscate Dollard and Dollard Holdings own fraudulent conduct and breach of fiduciary duty.
30. With respect to paragraph 30-34 of the within statement of claim, UESI and Collins say that Ambrose Griffiths was terminated for cause, *to wit*, based on Griffiths insubordination, theft, and collusion with Dollard, Dollard Holdings and Dollard Management to misappropriation funds and other company assets from UESI. The termination of Griffiths was in the best interest of the company and Collins states that the dismissal of Griffiths was designed to remove Griffiths from his position to protect UESI from further fraudulent conduct. Further, UESI and Collins each deny that Griffiths was a "key employee" of the Company and puts Dollard and Dollard Holdings to the strict proof thereof. With respect to each other statement or aversion of fact contained in paragraphs 30-34 of the within Statement of Claim, UESI and Collins puts Dollard and Dollard Holdings to the strict proof thereof.
31. With respect to each allegation of fact contained in paragraphs 35-38, UESI and Collins repeat the foregoing, and put Dollard and Dollard Holdings to the strict proof thereof.
32. With respect to paragraph 40 of the within Statement of Claim, UESI and Collins deny that Dollard or Dollard Holdings are entitled to any of the relief claimed.

33. With respect to the whole of the within Statement of Claim, UESI and Collins and UESI asks that the claim be dismissed, with costs to them on a fully indemnified basis.

STATEMENT OF COUNTERCLAIM

(A) MATERIAL FACTS:

34. As noted in paragraph 21 above, between 1974 and 2022, the Collins Group, which included UESI, dealt with RBC as their primary operating lender. The main RBC branch for all Collins Group banking matters was in Placentia, NL, the seat of office for the Collins Group, including UESI. During the aforementioned period numerous financings, credit agreements, and other banking contracts were entered into between the various members of the Collins Group and RBC. As its typical of group financing arrangements, RBC required various cross corporate guarantees and other cross collateralized agreements from the companies in the Collins Group to support the various banking facilities made available to the Collins Group businesses.
35. At all material times to the within action, Collins was an authorized director of every company in the Collins Group. Collins, and his father Edward Collins before him, were the primary contacts for all finance matters with RBC. Certain employees and directors (like Dollard) would be involved in the day-to-day banking activities for their respective companies.
36. In 2018 the Collins Group entered an ordinary course re-finance transaction with RBC as their existing term loans were up for renewal. In addition, the Collins Group (including UESI) sought certain joint credit products including a \$500,000.00 joint vehicle line. During this time, consistent with past practice, RBC requested guarantees from the principals of the Collins Group and from each of the Collins Group companies on a cross collateralized basis to support the various products being used by the Collins Group. These cross collateralized guarantees were necessary for the companies within the Collins Group (including UESI) to access financing with RBC. For example, with respect to UESI, RBC would not loan money directly to UESI without the cross guarantee of ECC.

37. Over the course of its history, the Collins Group frequently conducted meetings in person or by telephone and did not document these meetings. This is not uncommon in closely held family companies. With respect to UESI, it was Collins practice, as was his fathers before him, to consult with Dollard as a minority shareholder on major banking matters with RBC, including the refinance of the companies operating lines and other products. Between 2002 and 2022 this informal manner of managing UESI's affairs ran smoothly and there were no material disputes between the Collins family and Dollard concerning how the Collins family managed RBC relationship.
38. In 2018, Edward Collins – the patriarch of the Collins family and lead director and officer of the Collins Group of Companies – passed away. Prior to his passing Edward Collins agreed to make Dollard a 50/50 shareholder in UESI in recognition of Dollard's hard work, honesty, and good faith in working with UESI over the period of 2002 to 2017. To affect this 50/50 ownership split, Dollard retained Greg London ("**London**") of Deloitte and Michael Duffy of Duffy Law ("**Duffy**") to assist in a share reorganization UESI's share capital (the "**2017 Share Reorganization**").
39. Unfortunately, the 2017 Share Reorganization was not done properly, *to wit*, documents effecting the reorganization were not properly executed or registered, nor was independent legal advice given to the parties. As a result, up until May 2022, the shareholdings in UESI remained unchanged by the proposed 2017 Share Reorganization.
40. In 2018 the Collins Group completed an ordinary course refinance with RBC (the "**2018 Refinance**"). As part of the 2018 Refinance, Collins spoke with Dollard both personally and in the presence of UESI's bankers at RBC, and received Dollard's approval to proceed with the execution of guarantees on behalf of UESI (hereinafter the "**UESI Guarantee**").
41. During the time frame the 2018 Refinance was completed, Collins was a director and the President of UESI. The Collins family were a 90% shareholder of UESI. Pursuant to the companies constating documents, including its articles and bylaws, Collins could execute the UESI Guarantee without the approval of any other director or shareholder. Notwithstanding this authority, consistent with past practice and as set out above, Collins consulted with Dollard throughout.

42. In 2021 the Collins Group fell into financial trouble and entered into a special loans program with RBC. In that connection, the Collins Group hired Deloitte Restructuring ("**Deloitte**") to assist with its restructuring efforts. The primary issues with RBC concerned ECC and H&E. The other companies in the Collins Group were not the initial focus of RBC's credit concerns, notwithstanding they had provided cross corporate guarantees to RBC during the 2018 Refinance.
43. In December 2021 ECC and H&E entered into a forbearance agreement with RBC whereby RBC would forbear on its debt until March, 2022. This forbearance agreement did not involve UESI. During this period Dollard was aware that the Collins Group were undertaking a corporate restructuring as a result of their financial problems, and at no time did he express any concern or protest concerning the proposed reorganization, or as to UESI's involvement with the 2018 Refinance or the related UESI Guarantee.

(B) DOLLARD'S PLAN TO REMOVE COLLINS

44. Sometime prior to the period the Collins Group were undertaking their proposed corporate restructuring, unbeknownst to Collins, Dollard began making plans to affect a "corporate divorce" of UESI from the Collins Group. In doing so, Dollard retained and instructed Adrienne Mercer of McInnes Cooper ("**Mercer**") – ostensibly on behalf of UESI – to "clean up" the botched 2017 Share Reorganization (the "**2022 Rectification Application**"). It was, in fact, later discovered that Mercer was retained to provide Dollard with advice on his "corporate divorce" options to remove UESI from the Collins Group and the Collins family from UESI.
45. In the fall of 2021, Collins was approached by a competitor of UESI from Corner Brook, namely, Marine Contractors Inc. ("**Marine**") who expressed an interest in buying UESI. Discussions were brief, and Collins quickly rebuffed the idea and indicated he was not interested in selling his stake in UESI.
46. Following the initial discussions with Marine, Dollard approached Collins in December of 2021, again, asking if Collins would consider selling his interest in UESI. Again, Collins indicated he was not interested in selling. Dollard indicated he had the financial backing buy out Collins but did not state who the financial backing was coming from.

47. After Collins refused for the second time to sell his shares Dollard went quiet. Between the period of December 2021 to May, 2022, Mercer was allegedly working on the 2022 Rectification Application in order to seek the approval of this Honourable Court to amend the records for UESI and effectively back date the proposed 2017 share issuance. At all material times Dollard knew that UESI was part of the Collins Group and that the Collins Group was in financial trouble. Notwithstanding, he reserved his protest regarding the UESI Guarantees until the 2017 Rectification Application was heard, with the obvious implication was that Dollard did not want to make any complaints or take any steps to oust Collins until the 2022 Rectification Application was heard and his shares were secured.
48. Also, during this time, Dollard incorporated a new company on 01 April 2022 with Marine, namely the **Mardo Group Inc. ("Mardo")**. The directors of Mardo are Daryl Bennett, Glynn Pike (both directors of Marine) and Terry Dollard. This was never disclosed to Collins, or the Collins Group notwithstanding Marine were a direct competitor of UESI.
49. As noted, Collins had refused to sell his interest in UESI, and as such, Dollard was effectively blocked from "divorcing" UESI from the Collins Group and bringing in a replacement partner. Following the issuance of the 2022 Rectification Order – Dollard's attitude and approach with the Collins family changed dramatically and immediately – he began execution of his takeover plan. While up to this point the parties had an amicable relationship – now that Dollard's shares were confirmed by the 2022 Rectification Order – he began making baseless accusations that the 2018 Refinance as well as the related UESI Guarantee were never approved. Dollard did this with full knowledge that the allegations were false, and full knowledge of the impact these allegations would have on the Collins Groups relationship with RBC.
50. Collins further says it was plain and obvious given the timing of Dollard's allegations that these allegations were part of a coordinated attempt to relieve UESI of its guarantee obligations with RBC in the context of the Collins Group financial troubles. Collins says that Dollard's motive in denying the legitimacy of the UESI Guarantee was to further the financial demise of the remaining members of the Collins Group and undermine the Collins Group relationship with RBC. The intended result was to allow Dollard to affect

the corporate divorce he desired once the Collins Group were placed into receivership and purchase the assets of UESI with Mardo or Universal Soils.

51. On June 17, 2022, RBC issued demand letters to each of the Collins Group companies, including UESI (the "**Demands**"). Following the issuance of the Demands, the Collins Group discussed a further forbearance agreement with RBC. A draft Forbearance Agreement was circulated to the Collins Group by RBC on June 27, 2022 in which RBC requested UESI to be a party notwithstanding Collins Group had previously indicated they would not agree to make UESI a party to the draft Forbearance. On the same day, Dollard sent a letter to RBC making various frivolous, vexatious and defamatory statements and allegations concerning Collins and the Collins Group (hereinafter the "**June 27 Letter**"). The following day Greg Smith (then counsel for Collins Group, "**Smith**") was informed that Dollard had already hired Buckingham to represent him.
52. The June 27 Letter contains several misleading, vexatious, malicious, and defamatory statements. Buckingham was retained by Dollard on or before June 27, 2022, when the June 27 Letter was sent and as such, there is no excuse that Dollard did not have access to legal counsel before embarking on his campaign to malign the reputation of Collins and the Collins Group because he indicates in the letter he had counsel in Corner Brook prior to sending the letter and was meeting with counsel in St. John's (presumably Buckingham) immediately following the letter. On that basis, Collins says these statements were deliberate and done with full knowledge of their potential impact on the Collins Group.
53. In the June 27 Letter, Dollar says as follows:

- (a) That he was "the President and CEO of Universal Environmental Services Inc.".

This statement is not true. Dollard was never appointed as President or CEO of UESI. At all material times Edward Collins, and following him, Francis Collins were the Presidents of UESI. This statement was deliberately misleading and intended to give RBC the impression that Dollard had some official capacity to make the statements that follow, which he did not.

- (b) That "Universal, nor I and/or DHL, had no knowledge, nor did any of us consent and/or authorize and/or give permission to Francis Collins to sign any guarantee on behalf ECCL and/or FGC in favour of RBC of Canada ("RBC")."

This statement is false and defamatory as follows:

- a. Universal *had knowledge* of the guarantee because Collins had knowledge of the guarantee as the 90% shareholder, director, and the President of UESI at the time the UESI Guarantee was signed;
- b. Dollard had *actual knowledge* of the guarantee because he met with Collins and Snow at RBC on March 3, 2018 to review the same;
- c. This statement implies wrongdoing on behalf of Collins, that Collins acted outside the scope of his corporate authority, and that Collins misrepresented to RBC the efficacy of the UESI Guarantee. This is both false and defamatory.

- (c) That "At no time did the Directors Francis Collins and/or I, Terry Dollard, have any Directors Meeting to consent and/or approve the signing of any resolutions regarding the signing of guarantee documents by the Directors of Universal on behalf of ECCL and/or FGC in favour of RBC dated April 3, 2018, and January 21, 2022, referred to in your letter of June 17, 2022"

This statement is false and defamatory as follows:

- a. UESI's long standing practice was to have informal directors' meetings concerning RBC relationship, which was in turn always managed by the Collins family. Collins and Dollard had several telephone calls whereby Collins updated Dollard on RBC financing, including the UESI guarantees provided to RBC on April 3, 2018 and thereafter.
- b. This statement implies wrongdoing on behalf of Collins, that Collins acted outside the scope of his corporate authority and that Collins misrepresented to RBC the efficacy of the UESI Guarantee. This is both false and defamatory.

- (d) That "Francis Collins, a Director in Universal, did breach his Statutory and Common Law fiduciary duty and obligation and duty of care to Universal, and to DHL, a 50% Shareholder in Universal. This statutory duty is pursuant to Section 203(1)(a) of the Corporations Act of NL, which requires Directors to exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances."

This statement was untrue and defamatory as follows:

- a. There is no evidence that Francis Collins breached his statutory or fiduciary duty to UESI by virtue of executing the UESI Guarantee.
 - b. This statement explicitly accuses Collins of wrongdoing and alleges Collins breached his statutory duties as a director. The purpose of this statement was to undermine Collins' position with RBC, his credibility, and his authority to deal with RBC on behalf of UESI.
- (e) That "Frank Collins did not act in good faith when he favoured his own interest and the interest of RBC over the best interest of Universal and DHL, a 50% Shareholder in Universal. One is not to profit from one's fiduciary position, and one is not to put one's self in a position wherein one puts one's interest ahead of one's duty."

This statement is defamatory as follows:

- a. There is no evidence that Frank Collins acted in bad faith at any time. The execution and delivery of the UESI Guarantee was part of a group refinancing that was undertaken two years prior, in the ordinary course, and with Dollard's full knowledge and consent. The fruits of the refinancing, being the credit products made available to the Collins Group, including but not limited to various operating lines of credit, vehicle lines of credit, and so forth, were shared by all companies in the Collins Group, including UESI.
- b. This statement is defamatory in that it suggests Collins wrongfully obtained a *personal* benefit through the UESI Guarantee which he did not.

- (f) That "Franks Collins and his companies and also RBC did obtain benefits from his breach of trust, his breach of his Statutory and Common Law fiduciary duties and obligations to Universal, and Universal has incurred economic loss and damages as a result of such actions."

This statement is defamatory as follows:

- a. This statement explicitly alleges that Collins obtained an unlawful benefit from an alleged breach of trust. This statement is wholly untrue. Further, this statement was made to the main financier for the Collins Group, RBC, which could only result in RBC's opinion of Collins and his related companies being damaged.
 - b. This statement implies wrongdoing on behalf of Collins, that Collins acted outside the scope of his corporate authority and that Collins misrepresented to RBC the efficacy of the UESI Guarantee.
- (g) That Collins conduct "was improper, wrongful, unlawful, fraudulent and illegal, and which was unfairly prejudicial, detrimental and unfairly disregarded the interests of Universal and DHL, a 50% Shareholder in Universal. Frank Collins provided false statements and also made false representations to RBC. Not only was there also material non-disclosure on the part of Frank Collins, but he also was dishonest, deceitful and acted in bad faith."

These statements were wholly untrue, and as such, wholly defamatory. The nature of these statements makes their malicious intent plainly obvious, and their defamatory nature is self-evident given they are entirely false.

54. As noted above, the June 27 Letter was sent on the same day RBC provided a new draft forbearance agreement to the Collins Group which included UESI, notwithstanding the Collins Group would not allow UESI to become a party to it. Eleven (11) days later, on 8 July 2022, RBC filed a Receivership motion against the Collins Group where UESI was not named as a party.

55. On July 13, 2022, Buckingham, on behalf of Dollard, wrote a second letter to RBC to endorse Dollard's prior correspondence (the "July 13 Letter"). This July 13 Letter was not copied to the Collins Group or counsel and was sent directly to RBC without the Collins Group's knowledge or input.

56. In the July 13, 2022 Letter, Buckingham says as follows:

"We are writing as the solicitors acting on behalf of Mr. Terry Dollard, director of Universal Environmental Services Inc.

Please be advised that effective immediately RBC - RBC of Canada is instructed that Frank Collins no longer has the approval or authority to act in any way on behalf Universal Environmental Services Inc.

Internally, Mr. Collin's access to the bank account of Universal Environmental Services Inc. held at RBC - RBC of Canada has been withdrawn.

RBC - RBC of Canada is instructed not to negotiate any cheque which may be signed by Mr. Frank Collins. Mr. Frank Collins is forbidden, and lacks any authority to in any way deal with the finances of Universal Environmental Services Inc.

Mr. Frank Collins is to be removed immediately from any authority previously given by Universal Environmental Services Inc. to RBC- RBC of Canada that confers on Mr. Collins any ability to negotiate, deal with, or otherwise access the bank account(s) or credit facilities of Universal Environmental Services Inc.

So that there is no confusion as to the instruction of our client, Mr. Frank Collins has no authority from this point forward to act in any regard on behalf of Universal Environmental Services Inc."

57. Buckingham's statements were false and misleading. At the time these statements were made he knew or ought to have known, had he exercised a reasonable amount of due diligence, that the following statements were defamatory and untrue:

- (a) The statement that *"Mr. Frank Collins has no authority from this point forward to act in any regard on behalf of Universal Environmental Services Inc."* was made without instructions or authorization from UESI. Buckingham was never retained by UESI. Buckingham knew or ought to have known that Collins was, at all material times, a Director and the President of UESI. Further, Buckingham knew or ought to have known that no corporate procedures had been taken to remove Collins as a Director or the President of UESI at the time this statement was made. At all material times Collins had full capacity to represent UESI as he had done in the past.
- (b) The statement that *"Internally, Mr. Collin's access to the bank account of Universal Environmental Services Inc. held at RBC - RBC of Canada has been withdrawn."* was false and misleading. Buckingham knew or ought to have known that no steps were taken internally or otherwise to alter Collins authority to act on behalf of UESI.
- (c) The statements that the *"RBC of Canada is instructed not to negotiate any cheque which may be signed by Mr. Frank Collins. Mr. Frank Collins is forbidden and lacks any authority to in any way deal with the finances of Universal Environmental Services Inc."* and that *"Mr. Frank Collins has no authority from this point forward to act in any regard on behalf of Universal Environmental Services Inc."* were completely false and misleading. Buckingham knew or ought to have known that no steps were taken to remove or limit the authority conferred on Collins by UESI.

58. At the time Buckingham made these statements he was aware of the prior 27 June 2022 Letter sent by Dollard and the relationship between the Collins Group and RBC. As a result, his subsequent correspondence clearly implied that Collins had been removed as a signing authority for UESI due to the alleged fraudulent conduct complained of in the 27 June 2022 letter. Buckingham's 13 July 2022 letter was a clear endorsement of the allegations and defamatory statements made in the 27 June 2022 Letter and designed to give RBC the impression that these allegations were factual, and as a result, remedial action had been taken against Collins.

59. Given Buckingham's status as a senior solicitor and officer of this Honourable Court, his statements given to the Bank in writing carry significant weight. It is reasonable to assume that Buckingham's endorsement of the 27 June 2022 Letter, and his statement to the effect that "Mr. Frank Collins has no authority from this point forward to act in any regard on behalf of Universal Environmental Services Inc." provide credibility to the false, misleading, and defamatory allegations contained in the 27 June 2022 Letter. Buckingham's statements suggest that Collins authority to act on behalf of UESI was revoked due to the matters complained of in the 27 June 2022 Letter. Buckingham's willing participation in promulgating the defamatory content of the 27 June 2022 Letter makes him equally liable for the damages resulting from it.
60. As a result of Buckingham's July 13, 2022 Letter, RBC responded on July 22, 2022 and said that they "have been put on notice of a dispute among the Company's signing officers. In addition, [they have] received complaints and inconsistent instructions regarding signing authorizations on the [UESI Account]." As a result, RBC threatened to take further remedial action on the accounts of UESI, including "closing the UESI accounts within fourteen (14) days" unless they received an opinion letter from a lawyer acting for UESI confirming the proper signing authorities on the UESI accounts, or alternatively, mutually agreeable instructions from UESI's signing officers and directors.
61. As a result of the foregoing, Collins called a directors meeting at 9:00 a.m. on August 5, 2022 to address these banking issues as well as other matters. Dollard did not attend the meeting, and shortly thereafter tendered his resignation to McInnes Cooper through the offices of Buckingham.
62. On August 5, 2022, Adam Baker ("**Baker**"), as solicitor for UESI, wrote to RBC. Baker indicated that following his review of the corporate records of UESI, "[Collins] has the necessary power, capacity, and authority to execute and deliver documents to RBC on behalf of UESI". This opinion directly contradicted the prior false and misleading statements made by Buckingham.
63. It is clear from RBC's receivership motion that the 27 June 2022 and 13 July 2022 Letters were a significant factor in the bank seeking a Receivership for the Collins Group. In their motion and supporting materials RBC stated as follows:

"[RBC] notes that it received two guarantees from Universal Environmental Services Inc. ("Universal") as more particularly described therein. There appears to be a conflict between the directors/owners of Universal which may require direction from this Honourable Court as to both the enforceability of the guarantees and as to realization in respect of same to ensure all parties are dealt with fairly and equitably."

64. In their subsequent supporting affidavit filed 05 August 2022, RBC said as follows:

"..... Mr. Dollard sent correspondence [to RBC] indicating that it was Mr. Dollard's position that the UESI Guarantees were unenforceable.... It is RBC's position that the UESI Guarantees are enforceable, however Mr. Dollard's correspondence caused serious concerns for RBC who rely on the UESI Guarantees as security for the Respondents indebtedness to RBC.

65. RBC continued that:

"That on July 13, 2022, Mr. Dollard through his counsel, Goodland Buckingham, provided correspondence to advise me that Francis Collins no longer has approval or authority to act in any way on behalf of UESI."

66. RBC further said that they were seeking a Receivership Order, in part, to "[determine] priority issues to resolve the Universal Guarantee matter in a timely fashion to ensure all creditors are being treated equally and fairly and to provide a forum for direction to ensure an orderly and efficient process can be followed in administering the Respondents' estate".

67. Based on the foregoing, Dollard and Buckingham's defamatory and misleading statements were a significant factor in RBC pursuing a receivership motion against the Collins Group.

(C) DOLLARD'S MISSAPPROPRIATION AND MISMANAGEMENT OF ASSETS

68. Once Dollard and Buckingham launched their campaign to malign the Collins Group reputation with RBC and upset the banking discussions concerning the Collins Group restructuring, Dollard moved to the next step in his plan.

69. On July 17, 2022, Dollard, without authorization from UESI, began transferring UESI assets into his own name and/or the names of related parties. This included:

- 2017 Nissan Titan Crew Cab 4 x 4;
- 2020 Land Rover, Range Rover Sport;
- 2018 Chevrolet Equinox;
- 2011 Karvan Trailer;
- 2015 Commodore Trailer; and
- 2011 SD Challenger Boat.

(the "**Stolen Assets**").

70. On or around the same date Dollar wrote to the Registry of Companies for the Province of Newfoundland and Labrador and attempted to have the Registered Office for UESI changed from Jerseyside Placentia to 1 Quarry Road, Trans-Canada Highway, near St. Johns – a site location under the supervision of Griffiths.

71. Once Dollard completed his theft of these UESI assets, he then set up a new Company in preparation for the Receivership motion brought by RBC. This new company is called "Universal Soils Inc." and was incorporated on July 12, 2022 ("**Universal Soils**"). Dollard is the sole director of Universal Soils.

72. It is plainly obvious that Universal Soils was set up to trade on the name and goodwill of UESI. The timing of its incorporation and the steps taken by Dollard and Buckingham leading up to it are not a coincidence. The steps taken by Dollard and Buckingham, from the initial defamatory letters to RBC, up until the issuance of the within Statement of Claim were part of a coordinated effort further the financial demise of the Collins Group so that once RBC brought their receivership motion, Dollard could come in with his new company "Universal Soils" and the backing of his other new company "the Mardo Group" buy the assets of UESI.

73. On August 11, 2022, UESI demanded a return of the Stolen Assets. Dollard did not respond to this demand and UESI attempted to repossess the Stolen Assets but were unsuccessful in locating them.
74. On August 19, 2022, Buckingham responded to UESI's demand to say that the "beneficial ownership" of the Stolen Assets resides with Dollard "or others". Buckingham further advised that Dollard would "not be releasing any chattels" and that if UESI intended on recovering the Stolen Assets they would require a Recovery Order to do so.
75. Buckingham was clearly aware of the steps Dollard was taking and colluded with Dollard in taking these steps. Buckingham far exceeded his role as a solicitor and officer of this Court by actively participating in the defamation campaign with RBC, and by acting as counsel to Dollard when he misappropriated the Stolen Assets, all as part of a pre-meditated and coordinated plan to remove the Collins family from ownership in UESI.
76. It is clear that Dollard and Buckingham made an agreement, under the auspices of a professional retainer, to undermine the interests of the Collins Group to affect a transfer of the UESI business to Dollard and his cohorts. Buckingham and Dollard knew or ought to have known that the representations made to the Bank were false, untrue, fraudulent, and would have the effect of causing the Bank to terminate its commercial relationship with the Collins Group. Faced with no other options to remove the Collins family from UESI, Buckingham and Dollard conspired to destroy the Collins Group relationship with RBC and wait in the wings until such time as Dollard could make a bid for the assets.

(D) EVENTS FOLLOWING AUGUST 5, 2022:

77. Dollard resigned from UESI on August 5, 2022. Following Dollard's resignation, Collins and his employees began reviewing the financial records for UESI. Up to this point the management of UESI's day to day finances, including the management of accounts payable and receivable, were left to Dollard and Dollard Management.
78. Almost immediately upon taking control of UESI's records certain accounting discrepancies began to appear. These include, but are not limited to the following:

- i) It appears as though Dollard and Dollard Management were engaged in the practice of “account skimming” – in other words, an invoice would be sent out for only a portion of the services provided by UESI, with the balance being invoiced separately by Dollard or Dollard Management. This practice was conducted in a fraudulent and deceitful manner;
 - ii) Unbeknownst to Collins, Dollard was issuing himself (or his related companies) various cash advances from UESI accounts for reasons unknown;
 - iii) Unbeknownst to Collins, Dollard was issuing unauthorized cash advances to Griffiths for reasons unknown, and
 - iv) Unbeknownst to Collins, Dollard was charging significant amounts of personal expenses to UESI corporate visa accounts and these amounts were never documented or re-imbursed.
79. Certain other matters also came to light following August 5, 2022, including but not limited to the following:
- i) Between July 1, 2022 and July 31, 2022 Dollard misappropriated certain UESI company assets with no authorization from Collins, and no authority express or implied from UESI, including:
 - ii) Dollard was actively campaigning with UESI customers and attempting to convince them that UESI was “bankrupt” and “in serious financial trouble”. The implication is that Dollard was trying to undermine UESI's business relationships in order that he could accelerate the demise of UESI and presumably position himself to purchase the UESI assets in Receivership (with Universal Soils).
 - iii) Dollard allowed the lease on the Wabush remediation site for UESI lapse with the Town of Wabush and obtained a lease in his own name of lands immediately adjacent to it. The obvious implication being that Dollard was positioning himself to take over this site with his new company, a site which is arguably the most lucrative of all the UESI sites given it services UESI's major customers in Labrador.

80. Dollard further attempted to undermine the Collins Group, and in turn, UESI, by filing the within frivolous shareholders oppression action on September 15, 2022. This action was filed by Buckingham and served on the Collins Group and RBC one day before the Court was to hear RBCs Receivership motion. The obvious implication is that Dollard was attempting to lend more weight to the concerns expressed by RBC in their Receivership motion – particularly as it relates to the efficacy of the UESI Guarantee - in hopes that this motion would be successful, and the Collins Group would be placed into receivership.

(E) CONSPIRACY, COLLUSION: DOLLARD AND BUCKINGHAM

81. The actions of Dollard and Buckingham, in particular the dissemination of the 27 June 2022 Letter and the 13 July 2022 were sent as part of a pre-mediated campaign to malign the reputation of Collins, further the demise of the Collins Group, position UESI such that it could be acquired by Mardo or Universal Soils, and to cover up Dollard and Dollard Managements misappropriation of UESI funds and assets.
82. Buckingham wholly failed in his duty as a solicitor and officer of this Court, *to wit*, he actively participated with Dollard in the execution of Dollard's scheme, with respect to the misappropriation of the Stolen Assets, and with respect to the defamation of the Collins Group with RBC.
83. Further, Dollard and Buckingham acted with actual malice in attempting to undermine the interest of Collins, the Collins Group, and UESI and with wanton disregard for each of these parties' commercial interests. Their actions were part of a concerted effort to seize control of UESI and conceal the misappropriation of funds and assets described above.
84. The interference referred to in paragraph 79 above was illegal and unlawful. With respect to Dollard, he breached his fiduciary duty to act in good faith with respect to the Company and its shareholders, as well as various other common law duties imposed on him as a director of UESI. Dollard secretly incorporated companies (Mardo Group and Universal Soils) who – in the very least – would be direct competitors of UESI. Dollard acted with wanton disregard for the interests of UESI.

85. Dollard misappropriated assets, and in collusion with Griffiths, and allowed Griffiths to take tens of thousands of dollars from UESI Griffiths was not entitled to.
86. With respect to Buckingham, he breached various common law duties owed by him as a solicitor and officer of this Honorable Court, as well as his professional obligation to provide competent opinions based on a sufficient knowledge of the relevant facts, with an adequate consideration of the applicable law. In this case, Buckingham did not have sufficient knowledge of the relevant facts to provide the statements to RBC that he did. Likewise, there was no legal basis for his statements. Buckingham failed in his duty as a solicitor by colluding with Dollard and participating in the scheme outlined above.
87. It is clear the Plaintiff's suffered economic harm as a result of the intentional interference in their contractual and economic relations. Dollard and Buckingham knew, or ought to have known, that their conduct would encourage RBC to proceed with their Receivership Motion against the Collins Group. This is, in fact, what happened.
88. Further, Dollard and Buckingham knew or ought to have known that enforcement action by RBC would cause Collins and the Collins Group to incur significant costs, both direct costs in terms of defending a Receivership motion, and economically in terms of the various business and operational issues enforcement by RBC would present.

(F) RELIEF SOUGHT:

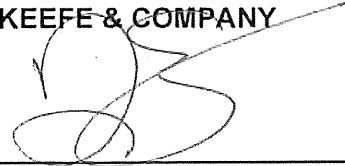
89. Therefore, Collins, UESI and the Collins Group claim from Dollard, Dollard Holdings, Dollard Management, Buckingham, and Goodland Buckingham, on a joint and several basis, the following:
- (i) A full accounting of the Stolen Assets and a return of the Stolen Assets;
 - (ii) A full accounting of all funds misappropriated by Dollard and Griffiths or any other person acting in concert with Dollard and Griffiths, and a return of these funds, disgorgement of the funds, and/or damages award in the amount of the stolen funds, in an amount to be determined at Trial;
 - (iii) Damages, for, *inter alia* the losses suffered by Collins, UESI, and the Collins Group as a result of RBCs receivership motion, including (a) all legal costs for

the Collins Group, Collins, and UESI in defending the receivership motion in an amount to be determined at Trial;

- (iv) Punitive damages against Dollard and Buckingham;
- (v) Special damages in an amount to be assessed at Trial;
- (vi) Non-pecuniary damages in favour Collins, in an amount to be determined at Trial;
- (vii) Aggravated damages;
- (viii) Costs on a solicitor and client basis;
- (ix) Pre-judgment interest; and
- (x) Such other relief as this Honourable Court deems mete and just.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 16 day of December, 2022.

O'KEEFE & COMPANY



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TO:

**Supreme Court of Newfoundland and
Labrador Trial Division (General)**
Court House, 309 Duckworth Street
P.O. Box 937
St. John's, NL A1C 5M3

AND TO:

The First Plaintiff/Defendant by Counterclaim
Dollard Holdings Inc.
5 Cambridge Ave.,
St. John's, NL,
A1A 3N5

The Second Plaintiff/Defendant by Counterclaim
Terry Dollard
5 Cambridge Ave.,
St. John's, NL,

A1A 3N5

The Third Defendant by Counterclaim

Dollard Management Inc.
5 Cambridge Ave.,
St. John's, NL,
A1A 3N5

The Fourth Defendant by Counterclaim

Philip J. Buckingham
16 Forest Rd Suite 200,
St. John's, NL,
A1C 2B9

The Fifth Defendant by Counterclaim

Goodland Buckingham
16 Forest Rd Suite 200,
St. John's, NL,
A1C 2B9.

ISSUED at St. John's, Newfoundland and Labrador this day of , 2022

Appendix “T”

Traveler's ("TCC") Term Sheet Pre-Condition Tracking
as at February 2, 2023

COMPLETE
In Progress
To Be Completed

Action	Status	Action Item	Estimated Delivery Date	Comments	
1 Stay Period satisfactory to the lender.	O/S	n/a	In Progress	Should an ARIQ be granted send the ARIQ to Traveler's for comment. Ongoing.	
2 Final approval of the subject loan transaction and Loan Agreement by TCC's Credit Committee	O/S	-	29 Feb-23	TCC has advised that it will take approximately 3-4 weeks for approval from the time they receive all documentation.	
3 Execution of Loan Agreement	O/S	-	31 Mar-23	TBD	
4 Security Registration	O/S	-	31 Mar-23	TBD	
5 Lenders AML/KYC Documents	O/S	-	28 Feb-23	TBD	
6 Receipt by TCC of final amounts owing to CRA as it relates to source deductions, HST, and income taxes, including required settlement amounts	ECC	RP	COMPLETE	\$3,115, 138 / Deemed trust of \$2,126,466	
		RT	COMPLETE	\$940,004	
		RC	COMPLETE	\$Nil	
	Classic	RP	COMPLETE	ECC records on deemed trust is \$361,270 (RP \$649,080). CRA has \$344,742.62 so going with the CRA number on the deemed trust.	
		RT	COMPLETE	\$210,713	
		RC	COMPLETE	\$Nil	
	51037	RP	COMPLETE	\$4,258 deemed trust on a RP payable account of \$6,244	
		RT	COMPLETE	No trust exam. Will use existing information. \$31,315	
		RC	COMPLETE	\$Nil	
	H&E	RP	COMPLETE	N/A - Never had employees	
		RT	COMPLETE	\$6,144	
		RC	COMPLETE	\$Nil	
	HGC	RP	COMPLETE	N/A - Never had employees	
		RT	COMPLETE	\$19,402	
		RC	COMPLETE	\$15,065	
7 Confirmation that borrower has the shortfall covered	In progress		In Progress	Need to finalize shortfall calculation by 1)updating payouts with creditors closer to closing date 2)Close sale of 30 Reids Lane 3)Receive settlement amounts 4) achieve at least the appraised value on equipment sales. The gap calculation will be a moving target due to accruing interest and costs. Process put in place to protect net proceeds - funds after payment of PMSI to be held in trust ordered via ARIQ.	
8 Equipment Appraisal	COMPLETE		COMPLETE		
9 and 10 Real Property Appraisal	ECC	104 Charter Ave (Building 500)	COMPLETE	Appraisal completed.	Phase 1 Completed and report received. No issues.
	ECC	30 Reids Lane, Deer Lake NL	COMPLETE	Company intends to liquidate property in the restructuring pursuant to the ARIQ.	Complete - Not required if sold.
	ECC	3 Lakesview Humber Valley Resort	COMPLETE	Appraisal completed.	COMPLETE - Phase 1 not required.
	ECC	Lot 27 Argentina	COMPLETE	AMA information provided to Traveler's	Not required. Partially covered by the Phase 1 on 104 Charter Avenue (Building 500).

		H&E	Morrissey's Place, Placentia	COMPLETE	Current Appraisal is November 2021. Accepted by Traveler's.	Details of all the excavation / servicing work you've done to date on these lots, that should suffice for ESA purposes. (this is part of the requirements anyway) - Outstanding
		FGC	26 Lakeview Humber Valley Resort	COMPLETE	Appraisal completed.	COMPLETE - Phase 1 not required.
		ECC	Quarry	In Progress	Appraisal Associated Limited (Todd Pickett, AACI, P App) retained to complete the appraisal. Information is being shared with appraiser. On site December 9, 2022.	
11	Information on the borrower and guarantor		Organization Chart	COMPLETE		
			Comprehensive asset and liability summary for each borrower, including security and payment information.	TBD		
			Proforma Income Statement	Complete	To be developed using the year end statements and Company's decision on equipment it intends to keep.	
			Rolling 13 week CF statement	In Progress	On going. Included in Monitor's Reports	
			2022 Financial statements (External)	Complete	Complete and shared with stakeholders.	
		31-Jul	ECC	Complete	Have 2021 and Internals for 2022.	
		31-Dec	51037	Complete	Complete and shared with stakeholders.	
		31-Jul	H&E	Complete	Complete and shared with stakeholders.	
		31-Oct	FGC	Complete	Not required. Not a borrower.	
			Classic	Not required	Complete and shared with stakeholders.	
			2021 Financial Statement (External)	Complete		
			2020 Financial Statements (External)	Complete		
			2019 Financial Statements (External)	Complete		
			YTD 2023 (Internal)	Complete	Complete and shared with stakeholders to December 31, 2022.	
		31-Oct	ECC	Complete	Internal Complete.	
			51037	Complete	Internal Complete.	
			H&E	Complete	Internal Complete.	
			FGC	Complete	None required - year end is October 31	
			Classic	Not required	Not required. Not a borrower.	
12	Itemized complete listing of equipment including make, model, serial numbers of all major components including pictures, invoices/registration certificates			Complete	Traveler's confirmed Ritchie Brothers work is sufficient.	
13	Deliver for review - evidence that priority payments are current			In Progress	Maintaining priority payments a requirement in the CCAA proceeding. On going. In the Monitor's Report	
14	Satisfactory completion of due diligence		TBD	TBD	TBD	
15	Other		Nothing to Note	Complete	Traveler's has not indicated that they are seeking other information.	
16	HASCAP		HASCAP Needs to be refinanced or paid out on the closing of the Traveler's Refinancing	In Progress	It is to be included in the Traveler's sources and uses funding gap.	
17	Court Deliverables			In Progress	Ongoing. Traveler's sources court filings from Monitor's website.	
18	Restructuring		Go Forward Work Plan / Contracting Strategy	In Progress		
			Go Forward Bonding Strategy	In Progress		
19	Updated AR and AP Schedules			TBD	Included in Monitor's Reports. Ongoing.	
20	Is a new operating lender being introduced concurrently?		New operating lender	In Progress	Legal counsel to provide	
21	Constituting documents for the borrowers	ECC	Certificate of Incorporation	In Progress	Legal counsel to provide	
			By-Laws	In Progress	Legal counsel to provide	
			Certificate of Officers	In Progress	Legal counsel to provide	
		51037	By-Laws	In Progress	Legal counsel to provide	
			Certificate of Officers	In Progress	Legal counsel to provide	
		H&E	Certificate of Incorporation	In Progress	Legal counsel to provide	

			By-Laws	In Progress	Legal counsel to provide	
			Certificate of Officers	In Progress	Legal counsel to provide	
	FGC		Certificate of Incorporation	In Progress	Legal counsel to provide	
			By-Laws	In Progress	Legal counsel to provide	
22	Organization Chart and share breakdown (borrowers)		Certificate of Officers	In Progress	Legal counsel to provide	
			Org Chart	COMPLETE	Legal counsel to provide	
			ECC	COMPLETE	Legal counsel to provide	
			51037	COMPLETE	Legal counsel to provide	
			H&E	COMPLETE	Legal counsel to provide	
			FGC	COMPLETE	Legal counsel to provide	
23	Organization Chart and ownership of non-borrowing entities with background information		Classic	COMPLETE		
			Environmental Services Inc.	TBD		
			Placentia Mall Inc.	TBD		
24	Information on H&E sub-division			COMPLETE	Received by Traveler's	
	New Requests					
25	Updated list of work contracts award to ECC - to include name of project, name of counter party, type/nature of the contract, short description of the work, estimated start/end date, gross project value			COMPLETE	Sent December 6, 2022. Ongoing.	
26	E&T Investments		Financial Statements	TBD		
27	H&E		Sold any new lots? (4 sold 32 remaining)	COMPLETE	None since the CCAA proceeding. Subject to the ARIO.	
			Anticipate lowering the list price to accelerate the rate of sale?	COMPLETE	Still listed for sale online; Reducing Listing Price - Need to talk to realtor and seek support from secured creditors.	
			Confirm remaining scope of work to finalize these sites	TBD		
			Expected cost and start/end date of the site improvement	TBD		
28	Updated Debt Schedule			TBD		
29	Nature/Purpose to each borrowing entity		ECC	In Progress		
			51037	In Progress		
			H&E	In Progress		
			FGC	In Progress		
30	Nature/Purpose to each borrowing entity		Classic	In Progress		
			Environmental Services Inc.	In Progress		
			Placentia Mall Inc.	In Progress		

Appendix “U”

Edward Collins Contracting Ltd., FGC Holdings Ltd., H&E Designs Ltd., 51037 NL Inc.*Travelers Capital Corp. Refinancing Plan - Updated Feb 1, 2023**Scenario 1 - Sell Certain Equipment***Sources of Refinancing:****Real Estate:****Note:**

Estimated Value	4,065,000	
Refinancing Factor	50%	
Refinancing Proceeds		\$ 2,032,500

Equipment:

Forced Liquidation Value (FLV)	4,607,000	1
Refinancing Factor	90%	
Refinancing Proceeds		\$ 4,146,300

Total Refinancing \$ 6,178,800**Refinanced Debt:****RBC Real Estate Mortgages:**

30 Reids Lane		
3 Lakeview	319,592	
Morrissey's Place	305,192	
26 Lakeview	237,246	
		\$ 862,031

Equipment Lenders:

Bank of Nova Scotia	15,675	
Brandt Finance	205,057	
Caterpillar Financial	-	
CWB National Leasing	-	
De Lage Landen Financial Services Canada Inc	120,630	
Diamler Truck Financial	370,672	
Honda Financial	10,158	
John Deere Financial	762,405	
RBC Royal Bank	262,313	2
Wells Fargo	213,279	
		\$ 1,960,189

RBC Loans + Other:

Line of Credit (ECC + 51037)	1,039,069	
Visa (ECC + 51037)	198,869	
Overdraft	865	
HASCAP	1,027,096	
Est. Fees & Interest	68,076	
		\$ 2,333,975

Canada Revenue Agency:

Payroll Deemed Trust - ECC	2,126,446	3
Payroll Deemed Trust - 51037	4,258	
		\$ 2,130,704

Total Debt to Refinance \$ 7,286,899**Refinancing Costs:**

Travelers estimate to close	185,636
-----------------------------	---------

Claim for RBC Protective Disbursements	288,529	4
--	---------	---

	\$ 474,165
--	------------

Total Use of Refinancing	\$ 7,761,064
---------------------------------	---------------------

Net Surplus (Deficit) from Refinancing	\$ (1,582,264)
---	-----------------------

Cash From Sale of Assets - In Trust with Monitor

30 Reid's Lane, net of secured charges	150,000	
Sale of Equipment, net of secured charges	735,709	
Less: Realtor Commission	(23,250)	
Less: Equipment Selling Costs	(161,856)	
		\$ 700,603

Cash From Company to Close Funding Gap

Accounts Receivable	250,000	
Holdback Accounts Receivable	250,000	
Cash in Trust with Monitor	250,000	
		\$ 750,000

Net Funding Surplus (Deficit)	\$ (131,662)
--------------------------------------	---------------------

Summary of RBC Debt:

Refinanced:

Mortgages	862,031	
Equipment	262,313	
Loans + HASCAP	2,265,899	
<i>Estimated Fees & Interest</i>	68,076	
RBC Recovery Costs	288,529	
		3,746,849

Paid Out:

Mortgage - 30 Reid's Lane	288,102	
Equipment	1,306,002	
		1,594,104

Not Refinanced:

CEBA	120,000	
		120,000

Total RBC Debt	\$ 5,460,953
-----------------------	---------------------

Notes:

1. Equipment to be refinanced excludes returned / disclaimed and equipment marked to sell now. Equipment to be sold in future is refinanced.
2. Includes term loans for 6 pieces of equipment; Travelers includes this under Mortgages.
3. Based on Monitor's re-calculation of deemed trust claim.
4. Professional fees incurred by RBC to Dec 7, 2022.

Edward Collins Contracting Ltd., FGC Holdings Ltd., H&E Designs Ltd., 51037 NL Inc.*Travelers Capital Corp. Refinancing Plan - Updated Feb 1, 2023***Scenario 2 - Refinance All Equipment****Sources of Refinancing:****Real Estate:****Note:**

Estimated Value	4,065,000	
Refinancing Factor	50%	
Refinancing Proceeds		\$ 2,032,500

Equipment:

Forced Liquidation Value (FLV)	6,099,100	1
Refinancing Factor	90%	
Refinancing Proceeds		\$ 5,489,190

Total Refinancing \$ 7,521,690**Refinanced Debt:****RBC Real Estate Mortgages:**

30 Reids Lane		
3 Lakeview	319,592	
Morrissey's Place	305,192	
26 Lakeview	237,246	
		\$ 862,031

Equipment Lenders:

Bank of Nova Scotia	15,675	
Brandt Finance	205,057	
Caterpillar Financial	-	
CWB National Leasing	-	
De Lage Landen Financial Services Canada Inc	120,630	
Diamler Truck Financial	370,672	
Honda Financial	10,158	
John Deere Financial	762,405	
RBC Royal Bank	1,568,316	2
Wells Fargo	213,279	
		\$ 3,266,191

RBC Loans + Other:

Line of Credit (ECC + 51037)	1,039,069	
Visa (ECC + 51037)	198,869	
Overdraft	865	
HASCAP	1,027,096	
Est. Fees & Interest	68,076	
		\$ 2,333,975

Canada Revenue Agency:

Payroll Deemed Trust - ECC	2,126,446	3
Payroll Deemed Trust - 51037	4,258	
		\$ 2,130,704

Total Debt to Refinance \$ 8,592,901**Refinancing Costs:**

Travelers estimate to close	185,636
-----------------------------	---------

Claim for RBC Protective Disbursements	288,529	4
	<u>\$ 474,165</u>	
Total Use of Refinancing	<u>\$ 9,067,067</u>	
Net Surplus (Deficit) from Refinancing	<u>\$ (1,545,377)</u>	
Cash From Sale of Assets - In Trust with Monitor		
30 Reid's Lane, net of secured charges	150,000	
Sale of Equipment, net of secured charges		
Less: Realtor Commission	(23,250)	
Less: Equipment Selling Costs	-	
	<u>\$ 126,750</u>	
Cash From Company to Close Funding Gap		
Accounts Receivable	250,000	
Holdback Accounts Receivable	250,000	
Cash in Trust with Monitor	250,000	
	<u>\$ 750,000</u>	
Net Funding Surplus (Deficit)	<u>\$ (668,627)</u>	

Summary of RBC Debt:		
Refinanced:		
Mortgages	862,031	
Equipment	1,568,316	
Loans + HASCAP	2,265,899	
<i>Estimated Fees & Interest</i>	68,076	
RBC Recovery Costs	288,529	
	<u>5,052,851</u>	
Paid Out:		
Mortgage - 30 Reid's Lane	288,102	
Equipment	-	
	<u>288,102</u>	
Not Refinanced:		
CEBA	120,000	
	<u>120,000</u>	
Total RBC Debt	\$ 5,460,953	

Notes:

1. Equipment to be refinanced excludes returned / disclaimed and equipment.
2. Includes term loans for 6 pieces of equipment; Travelers includes this under Mortgages.
3. Based on Monitor's re-calculation of deemed trust claim.
4. Professional fees incurred by RBC to Dec 7, 2022.

TAB AAA

This is **Exhibit "AAA"** to the Affidavit of JAMES TOOTHILL
of the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

O'KEEFE & SULLIVAN

BY EMAIL

Borden Ladner Gervais LLP
Solicitors for Western Surety Company
Bay Adelaide Centre, East Tower 22 Adelaide Street West
Toronto, ON, M5H 4E3 Canada
Attn: Mark Borgo and Andrew Punzo
Email: mborgo@blg.com
apunzo@blg.com

Matthew Craig
Stewart McKelvey
Solicitors for the Town of Placentia
Suite 1100, 100 New Gower Street,
St. John's, NL, A1C 6K3
Email: mcraig@stewartmckelvey.com

20 January 2023

Dear Sirs:

**Re: Town of Placentia Mechanics Holdback Funds
Placentia Waterline Upgrades**

As you are aware we represent Edward Collins Contracting Ltd. and its affiliated companies ("ECC"). We refer to the email of Andrew Punzo dated of 05 January 2022 where Mr. Punzo said (on behalf of Western Surety) as follows:

"[We] ...are confirming that Western's preference is for the Town to hold onto the funds rather than paying the funds into court. This approach contemplates one hearing to determine who/where the Town ought to pay the funds.

We will leave it to Matt to advise if the Town does not want to hold the funds and prefers to incur the costs and take affirmative steps under the MLA to pay them into court or otherwise."

With respect to the forgoing, it is our client's position that the mechanics lien holdback funds in the amount of \$237,785.76 currently in the possession of the Town of Placentia should be paid to ECC. These funds constitute an ECC receivable and should be made available for the benefit of its creditors. Western Surety disagrees with that position.

Therefore, we would ask that you accept this letter as our **formal demand** that the holdback funds be paid either to ECC's Monitor or directly or into Court (in the CCAA matter) within **five (5) business days** from the date hereof. Failing compliance with this demand, we have instructions to make an application to Court to compel the Town of Placentia to pay these funds into Court and seek our costs on the same.

We trust the foregoing is clear.

Regards,



DARREN D. O'KEEFE
dokeefe@okeefesullivan.com

cc.

Phil Clarke
Grant Thornton Ltd.
phil.clarke@ca.gt.com

TAB BBB

This is **Exhibit "BBB"** to the Affidavit of JAMES TOOTHILL
of the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

From: Punzo, Andrew
Sent: January 23, 2023 5:27 PM
To: Matthew Craig; Angela DeCaria; Borgo, Mark; Darren O'Keefe
Cc: Clarke, Phil; skour@reconllp.com; Dutrizac, Jason
Subject: RE: Town of Placentia- Mechanics Lien Holdback Funds [Placentia Waterline Upgrades]
Attachments: Email from Michael Cabot dated July 6, 2022.PNG; 2022 07 19 - ECC - Signed Agreement(130746434.1).pdf; 2021-10-06 Ltr to Town re direction to pay(131027112.1).pdf; Letter to Town of Placentia 20 Jan 23.pdf

All,

When we spoke with this group on January 5th, the plan was for ECC to circulate the details and support for its position regarding the holdback the following week. I do not believe ECC has complied with the Monitor's request as we have not received anything explaining or supporting any position. We look forward to ECC's explanation.

Western does not agree with what ECC has proposed in its January 20th letter, which would be inconsistent with the Town's obligations under the lien legislation. Our view is that this matter is straightforward. ECC has already (i) irrevocably directed Placentia to pay the funds to Crane, and further (ii) entered into a settlement agreement whereby it again confirmed that the funds are payable to Rodco and Crane. We trust ECC's forthcoming explanation will address these matters as well.

Matt, please see attached ECC's Irrevocable Direction to Pay to Placentia signed by ECC in October 2021 in favour of Crane for the amount of \$178,070.71 plus HST. We believe this is alone sufficient to pay that amount to Western as assignee of Crane's claim.

Thank you,

Andrew Punzo

Partner

T 416.367.6005 | APunzo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

BLG | Canada's Law Firm

Calgary | Montréal | Ottawa | Toronto | Vancouver

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Borden Ladner Gervais LLP

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From: Michael Cabot <michael.cabot@occolaw.com>

Sent: July 6, 2022 8:11 AM

To: Punzo, Andrew <APunzo@blg.com>; James Toothill <JToothill@westernsurety.ca>; C. Brad Leyte <bleyte@nf.aibn.com>

Cc: Michel Prud'homme <michel.prudhomme@bbcg.ca>; Borgo, Mark <MBorgo@blg.com>

Subject: Re: Edward Collins (ECC) Bond #532,090 - Town of Placentia water system upgrades - claim by Rodco Mechanical (2014) Ltd.

Andrew –

Just checking in on this to let you know that ECC has signed this agreement.

I understand that Rodco has done the same.

Have you had an opportunity to review it?

Mike

Michael Cabot
Partner

Direct 709 702 8902 Fax 709 702 8901

Email michael.cabot@occolaw.com

Web www.occolaw.com



ORR | CABOT
CROSBIE | OLEY
LAW

55 Duckworth St., St. John's, NL, A1C 1E6

THIS EMAIL TRANSMISSION IS SOLICITOR-CLIENT PRIVILEGED and is intended only for the person(s) to whom it is addressed. Any other distribution, copying or disclosure and delete the message and any attachments received with it.

SETTLEMENT AGREEMENT entered into with effect as of this ____ day of June, 2022.

BETWEEN:

EDWARD COLLINS CONTRACTING LIMITED, a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

("ECC")

AND:

RODCO MECHANICAL (2014) LTD. a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

("Rodco")

AND:

WESTERN SURETY COMPANY, a corporation duly incorporated and existing under the laws of the Province of Ontario,

("Western")

WHEREAS

- A. The Town of Placentia and ECC entered into an agreement for the supply of certain construction works and services dated March 19, 2021 (the "**Contract**").
- B. Pursuant to the Contract, ECC agreed to supply the construction works and services necessary in connection with a water system upgrade project being undertaken in the Town of Placentia (the "**Project**").
- C. ECC engaged Rodco to provide certain works and services in connection with the completion of the Contract.
- D. The Town of Placentia is in possession of a holdback in relation to the Project in the amount of \$244,977.53.
- E. Rodco has caused to be registered a mechanics' lien bearing Lien No. 19963 and had further caused a Certificate of Action to be registered with the Supreme Court of Newfoundland and Labrador General Division bearing court file no. 2022 01G 0563. Rodco has also issued a mechanics' lien bearing Lien No 20096.
- F. Western has issued a labour and materials bond in relation to the Project (the "**Bond**").
- G. Rodco has submitted a claim under the labour and materials bond which bond was issued by Western Surety Company for amounts due and owing to Rodco by ECC.
- H. ECC, Rodco and Western (the "**Parties**") have agreed to enter into this Settlement Agreement (the "**Settlement Agreement**"), for purposes of setting out the terms and

conditions of the agreement reached between ECC, Rodco and Western with respect to the completion of the Project and release of holdback.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth and contained, and other good and valuable consideration passing between ECC and Rodco (hereinafter collectively referred to as the "**Parties**"), the Parties agree as follows:

AGREEMENT

1. The Parties acknowledge and agree that the holdback can be released and paid as follows:
 - (a) Crane Supply to be paid from the holdback the amount of \$204,781.32.
 - (b) Rodco to be paid from the holdback the amount of \$40,196.17
2. ECC agrees to:
 - (a) Pay the balance of monies due and owing to Rodco in the amount of \$358,411.71 to Rodco on or before July 28, 2022.
 - (b) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of ECC under this Settlement Agreement.
3. Rodco agrees to:
 - (a) Discharge any and all mechanics' liens as registered in connection with the Project, including but not limited to claim for lien No. 19963 and Certificate of Action bearing court file no. 2022 01G 0563 and lien No. 20096.
 - (b) Not register any additional mechanics' liens or initiate legal proceedings in relation to the Contract, with the exception of legal proceedings to enforce this Settlement Agreement.
 - (c) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of Rodco under this Settlement Agreement and to take all steps required to have the holdback for the Project released.
4. Western Agrees to:
 - (a) Make full payment to Rodco in the amount of \$358,411.71 less any payments made by ECC following the date of these Minutes of Settlement that remains due to Rodco by ECC as outstanding on July 28, 2022 within 7 business days of Rodco providing written notice to Western of the outstanding amount.
5. General Terms
 - (a) This Settlement Agreement, including the schedules hereto, embodies the entire Agreement between the Parties concerning the subject matters mentioned herein, and supersedes all previous discussions, correspondence,

understandings or agreements, whether written or oral, with respect to such matters.

- (b) Rodco and ECC agree that this Settlement Agreement is intended to be in complete satisfaction of all matters arising between Rodco and ECC in relation to the Contract and/or the Project.
- (c) The invalidity of any of the provisions of this Settlement Agreement, or any of the provisions of the documents attached as schedules to this Settlement Agreement, shall not invalidate or affect any of the other provisions of this Settlement Agreement, which shall remain in full force and effect.
- (d) This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- (e) None of the terms, conditions or provisions of this Settlement Agreement shall be changed, waived, varied, modified or altered unless done so in writing and signed by all of the Parties.
- (f) This Settlement Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Newfoundland and Labrador, and the laws of Canada applicable therein, and the Parties shall attorn to the jurisdiction of the courts of the Province of Newfoundland and Labrador.
- (g) This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together constitute one and the same instrument. This Settlement Agreement may be executed and transmitted by facsimile or by email attachment in .pdf.

[Remainder of page intentionally blank. Signature pages to follow.]

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed as of the day and year first before written.

Witness

EDWARD COLLINGS CONTRACTING LIMITED

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the Town

Witness

RODCO MECHANICAL (2014) LTD.

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

Witness

WESTERN SURETY COMPANY

Per: _____ *James*

Name: *James Toothill*

Title: *Chief Claims Manager*

I/We have the authority to bind the corporation



ORR | CABOT
CROSBIE | OLEY
LAW

October 6, 2021

VIA EMAIL mgreene@placentia.ca

Town of Placentia

P.O. Box 99

Placentia, NL A0B 2Y0

Attention: The Honourable Bernard Power, Mayor

Regarding: Our Client – Edward Collins Contracting Limited
Project Part A 17-GI-20-00050 Water connection to Dunville and Part B – 17-
SCF-19-00129 Pumphouse Upgrades

Further to the above-referenced project, please find enclosed a Direction to Pay on behalf of our client, Edward Collins Contracting Limited.

We trust that you will find the foregoing to be in order.

Yours Truly,

Michael Cabot

cc. Lee Ballett, via email
Counsel for Crane Canada Co.

Michael Cabot | Partner

Direct 709 702 8902 Fax 709 702 8901 Email michael.cabot@occolaw.com
55 Duckworth Street, St. John's, NL A1C 1E6

Schedule "A"

IRREVOCABLE DIRECTION TO PAY

FROM: EDWARD COLLINS CONTRACTING LTD

TO: THE TOWN OF PLACENTIA

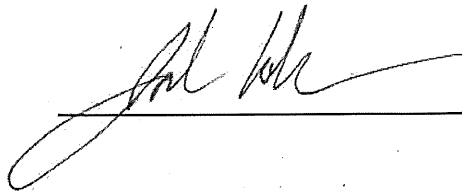
In the respect of the holdback funds identified in correspondence from the Town of Placentia dated September 28, 2021 in the amount of \$178,070.71 plus HST (the "**Funds**") held pursuant to the Multi Year Capital Works Project Part A 17-GI-20-00050 Water connection to Dunville and Part B – 17-SCF-19-00129 Pumphouse Upgrades, the undersigned hereby authorizes and directs you to advance and pay from the Funds to:

Crane Canada Co.
c/o **Duffy Law Office**
640 Torbay Road
St. John's, NL A1A 5G9

This authority and direction is given and made in consideration of a Settlement Agreement entered into by the Edward Collins Contracting Ltd. and Crane Canada Co to resolve outstanding debts due and owing by Edward Collins Contracting Ltd.

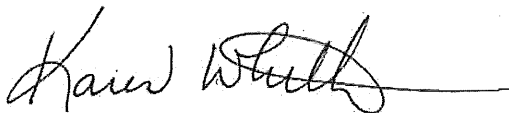
DATED at St. John's, in the
Province of Newfoundland and Labrador
This 4th day of October
A.D. 2021

Edward Collins Contracting Ltd.


_____

KAREN WHITTLE

A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2024.



O'KEEFE & SULLIVAN

BY EMAIL

Borden Ladner Gervais LLP
Solicitors for Western Surety Company
Bay Adelaide Centre, East Tower 22 Adelaide Street West
Toronto, ON, M5H 4E3 Canada
Attn: Mark Borgo and Andrew Punzo
Email: mborgo@blg.com
apunzo@blg.com

Matthew Craig
Stewart McKelvey
Solicitors for the Town of Placentia
Suite 1100, 100 New Gower Street,
St. John's, NL, A1C 6K3
Email: mcraig@stewartmckelvey.com

20 January 2023

Dear Sirs:

**Re: Town of Placentia Mechanics Holdback Funds
Placentia Waterline Upgrades**

As you are aware we represent Edward Collins Contracting Ltd. and its affiliated companies ("ECC"). We refer to the email of Andrew Punzo dated of 05 January 2022 where Mr. Punzo said (on behalf of Western Surety) as follows:

"[We] ...are confirming that Western's preference is for the Town to hold onto the funds rather than paying the funds into court. This approach contemplates one hearing to determine who/where the Town ought to pay the funds.

We will leave it to Matt to advise if the Town does not want to hold the funds and prefers to incur the costs and take affirmative steps under the MLA to pay them into court or otherwise."

With respect to the forgoing, it is our client's position that the mechanics lien holdback funds in the amount of \$237,785.76 currently in the possession of the Town of Placentia should be paid to ECC. These funds constitute an ECC receivable and should be made available for the benefit of its creditors. Western Surety disagrees with that position.

O'KEEFE & SULLIVAN LAWYERS

St. Johns: 80 Elizabeth Ave., Suite 202, St. John's, NL, A1A 1W7
Corner Brook: 40 Main Street, Corner Brook, NL, A2H 1C3
Main Office: (709) 800 6536 | Main Facsimile: (709) 700 0343
www.okeefesullivan.com

Therefore, we would ask that you accept this letter as our **formal demand** that the holdback funds be paid either to ECC's Monitor or directly or into Court (in the CCAA matter) within **five (5) business days** from the date hereof. Failing compliance with this demand, we have instructions to make an application to Court to compel the Town of Placentia to pay these funds into Court and seek our costs on the same.

We trust the foregoing is clear.

Regards,



DARREN D. O'KEEFE
dokeefe@okeefesullivan.com

cc.

Phil Clarke
Grant Thornton Ltd.
phil.clarke@ca.gt.com

TAB CCC

This is **Exhibit "CCC"** to the Affidavit of JAMES TOOTHILL
of the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Western Surety - ECC - Town of Placentia | Bond No. 532,090
Attachments: Town of Placentia Waterline [FILED] 02 Feb 23.pdf

From: Darren O'Keefe <dokeefe@okeefesullivan.com>
Sent: January 31, 2023 4:26 PM
To: Punzo, Andrew <APunzo@blg.com>; Clarke, Phil <Phil.Clarke@ca.gt.com>; Borgo, Mark <MBorgo@blg.com>
Cc: mcraig@stewartmckelvey.com; skour@reconllp.com
Subject: RE: Western Surety - ECC - Town of Placentia | Bond No. 532,090

[External / Externe]

Good Evening,

I'm writing to follow up on the email exchange below.

It is our client's position that the Holdback should be paid into Court, as previously set out in our letter last week. We understand the parties are reluctant to pay the funds into the CCAA matter.

The Town of Placentia seems to have no interest in the funds and is not claiming them for their own benefit. They are primarily concerned about being further dragged into litigation by paying the wrong person. On that basis, we suggest the funds be paid into Court in the Mechanics Lien action so that the Town of Placentia can be released from dealing with this matter further. If we choose to dispute with Western later whether the funds should be transferred to the CCAA action for the benefit of ECC's creditors, we will have one less party to deal with and one less legal fee account to argue about at the end. We of course reserve our rights in that regard.

Please advise if the parties will agree to this. If there is no agreement, we expect to make an application before the end of the week (as a person interested in the appropriate distribution of the holdback funds) to have the monies paid into the Mechanics Lien action.

Regards,

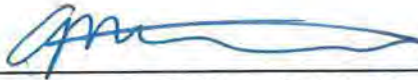
Darren D. O'Keefe
Partner, Lawyer | O'Keefe & Sullivan
P 709 700 0911 | C 709 699 3002
E dokeefe@okeefesullivan.com
80 Elizabeth Ave., 2nd Floor, St. John's, NL A1A 1W7

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immediately and delete the material from any computer.

TAB DDD

This is **Exhibit "DDD"** to the Affidavit of JAMES TOOTHILL
of the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Western Surety - ECC - Town of Placentia | Bond No. 532,090
Attachments: Town of Placentia Waterline [FILED] 02 Feb 23.pdf

From: Punzo, Andrew <APunzo@blg.com>
Sent: February 2, 2023 3:25 PM
To: Borgo, Mark <MBorgo@blg.com>; Darren O'Keefe <dokeefe@okeefesullivan.com>; Clarke, Phil <Phil.Clarke@ca.gt.com>
Cc: mcraig@stewartmckelvey.com; skour@reconllp.com
Subject: RE: Western Surety - ECC - Town of Placentia | Bond No. 532,090

Darren

Further to Mark's email below, we have instructions from Western to bring an application to complete/enforce the settlements in place between ECC, Crane, Rodco and Western. Our view is that this issue can be determined independently, then the Town can pay the funds based on the outcome of the application, rather than into court at this time.

In accordance with the attached Order, and assuming that the Monitor's report will include reference to this dispute, we will be providing Western's materials by February 10th to all interested parties.

Would you like to cooperatively agree on a mutually acceptable timetable for the exchange of all materials, any cross-examinations, and the hearing date subject to Justice MacDonald's availability? It seems unlikely that this matter will be able to be heard during the comeback hearing scheduled for March 17th, although we are prepared to proceed on that day if required.

Thank you,

Andrew Punzo

Partner

T 416.367.6005 | APunzo@blg.com

Bay Adelaide Centre, East Tower; 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

BLG | Canada's Law Firm

Calgary | Montréal | Ottawa | Toronto | Vancouver

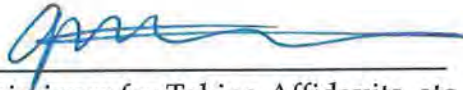
blg.com | To manage your communication preferences or unsubscribe, please click on blg.com/mypreferences/

Borden Ladner Gervais LLP

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TAB EEE

This is **Exhibit "EEE"** to the Affidavit of JAMES TOOTHILL
of the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.

A handwritten signature in blue ink, appearing to be 'J. [unclear]', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

Subject: FW: Western Surety - ECC - Town of Placentia | Bond No. 532,090
Attachments: Town of Placentia Waterline [FILED] 02 Feb 23.pdf

From: Darren O'Keefe <dokeefe@okeefesullivan.com>
Sent: February 2, 2023 2:21 PM
To: Punzo, Andrew <APunzo@blg.com>; Borgo, Mark <MBorgo@blg.com>; Clarke, Phil <Phil.Clarke@ca.gt.com>
Cc: mcraig@stewartmckelvey.com; skour@reconllp.com
Subject: RE: Western Surety - ECC - Town of Placentia | Bond No. 532,090

[External / Externe]

Andrew,

Thank you for the email.

We do not agree with the approach you have suggested. As we have previously set out, there was no settlement agreement.

Please see attached an application which we have filed with the Court. Kindly confirm if you will accept service on behalf of Western and Rodco by email, otherwise we can have Rodco served personally.

Regards,

Darren D. O'Keefe
Partner, Lawyer | O'Keefe & Sullivan
P 709 700 0911 | C 709 699 3002
E dokeefe@okeefesullivan.com
80 Elizabeth Ave., 2nd Floor, St. John's, NL A1A 1W7

This email (including any attachments) is confidential and may contain solicitor client or other privileged information. It is intended only for the use of the addressee(s). If you have received this email in error, please notify the sender immediately, and delete all versions of this email and any attachments.

t the sender immediately and delete the material from any computer.

Khalid, Bushra

From: Borgo, Mark
Sent: February 10, 2023 12:02 PM
To: Khalid, Bushra
Subject: FW: Western Surety - ECC - Town of Placentia | Bond No. 532,090
Attachments: Affidavit of Josh Collins [EXECUTED] 02 Feb 23.pdf

From: Darren O'Keefe <dokeefe@okeefesullivan.com>
Sent: February 2, 2023 2:29 PM
To: Punzo, Andrew <APunzo@blg.com>; Borgo, Mark <MBorgo@blg.com>; Clarke, Phil <Phil.Clarke@ca.gt.com>
Cc: mcraig@stewartmckelvey.com; skour@reconllp.com
Subject: RE: Western Surety - ECC - Town of Placentia | Bond No. 532,090

[External / Externe]

Please see the attached affidavit of Josh Collins, the original will be filed with the Court tomorrow.

We anticipate filing an additional affidavit from Mr. Collins on or before February 10, 2022.

Regards,

Darren D. O'Keefe
Partner, Lawyer | O'Keefe & Sullivan
P 709 700 0911 | C 709 699 3002
E dokeefe@okeefesullivan.com
80 Elizabeth Ave., 2nd Floor, St. John's, NL A1A 1W7

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Cc: mcraig@stewartmckelvey.com; skour@reconllp.com
Subject: RE: Western Surety - ECC - Town of Placentia | Bond No. 532,090

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Partner, Lawyer | O'Keefe & Sullivan
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Cc: mcraig@stewartmckelvey.com; skour@reconllp.com
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Thank you,

Andrew Punzo

Partner
T 416.367.6005 | APunzo@blg.com
Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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Borden Ladner Gervais LLP

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O'KEEFE & SULLIVAN

BY COURIER

The Supreme Court of Newfoundland and Labrador
P.O. Box 937
313 Duckworth Street,
St. John's, NL
A1C 5M3

02 February 2023

To the Registry of the Supreme Court:

Re: 2022 01G 0563
In Re: Rodco Mechanical (2014) Inc. v. Edward Collins Contracting Ltd. et. al.

Please find the following documents enclosed herewith:

1. Interlocutory Application;
2. Supporting Affidavit of Darren D. O'Keefe; and
3. Our firm cheque in the amount of \$13.00.

We trust the foregoing is satisfactory.

Regards,



DARREN D. O'KEEFE
dokeefe@okeefesullivan.com

2022 01G 0563

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER OF the *Mechanics' Lien Act*, Chapter M-3, of the Revised Statutes of Newfoundland and Labrador, 1990

- AND -

IN THE MATTER OF a claim for lien of a claim of lien by Rodeo Mechanical (2014) Ltd. against certain property of the Town of Placentia, as Owner, and against Edward Collins Contracting Limited, as General Contractor;

BETWEEN: RODCO MECHANICAL (2014) INC.

PLAINTIFF

AND: EDWARD COLLINS CONTRACTING LTD.

FIRST DEFENDANT

AND: THE TOWN OF PLACENTIA

SECOND DEFENDANT

SUMMARY OF CURRENT DOCUMENT	
Court File Number (s):	2022 01G 0563
Date of Filing of Document:	02 February 2023
Name of Filing Party or Person:	Edward Collins Contracting Ltd.
Application to which Document being filed relates:	Application pursuant to s. 5, 6, 12.4(1), 23(4) and 26(2)(b) of the <i>Mechanics' Lien Act</i> , R.S.N.L. 1990, c.M-3, as amended (the "Act") for an order that certain holdback funds (the "Holdback") held pursuant to s.6 of the Act be paid into Court and that the Second Defendant be released from any further obligation under the Act or connection with this proceeding.
Statement of purpose in filing:	To seek an order for Holdback funds to be paid into Court and the release of the Second Defendant in the within matter.
Court Sub-File Number, if any:	N/A

INTERLOCUTORY APPLICATION

The Interlocutory Application of Edward Collins Contracting Ltd. ("ECC"), seeks an order as follows:

1. Pursuant to sections 5, 6, 12.4(1), 23(4) and 26(2)(b) of Act that:
 - (a) the Second Defendant be ordered to pay the Holdback into this Honourable Court in satisfaction of its obligations under the Act;
 - (b) Pursuant to section 26(2) of the Act, that upon payment of the Holdback into this Honourable Court, an Order that Mechanics' Lien No.19963 registered on 03 December 2021 be vacated pursuant to section 12.4(1) of the Act;
 - (c) That payment of the Holdback as aforesaid shall discharge the Second Defendant of any further obligation or liability as it relates to the claim of the Plaintiff in the within action; and
 - (d) That upon payment of the Holdback into this Honourable Court, and the discharge of the lien as aforesaid, any interested party may apply to this Honourable Court for a determination of the ownership of the Holdback, including but not limited to any application concerning the correct procedural forum to resolve any disputes with respect to ownership of the Holdback.

MATERIAL FACTS:

2. The Plaintiff is a body corporate, duly incorporated and existing pursuant to the laws of the Province of Newfoundland and Labrador, and has its registered address situate at 257 Conception Bay Highway, in the Town of Conception Bay South, in the Province of Newfoundland and Labrador, with postal code AOA 2R0.
 3. The First Defendant is a body corporate, incorporated and existing pursuant to the laws of the Province of Newfoundland and Labrador, and has its registered office situate at
-

Main Road, P.O. Box 51, in the Town of Jerseyside, Placentia Bay, in the Province of Newfoundland and Labrador, with postal code A0B 2G0.

4. The Second Defendant is a municipality, incorporated and existing under the *Municipalities Act*, 1999, SNL 1999, c.M-24, as amended, with its address at P.O. Box 99, 21 Patterson Drive, in the Town of Placentia, in the Province of Newfoundland and Labrador, with postal code A0B 2Y0. At all times material and relevant to the within action the Second Defendant was the "Owner" of the subject Property (defined below) within the meaning of the Act.
5. The Plaintiff alleges that under a contract between the Plaintiff and the First Defendant (the "**Contract**"), the Plaintiff agreed to supply materials and labour in connection with the construction, development and improvement of the municipal water system and associated structures upon the Owner's land or their interest in same (hereinafter referred to as the "**Property**"), and more particularly:
 - (a) Pressure reducing building and associated structures situate at the corner of Harbour Drive and Route 100, in the Town of Placentia, in the Province of Newfoundland and Labrador;
 - (b) Pressure reducing building and associated structures situate at the corner of Fox Harbour Road and Route 100, in the Town of Placentia, in the Province of Newfoundland and Labrador; and
 - (c) Clarkes Pond pump house and associated structures situate at the corner of Route 100 and the entrance to the Town of Placentia, in the Province of Newfoundland and Labrador.
6. The Plaintiff further alleges that it supplied materials and labour to the First Defendant under the terms of the Contract up to and including 10 November 2021.
7. On 03 December 2021, pursuant to the provisions of the Act, the Plaintiff registered a Mechanics' Lien (bearing No. 19963) upon the interest of the Defendants in the Property (hereinafter the "**Lien**"). The total amount of the Lien was Five hundred eight thousand,

two hundred seventy-one dollars and fifty cents (\$508,271.50), inclusive of HST, plus interest.

8. On 02 February 2022 the Plaintiff filed a Certificate of Action along with the within Statement of Claim.
 9. The Plaintiff acknowledges having received a payment in the amount of One hundred thirty-five thousand dollars (\$135,000.00) since the registration of the Lien.
 10. The Plaintiff alleges that there remains due and owing from the Defendants to the Plaintiff, in respect of the said Contract, the amount of Three hundred eighty-one thousand, nine hundred fifty dollars and twenty-four cents (\$381,950.24), plus interest at the invoiced rate, and that despite demand, the Defendants have failed to pay this remaining amount to the Plaintiff.
 11. Since the date of the Certificate of Action and within claim, no further steps have been taken in the within proceeding.
 12. On 15 July 2022, the First Defendant applied for creditor protection under the provisions of the *Company Creditors Arrangement Act* R.S.C 1985 (the "**CCAA**"). This Honorable Court granted an interim order under Rule 22 of the *Rules of the Supreme Court*, 1986 on 20 July 2022, followed by a first day CCAA order on 05 October 2022, and an amended and restated first day order (the "**ARIO**") on 17 October 2022.
 13. As of the date hereof, the First Defendant is still subject to the ARIO.
 14. Sometime between 01 December 2021 and 15 July 2022, the Plaintiff made a claim against the labour and materials bond of the First Defendant, in place with Western Surety Company of Canada ("**Western**") in the amount of \$381,950.24, being the same amount claimed in the within action (the "**Bonding Claim**").
 15. That sometime between 15 July 2022 and the date hereof, Western paid the Bonding Claim. Western alleges that during this period it obtained an assignment of the Plaintiff's lien rights.
-

16. That Western, the First Defendant and the Second Defendant have not been able to agree as to who is entitled to the Holdback given (i) the intervening ARIO and related CCAA proceedings; (ii) the payment of the Bonding Claim, and (iii) the alleged assignment of the Plaintiff's lien rights.
 17. The First Defendant further says that the parties cannot agree as to which proceeding governs the adjudication of the payment of the Holdback, whether it be the within proceeding, or the CCAA proceeding.
 18. The Second Defendant has indicated it has no interest in the Holdback, other than it does not wish to be part of any ongoing legal dispute concerning the payment of the Holdback. As a result, the Second Defendant has not paid the Holdback.
 19. The First Defendant has no reason to further involve the Second Defendant in the within proceeding concerning ownership of the Holdback and says the dispute is between the First Defendant, Western (as alleged as assignee of Plaintiff) and any other person who may have an interest in the Holdback.
 20. On the basis of the foregoing, the First Defendant seeks an order as follows:
 - (a) That the Second Defendant be ordered to pay the Holdback into this Honourable Court in satisfaction of its obligations under the Act;
 - (b) That pursuant to section 26(2) of the Act, upon payment of the Holdback into this Honourable Court, Mechanics' Lien No. 19963 registered on 03 December 2021 shall be vacated as the Owner has met its obligations under section 12.4(1) of the Act;
 - (c) That payment of the Holdback as aforesaid shall discharge the Second Defendant of any further obligation or liability as it relates to the claim of the Plaintiff and the within proceedings; and
-

- (d) That upon payment of the Holdback into this Honourable Court, and the discharge of the Lien as aforesaid, any interested party may apply to this Honorable Court for a determination of the ownership of the Holdback, including but not limited to an application concerning the correct procedural forum to resolve any disputes with respect to ownership of the subject Holdback.

All of the foregoing is respectfully submitted.

DATED at St. John's, Newfoundland and Labrador, this 02 day of February, 2023.

O'KEEFE & SULLIVAN



DARREND O'KEEFE

Solicitors for Second Defendant
Edward Collins Contracting Ltd.
Suite 202, 80 Elizabeth Ave.
St. John's, NL
A1A 1W7

TO:

ISSUED at St. John's, Newfoundland and Labrador, this _____ day of _____, 2023.

2022 01G 0563

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER OF the *Mechanics' Lien Act*,
Chapter M-3, of the Revised Statutes of
Newfoundland and Labrador, 1990

- AND -

IN THE MATTER OF a claim for lien of a claim of
lien by Rodeo Mechanical (2014) Ltd. against
certain property of the Town of Placentia, as
Owner, and against Edward Collins Contracting
Limited, as General Contractor;

BETWEEN: RODCO MECHANICAL (2014) INC.

PLAINTIFF

AND: EDWARD COLLINS CONTRACTING LTD.

FIRST DEFENDANT

AND: THE TOWN OF PLACENTIA

SECOND DEFENDANT

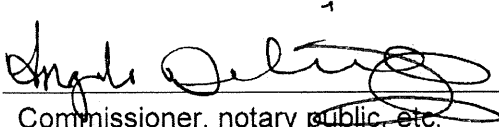
AFFIDAVIT

I, Darren D. O'Keefe, Solicitor for the ECC Group, of the City of St. John's, in the Province
of Newfoundland and Labrador, MAKE OATH AND SAY THAT:

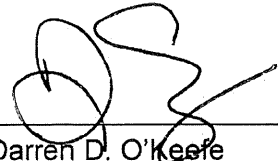
1. I have consulted with Josh Collins, Vice President of the ECC Group, who has provided the affidavit attached hereto as Schedule "A" to confirm that he is familiar with and status of the within application.
 2. That to the best of my knowledge and belief, based on my discussions with Josh Collins, he has reviewed the within application and the facts as stated therein are true to the best of his knowledge, information and belief as set out in the attached affidavit.
 3. That the original of the affidavit attached as Schedule "A" will be delivered to the Court within three (3) business days of the date hereof.
 4. I make this affidavit in support of ECC's position in the within application and for no other or improper purpose.
-

[Signature page to affidavit of Darren O'Keefe dated 02 February 2023]

SWORN at St. John's, Newfoundland and
Labrador, on the 02 day of February
2023, before me



Commissioner, notary public, etc.



Darren D. O'Keefe

ANGELA De CARIA
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2025

SCHEDULE "A"

2022 01G 0563

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

IN THE MATTER OF the *Mechanics' Lien Act*, Chapter M-3, of the Revised Statutes of Newfoundland and Labrador, 1990

- AND -

IN THE MATTER OF a claim for lien of a claim of lien by Rodeo Mechanical (2014) Ltd. against certain property of the Town of Placentia, as Owner, and against Edward Collins Contracting Limited, as General Contractor;

BETWEEN: RODCO MECHANICAL (2014) INC.

PLAINTIFF

AND: EDWARD COLLINS CONTRACTING LTD.

FIRST DEFENDANT

AND: THE TOWN OF PLACENTIA

SECOND DEFENDANT

AFFIDAVIT

I, Josh Collins, Vice President of the First Defendant, resident of the Town of Placentia, in the Province of Newfoundland and Labrador, make oath and say as follows:

1. That I have reviewed the content of the within application, and the same is true to best of my knowledge information and belief.
2. I make this Affidavit truthfully, knowing it to be an offence to willfully swear a false affidavit.

SWORN TO at St. John's,
Newfoundland and Labrador,
this ____ day of February, 2023.
before me:

JOSH COLLINS

2022 01G 0563

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER OF the *Mechanics' Lien Act*, Chapter M-3, of the Revised Statutes of Newfoundland and Labrador, 1990

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2. I make this Affidavit truthfully, knowing it to be an offence to willfully swear a false affidavit.

SWORN TO at St. John's,
Newfoundland and Labrador,
this 02 day of February, 2023.
before me:



CANDACE SEYMOUR

A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2027.



JOSH COLLINS

TAB FFF

This is **Exhibit “FFF”** to the Affidavit of JAMES TOOTHILL
of the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

O'KEEFE & SULLIVAN

BY EMAIL AND FACSIMILE

Western Surety Company
c/o Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street, West, Suite 3400
Toronto, ON M5H 4E3

Via Email:

Andrew Punzo: apunzo@blg.com
Mark Borgo: mborgo@blg.com

02 February 2023

Mr. Punzo:

Re: 2022 01G 0563
In Re: Rodco Mechanical (2014) Inc. v. Edward Collins Contracting Ltd. et. al.

Please find our clients Notice to Produce for Inspection being issued on Western Surety Company pursuant to Rule 32.05.

We trust the foregoing is satisfactory.

Regards,



DARREN D. O'KEEFE
dokeefe@okeefesullivan.com

cc. Phil Clarke, Grant Thornton

2022 01G 0563

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER OF the *Mechanics' Lien Act*,
Chapter M-3, of the Revised Statutes of
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BETWEEN: RODCO MECHANICAL (2014) INC.

PLAINTIFF

AND: EDWARD COLLINS CONTRACTING LTD.

FIRST DEFENDANT

AND: THE TOWN OF PLACENTIA

SECOND DEFENDANT

NOTICE TO PRODUCE FOR INSPECTION

TAKE NOTICE that in accordance with Rule 32.05 of the *Rules of the Supreme Court*, 1986, ECC
requires you to produce the following documents for inspection and copying:

1. All correspondence between Western Surety Company ("**Western**") its agents and counsel,
between the dates of 01 September 2021 and 02 February 2023, and the following parties,
with respect to the subject matter of the within action:
 - a. Rodco Mechanical (2014) Inc. ("**Rodco**"), its agents and counsel;
 - b. The Town of Placentia (the "**Town**"), its agents and counsel; and
 - c. Crane Canada Co. ("**Crane**"), its agents and counsel.

2. A copy of the alleged assignment agreement of Lien No. 19963 between Rodco and Western, along with all correspondence in relation thereto.
3. A copy of all documents provided by Rodco to Western to support their bonding claim in connection with the within matter (and Lien no. 19963) including all correspondence between Rodco and Westerns agents and counsel.

We will accept delivery of these materials electronically.

As per Rule 32.05(2) we ask for your response within four (4) days.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador, this 2nd day of February 2022.

O'KEEFE & SULLIVAN



DARREN D. O'KEEFE

Solicitor for the Applicant

Whose address for service is:

Suite 202, 80 Elizabeth Ave., St. John's, NL
A1C 1W7

TO:

Western Surety Company
c/o Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street, West, Suite 3400
Toronto, ON M5H 4E3

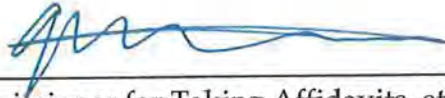
Via Email:

Andrew Punzo: apunzo@blg.com

Mark Borgo: mborgo@blg.com

TAB GGG

This is **Exhibit "GGG"** to the Affidavit of JAMES TOOTHILL
of the City of Regina, in the Province of Saskatchewan, sworn
before me at the City of Regina, in the Province of
Saskatchewan, on February 10th, 2023.



A Commissioner for Taking Affidavits, etc.
For the Province of Saskatchewan

Khalid, Bushra

From: Borgo, Mark
Sent: February 9, 2023 4:01 PM
To: Khalid, Bushra
Subject: FW: Mechanics Lien Act, Rodco Mechanical (2014) Inc. v. Edward Collins Contracting Ltd. et al. [2022 01G 0563]
Attachments: Notice to Produce for Inspection 02 Feb 2023.pdf

From: Punzo, Andrew <APunzo@blg.com>
Sent: February 2, 2023 4:51 PM
To: Darren O'Keefe <dokeefe@okeefesullivan.com>; Borgo, Mark <MBorgo@blg.com>
Cc: Phil Clarke - BDO Canada Ltd. (Phil.Clarke@ca.gt.com) <phil.clarke@ca.gt.com>; Sharon Kour <skour@reconllp.com>; Caitlin Fell <cfell@reconllp.com>; Matthew Craig <mcraig@stewartmckelvey.com>
Subject: RE: Mechanics Lien Act, Rodco Mechanical (2014) Inc. v. Edward Collins Contracting Ltd. et al. [2022 01G 0563]

Darren

We have your Notice attached. Western objects to producing the documents on the basis that the Notice has no application and is void as follows:

1. Western is not a party to the Rodco action;
2. We do not act for Rodco. Western has an assignment of its claims against ECC;
3. In any event, the documents "required" in the Notice are not contemplated by the applicable Rule. It is not clear where the "required" documents are referenced in a pleading, and there are no affidavits or lists of documents;
4. Finally, by asking Western to take steps in a proceeding, we understand ECC wishes to waive the stay of proceedings.

We trust that suffices as an objection. Please note Western's documents are in Regina.

Andrew Punzo

Partner

T 416.367.6005 | APunzo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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Borden Ladner Gervais LLP

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From: Darren O'Keefe <dokeefe@okeefesullivan.com>
Sent: February 2, 2023 3:46 PM
To: Punzo, Andrew <APunzo@blg.com>; Borgo, Mark <MBorgo@blg.com>
Cc: Phil Clarke - BDO Canada Ltd. (Phil.Clarke@ca.gt.com) <phil.clarke@ca.gt.com>; Sharon Kour

<skour@reconllp.com>; Caitlin Fell <cfell@reconllp.com>; Matthew Craig <mcraig@stewartmckelvey.com>

Subject: Re: Mechanics Lien Act, Rodco Mechanical (2014) Inc. v. Edward Collins Contracting Ltd. et al. [2022 01G 0563]

[External / Externe]

Sirs:

Please see attached Notice to Produce for Inspection.

Regards,

Darren D. O'Keefe

Partner, Lawyer | O'Keefe & Sullivan

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O'KEEFE & SULLIVAN

BY EMAIL AND FACSIMILE

Western Surety Company
c/o Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street, West, Suite 3400
Toronto, ON M5H 4E3

Via Email:

Andrew Punzo: apunzo@blg.com

Mark Borgo: mborgo@blg.com

02 February 2023

Mr. Punzo:

Re: 2022 01G 0563

In Re: Rodco Mechanical (2014) Inc. v. Edward Collins Contracting Ltd. et. al.

Please find our clients Notice to Produce for Inspection being issued on Western Surety Company pursuant to Rule 32.05.

We trust the foregoing is satisfactory.

Regards,



DARREN D. O'KEEFE

dokeefe@okeefesullivan.com

cc. Phil Clarke, Grant Thornton

2022 01G 0563

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER OF the *Mechanics' Lien Act*,
Chapter M-3, of the Revised Statutes of
Newfoundland and Labrador, 1990

- AND -

IN THE MATTER OF a claim for lien of a claim
of lien by Rodeo Mechanical (2014) Ltd. against
certain property of the Town of Placentia, as
Owner, and against Edward Collins Contracting
Limited, as General Contractor.

BETWEEN: RODCO MECHANICAL (2014) INC.

PLAINTIFF

AND: EDWARD COLLINS CONTRACTING LTD.

FIRST DEFENDANT

AND: THE TOWN OF PLACENTIA

SECOND DEFENDANT

NOTICE TO PRODUCE FOR INSPECTION

TAKE NOTICE that in accordance with Rule 32.05 of the *Rules of the Supreme Court*, 1986, ECC
requires you to produce the following documents for inspection and copying:

1. All correspondence between Western Surety Company ("**Western**") its agents and counsel,
between the dates of 01 September 2021 and 02 February 2023, and the following parties,
with respect to the subject matter of the within action:
 - a. Rodco Mechanical (2014) Inc. ("**Rodco**"), its agents and counsel;
 - b. The Town of Placentia (the "**Town**"), its agents and counsel; and
 - c. Crane Canada Co. ("**Crane**"), its agents and counsel.

2. A copy of the alleged assignment agreement of Lien No. 19963 between Rodco and Western, along with all correspondence in relation thereto.
3. A copy of all documents provided by Rodco to Western to support their bonding claim in connection with the within matter (and Lien no. 19963) including all correspondence between Rodco and Westerns agents and counsel.

We will accept delivery of these materials electronically.

As per Rule 32.05(2) we ask for your response within four (4) days.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador, this 2nd day of February 2022.

O'KEEFE & SULLIVAN



DARREN D. O'KEEFE

Solicitor for the Applicant

Whose address for service is:

Suite 202, 80 Elizabeth Ave., St. John's, NL
A1C 1W7

TO:

Western Surety Company
c/o Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street, West, Suite 3400
Toronto, ON M5H 4E3

Via Email:

Andrew Punzo: apunzo@blg.com

Mark Borgo: mborgo@blg.com

Appendix “H”

2022 01G 1964
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies*
Creditors Arrangement Act, R.S.C., 1985 c.
C-36 as amended (the “CCAA”)

AND IN THE MATTER OF an application of
Edward Collins Contracting Ltd., Classic
Security Limited, FGC Holdings Limited,
51037 Newfoundland and Labrador Inc. and
H&E Designs Ltd. (collectively “ECC” or the
Company”)

WESTERN SURETY COMPANY
BOOK OF AUTHORITIES

July 31, 2023

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Lawyers for the Claimant,
Western Surety Company

I N D E X

TAB	AUTHORITY
1.	<i>Edward Collins Contracting Limited (Re)</i> , 2022 NLSC 149.
2.	<i>Andrews v. Canada (Attorney General)</i> , 2019 NLSC 42.
3.	<i>Pittman's Enterprises Ltd. v Mike Kelly & Sons Limited</i> , 2021 NLSC 126.
4.	<i>Apotex Inc. v Allergan, Inc.</i> , 2016 FCA 155.
5.	<i>McCabe v Verge</i> , 1999 CanLII 18936 (NL CA).
6.	<i>Olivieri v. Sherman</i> , 2007 ONCA 491 (CanLII).
7.	<i>Killick Fisheries Inc. v Atlantic Treasure Seafoods Limited et al.</i> , 2012 CanLII 31223 (NL SC).
8.	<i>Cellular Rental Systems Inc v Bell Mobility Cellular Inc.</i> , [1995] OJ No. 721.
9.	<i>Stoewner v Hanneson</i> , [1992] OJ No. 697.
10.	<i>L-Jalco Holdings Inc. v Lawrynnowicz & Associates</i> , 2018 ONSC 4002 (CanLII).
11.	<i>Ozon v Lutex et al.</i> , 2015 NLTD 147.
12.	<i>31 Kingsbury Inc. v Delta Elevator Company Limited</i> , 2019 ONSC 3619 (CanLII).
13.	<i>Homewood v Ahmed</i> (2003), 42 CPC (5th) 291.
14.	<i>Northwest Angle 33 First Nations v Razar Contracting Services Ltd. et al</i> , 2023 ONSC 1233.
15.	<i>PCL Constructors Westcoast Inc. v Norex Civil Contractors Inc.</i> , 2009 BCSC 95.
16.	<i>First Vancouver Finance v M.R.N.</i> , 2022 SCC 49 (CanLII).
17.	<i>The Guarantee Company of North America v Manitoba Housing and Renewal Corp. et al</i> , 2017 MBQB 27.

TAB 1



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION
In Bankruptcy and Insolvency**

Citation: *Edward Collins Contracting Limited (Re)*, 2022 NLSC 149

Date: October 14, 2022

Docket: 202201G1964

2022 NLSC 149 (CanLII)

IN THE MATTER OF the *Companies’
Creditors Arrangement Act*, R.S.C. 1985,
c. C-36, as amended (the “CCAA”)

AND IN THE MATTER OF an
application of Edward Collins
Contracting Limited, Classic Security
Ltd., FGC Holdings Ltd., 51037
Newfoundland and Labrador Inc. and H &
E Designs Ltd. (collectively, the
“Companies ”)

- AND -

Docket: 202201G1853

IN THE MATTER OF the *Bankruptcy
and Insolvency Act*, R.S.C. 1985, c. B-3,
as amended (the “BIA”);

AND IN THE MATTER OF the
Receivership of Edward Collins
Contracting Limited, H & E Designs Ltd.,
Classic Security Ltd., FGC Holdings Ltd.
and 51037 Newfoundland and Labrador
Inc.

BETWEEN:

ROYAL BANK OF CANADA

APPLICANT

AND:

**EDWARD COLLINS CONTRACTING
LIMITED, H & E DESIGNS LTD.,
CLASSIC SECURITY LTD., FGC
HOLDINGS LTD. and 51037
NEWFOUNDLAND AND LABRADOR
INC.**

RESPONDENTS

Before: Justice Alexander MacDonald
Edited Transcript of Oral Reasons for Judgment

Place of Hearing:	St. John's, Newfoundland and Labrador
Dates of Hearing:	September 16, 2022 and September 28-29, 2022
Date of Oral Judgment:	October 5, 2022
Appearances:	
Darren D. O'Keefe	Appearing on behalf of the Companies
Neil L. Jacobs, K.C. and Joseph J. Thorne	Appearing on behalf of Royal Bank of Canada
Maeve A. Baird	Appearing on behalf of the Minister of National Revenue

David L. Hearn	Appearing on behalf of the Government of Newfoundland and Labrador
Andrew Punzo and Mark A. Borgo	Appearing on behalf of Western Surety Company
Tim Hill, K.C. and Joshua J. Santimaw	Appearing on behalf of Daimler Truck Financial Services Canada Corporation
Andrew A. Fitzgerald, K.C.	Appearing on behalf of S.R. Stack & Company Ltd.
Phil Clarke	Appearing on behalf of Grant Thornton Limited, the Proposed Monitor
Steven McLaughlin	Appearing on behalf of Ernst & Young Inc.

Authorities Cited:

CASES CONSIDERED: 9354-9186 *Québec Inc. v. Callidus Capital Corp.*, 2020 SCC 10; *Ted Leroy Trucking [Century Services] Ltd., Re*, 2010 SCC 60; *Norcon Marine Services Ltd., (Re)*, 2019 NLSC 238; *Hester Creek Estate Winery Ltd., Re*, 2004 BCSC 345; *United Used Auto & Truck Parts Ltd., Re*, (1999), 12 C.B.R. (4th) 144, 93 A.C.W.S. (3d) 411 (B.C.S.C.); *Montréal (Ville) c. Restructuration Deloitte Inc.*, 2021 SCC 53; *Industrial Properties Regina Limited v. Copper Sands Land Corp.*, 2018 SKCA 36

STATUTES CONSIDERED: *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36; *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

REASONS FOR JUDGMENT

MACDONALD J.:

INTRODUCTION

[1] On July 8, 2022, the Royal Bank of Canada (“RBC”) applied to appoint Ernst and Young Inc. as a court-appointed receiver over all or substantially all of the assets

of Edward Collins Contracting Limited, Classic Security Ltd., FGC Holdings Ltd., 51037 Newfoundland and Labrador Inc. and H & E Designs Ltd (“Companies”). The Companies oppose the application.

[2] On July 18, 2022, the Companies applied for creditor protection and other relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“CCAA”). They asked me to grant an initial order called for under section 11.02(1)(a) of the CCAA (“Initial Order”). If I deny the Initial Order, they ask that I dismiss the receivership application.

[3] On July 19 and 20, 2022, the Court heard the parties on both applications. The Court informed the parties that it could not hear these matters until September 16, 2022.

[4] On July 20, 2022, the Court granted a consent order (“Consent Order”). The Court ordered that any person having a contractual arrangement or a statutory mandate for the supply of goods or services, were restrained until further order from the Court from discontinuing, altering or terminating the supply of such goods or services (“Consent Stay”) until September 16, 2022 (“Consent Stay Period”).

[5] I heard both applications on September 16, 28 and 29, 2022. On September 16, 2022, I continued the Consent Order until now.

[6] The parties agree that I will deal with the CCAA application first. If I dismiss the CCAA application, I will then deal with the receivership application. I now turn to the CCAA application.

CCAA APPLICATION

[7] RBC, the principal secured creditor of the Companies, and Daimler Truck Financial Services Canada Corporation, a secured lender of certain equipment, oppose the CCAA application.

[8] The Western Surety Company (“Surety”), Edward Collins Contracting Limited’s (“Collins Contracting”) construction surety provider, the Canada Revenue Agency (“CRA”), and the other parties at the hearing neither supported nor opposed the CCAA application.

[9] I hereby grant the Companies the Initial Order which I attach as Schedule A. I will now explain why I made this decision.

[10] I have considered:

- (a) Do the Companies have standing under the CCAA?
- (b) Have the Companies satisfied the test to allow me to grant an Initial Order?
- (c) If so, should the Companies’ conduct during the Consent Stay cause me to refuse the Initial Order? and
- (d) Did the Companies act in bad faith?

[11] I will then deal with:

- (a) Should the Court exercise its discretion to grant the administration charge? and
- (b) What conditions should I impose in the Initial Order?

[12] I will first deal with whether the Companies have standing under the CCAA.

Do the Companies have standing under the CCAA?

[13] I find the Companies have standing under the CCAA. The CCAA applies to a debtor company or affiliated debtor Companies, if they are insolvent or have committed an act of bankruptcy and owe more than \$5 million.

[14] The Companies owe RBC in excess of \$5 million and CRA about \$4.9 million. I am satisfied that the Companies are insolvent.

[15] Thus, I find that the Companies qualify as debtor companies under the CCAA. I now turn to whether the Companies met the test to allow me to issue an Initial Order.

Have the Companies satisfied the test to allow me to issue an Initial Order

[16] I find that the Companies have satisfied the test. I will now explain why I made that decision.

[17] Under section 11.02(1)(a) of the CCAA, I may pursuant to an initial order stay all proceedings against the Companies for not more than 10 days.

[18] The Supreme Court of Canada in 9354-9186 *Québec Inc. v. Callidus Capital Corp.*, 2020 SCC 10 (“*Callidus*”), gives me guidance on the purpose and objectives of the CCAA in paragraphs 39 to 42. I will now summarize that guidance.

[19] The CCAA is one of three principal insolvency statutes in Canada. Canada's insolvency statutes pursue an array of overarching remedial objectives that reflect the wide ranging and potentially “catastrophic” impacts insolvency can have.

[20] These objectives include:

- (a) providing for timely, efficient and impartial resolution of a debtor's insolvency;
- (b) preserving and maximizing the value of a debtor's assets;
- (c) ensuring fair and equitable treatment of the claims against a debtor;
- (d) protecting the public interest; and
- (e) balancing the costs and benefits of restructuring or liquidating the company.

[21] Among these objectives, the CCAA generally prioritizes avoiding the social and economic losses resulting from liquidation of an insolvent company.

[22] The typical CCAA case has historically involved an attempt to facilitate the reorganization and survival of the pre-filing debtor company in an operational state – that is, as a going concern.

[23] However, the CCAA is fundamentally insolvency legislation, and thus it also “has the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by the firm's financial distress ... and enhancement of the credit system generally”. (*Callidus* at para. 42).

[24] CCAA proceedings have evolved to permit outcomes that do not result in the emergence of the pre-filing debtor company in a restructured state, but rather involve some form of liquidation of the debtor's assets under the auspices of the CCAA itself. Such scenarios are referred to as “liquidating CCAs”, and they are now commonplace in CCAA applications.

[25] Liquidating CCAs take diverse forms and may involve:

- (a) the sale of the debtor company as a going concern;
- (b) an "en bloc" sale of assets that are capable of being operationalized by a buyer;
- (c) a partial liquidation or downsizing of business operations; or
- (d) a piecemeal sale of assets (*Callidus* at para. 43).

[26] In this case, the Companies seek the reorganization and survival of the Companies as a going concern. That is not to say the Companies’ plans may change when it formulates its final restructuring plan.

[27] Under Section 11.02(1) of the CCAA, I may, in an initial order, make any orders I see fit. I may:

- (a) Stay proceedings under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“BIA”); and
- (b) restrain proceedings in any existing action against the Companies and prohibit any new action against them.

[28] I cannot make the Initial Order effective for more than 10 days.

[29] Under subsection 11.02(2) of the CCAA, I can amend the Initial Order and extend the stay at a so-called comeback hearing. I must hold the hearing before the expiry of the stay in the Initial Order. I may amend these Orders. I will call these amendments the Amended Orders.

[30] Under section 11.02(3) of the CCAA, I cannot grant an Amended Order unless the Companies satisfy me that:

- (a) circumstances exist that make the extension appropriate; and
- (b) they are acting in good faith and with due diligence.

[31] Section 11.02(3)(b) of the CCAA says, “in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence”. Subsection 2 deals with orders after the initial order.

[32] Despite the wording of section 11.02(3)(b) indicating “good faith and due diligence” applies only to orders under subsection (2), that being orders “other than initial applications”, the Supreme Court of Canada in *Ted Leroy Trucking [Century Services] Ltd., Re*, 2010 SCC 60 at para. 69, determined good faith and due diligence applies to initial orders as well.

[33] It said at paragraph 70 that “the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising CCAA authority”.

[34] Under section 11.7(1) of the CCAA, when I make an Initial Order, I must appoint a person to monitor the business and financial affairs of the Companies. The monitor must be a trustee, defined in section 2 of the BIA. The Companies ask that I appoint Grant Thornton Limited, represented by Phil Clarke, Senior Vice-President and Bankruptcy Trustee (“Proposed Monitor”).

[35] During the currency of the Initial Order and comeback Amended Orders, the Companies attempt to complete a plan of compromise and arrangement with its creditors. The Proposed Monitor assists them. The Proposed Monitor, as an officer of the Court, periodically reports to the Court on the progress of the plan.

[36] I will now turn to the circumstances the Companies must show me to allow me to grant the Initial Order.

Legal Test – Contents of Plan

[37] Justice Orsborn in *Norcon Marine Services Ltd., (Re)*, 2019 NLSC 238, said at paragraph 15, that I should consider whether the Companies have some chance, by engaging the CCAA process, of furthering the purposes of the legislation.

[38] Justice Orsborn observed the Companies must overcome a low bar to trigger the CCAA process. However, the Companies must do more than simply ask for time.

[39] The Companies must put forth “a germ of a plan” that suggests “a reasonable possibility of restructuring” (*Norcon* at para. 16). However, they need not present a fully developed plan at the initial hearing, nor are they required to have the support of all of their creditors.

[40] To put this test in context, I will now describe the financial difficulties the Companies find themselves in and how these difficulties arose.

Companies’ Financial Woes

[41] Collins Contracting is a general contractor specializing in roadworks. As described in the affidavit of David Savoie, Business Specialist with RBC, in the 2019

fiscal year, its revenue was \$12.1 million and its net income was \$393,000. In the 2020 FY, its revenue was \$11.4 million and its profit was \$310,000.¹ Significantly, Collins Contracting's obligation to CRA increased from about \$60,000 to about \$451,000.²

[42] He says that in the 2021 FY, the Companies' revenue decreased to \$8.5 million. Its 2020 FY profit became a \$3.4 million loss in 2021. This loss was incurred despite Collins Contracting's \$1.2 million emergency wage subsidy from Canada.³

[43] He further says the information in the 2021 financial statements caused Collins Contracting to be in default of the RBC loan facility because it no longer had minimum debt service coverage ratio of 1.25X called for in the loan facility.⁴

[44] Because of the Companies' financial difficulties and default, on December 31, 2021, RBC, Collins Contracting, H & E Designs Ltd., Frank Collins and Josh Collins executed the forbearance agreement.

[45] In the agreement, Collins Contracting acknowledges it is in default of its obligations to RBC. It agreed to provide interim financial statements and CRA balance reporting.

[46] It also agreed, at paragraph 1(e), to "confirm the rights and remedies available to the Bank under the Security are fully and immediately enforceable by [RBC] and hereby waive all notice periods of application thereto, including notice period of application under Section 244 of the [BIA]".

¹ Affidavit of David Savoie, filed August 5, 2022, [Savoie Affidavit], at para. 15.

² *Ibid.* at para. 16.

³ *Ibid.* at para. 34.

⁴ *Ibid.*

[47] In the second recital of the agreement, RBC agreed not to call its loans until February 28, 2022.

[48] Collins Contracting provided RBC monthly interim year-to-date financial statements from October, 2021 to March, 2022. All showed a continued deterioration of Collins Contracting's financial position.⁵

[49] The March 2022 interim statement, provided to RBC on June 9, 2022, shows revenue of \$5.3 million, compared to forecasted revenue of \$15.2 million, and a net loss of \$2.1 million compared to forecasted net income of \$3 million. The amount owing to CRA was then about \$3.2 million.⁶

[50] Thus, over the 2021 FY and up to March 2022 FY, the Companies incurred a cumulative loss of about \$5.5 million. Its CRA obligation increased from \$451,000 in 2020 to \$3.2 million.

[51] RBC demanded its loans on July 17, 2022. RBC was owed, as of June 15, 2022, more than \$5 million, together with interest, expenses and fees.⁷

[52] CRA filed an affidavit on September 12, 2022, of Mark Lohnes, Resource Officer/Complex Case Officer with CRA. He said that the Companies owe CRA about \$4.9 million. He said that over \$3.3 million is for deemed trust unremitted employee payroll source deductions and HST.⁸ This, excluding interest and penalties, is the so-called deemed trust debt.

⁵ *Ibid.* at paras. 39-51.

⁶ *Ibid.* at para. 51.

⁷ Receivership Originating Application, filed July 8, 2022 at para 11.

⁸ Affidavit of Mark Lohnes, filed September 12, 2022, [Lohnes Affidavit] at para. 38.

[53] CRA says Collins Contracting owes almost \$4 million of this amount. It says about \$2 million (excluding penalties and interest) is for deemed trust for unremitted employee payroll source deductions (“Payroll deemed trust debt”) and about \$756,000 for HST deemed trust debt.⁹

[54] In paragraph 38, CRA says the remainder of the Companies owe CRA about \$939,000. About \$348,000 (excluding penalties and interest) is for Payroll deemed trust debt and about \$205,500 is for HST deemed trust debt.¹⁰

[55] CRA says that Collins Contracting last remitted amounts in March 2022, and it was the last of the Companies to do so. The Proposed Monitor said, and I accept, that he made remittances over the summer of Collins Contracting’s monies owed to CRA for that period, but he did not remit any of the arrears.

[56] CRA is in the process of reviewing the Companies’ accounts, and it will determine the final arrears after that review. The timing of this review is currently within the control of CRA, and its counsel could not provide me any guidance on when this review might begin or end.

[57] The Companies provided little explanation for their financial difficulties in its application or in Francis Collins’ July 18, 2022 affidavit. They did not explain how it incurred the CRA debt.

[58] On July 18, 2022, Francis Collins, director of the Companies, filed an affidavit supporting the initial application. He provided me with the Companies’ 2021 FY financial statements, but provided no cash flow statements or any other historical financial data.

⁹ *Ibid.* at para. 19.

¹⁰ *Ibid.* at para. 38.

[59] Francis Collins, addressed the CRA balances by saying, “As appears from the Company’s books and records, there is currently a significant amount outstanding to the Canada Revenue Agency (“CRA”). The Company is actively working with CRA to determine the full outstanding balances and to work on a payment plan to relieve this liability. The Company is hopeful that the CCAA proceedings will bring CRA to the table to discuss options, as to date CRA has not been forthcoming with information or responsive to requests from the Company to discuss the Company’s CRA’s position of potential discrepancies in CRA’s accounting.”¹¹

[60] This statement shows, at best, a disturbing lack of awareness of how the Companies incurred almost \$5 million in CRA obligations, including almost \$3.3 million in deemed trust amounts for both income tax and HST.

[61] On September 23, 2022, Josh Collins filed an affidavit to provide me with further information. He answers the question, “How did [Edward Collins Contracting Limited] get itself into financial trouble and accumulate such a high amount of CRA Debt?”¹² He says two primary events caused both.

[62] The first event is the purchase of a defective asphalt plant. Collins Contracting underestimated the risk of purchasing a defective plant and the cost and time necessary to rectify the plant deficiencies and to bring its software up-to-date.¹³

[63] The second event is the collapse of Collins Contracting’s revenue during COVID-19.¹⁴

¹¹ Affidavit of Francis Collins, filed July 18, 2022 at para. 12.

¹² Affidavit of Josh Collins, filed September 23, 2022 [Collins’ Second Affidavit], at heading A.

¹³ *Ibid.* at paras. 3-12.

¹⁴ *Ibid.* at paras. 14-25.

[64] He says that both events contributed to a loss of almost \$3 million in 2021.¹⁵ RBC said the loss was \$3.4 million and I can only assume this was because Mr. Savoie relied on interim rather than final statements.

[65] Josh Collins admits that Collins Contracting maintained its liquidity despite these losses by not paying their CRA obligations,¹⁶ and in May 2020 by borrowing \$1 million from RBC by way of a \$1 million loan under the so-called “Highly Affected Sectors Credit Availability Program” (“HASCAP”). The Government of Canada guaranteed this HASCAP loan. This program is designed to support companies that suffered financially during the COVID-19 epidemic.

[66] The Proposed Monitor confirms in his first pre-filing report that the unpaid CRA funds “were used to offset the acquisition and operating losses incurred” for capital acquisitions, losses for underutilized equipment and other operational losses.¹⁷ In paragraph 21(b), the Proposed Monitor also identifies that Collins contracting lost more than \$1 million dollars on an unfavourable bridge construction contract.

[67] Thus, I find the triggering causes of the Companies’ financial crisis are an improvident capital purchase, an unfavourable construction contract, and the general collapse of the Companies’ revenue and its resulting operating losses. This in turn caused the Companies not to pay the deemed trust debt to CRA to fund these losses.

[68] This, together with the collapse in the Companies’ retained earnings¹⁸ and profits and the increase in CRA’s deemed trust debt, caused RBC to take action to protect its security from further erosion.

¹⁵ *Ibid.* at para. 17.

¹⁶ *Ibid.* at para. 18.

¹⁷ Pre-filing Report of Grant Thornton Limited, September 15, 2022 [Proposed Monitor’s First Pre-filing Report], at para. 21(c).

¹⁸ *Supra* note 12 at para. 20 (from about \$2.9 million to almost nothing in 2021).

[69] Having discussed the cause of the Companies' financial problems, I now turn to whether the Companies put forth "a germ of a plan" that suggests "a reasonable possibility of restructuring". (*Norcon* at para. 16)

Companies' "Germ of a Plan"

[70] I find that they have. I now will explain why I made that decision.

[71] The Companies' plan is contained in the Proposed Monitor's first and second pre-filing reports and in affidavits from Josh Collins.

[72] The plan is based on two pillars. The first pillar is the prospect of Travelers Capital refinancing the Companies' debt obligations. The Companies provided me with an executed "summary of terms and conditions" dated September 22, 2022. Joshua Collins is named as a guarantor. I will call this the Term Sheet.

[73] The Term Sheet indicates that Travelers will lend the Companies 90% of the appraised forced liquidation value of the Companies' equipment value and 50% of the appraised value of certain real property. Travelers estimates this value is \$6,796,490.

[74] The Companies provided me with the forced liquidation value appraisal on September 23, 2022. The Proposed Monitor tells me the valuation supports the valuation of the equipment in the Term Sheet.

[75] Travelers also requires that the Companies provide it with:

- (a) completed environmental reports on specified property;
- (b) real estate appraisals;

- (c) forward-looking income and cash flow statements; and
- (d) Year-to-date statements and historical three-year prior financial statements.

[76] On September 22, 2022, the Companies filed copies of:

- (a) an appraisal of a residence on Lakeview Dr. in Deer Lake;
- (b) A real estate agent's assessment of a property at 30 Reid's Lane in Deer Lake;
- (c) an appraisal of Collins Contracting's office building in Placentia;
- (d) an appraisal of a real estate development;
- (e) a purchase and sale agreement for property on Charter Avenue in Placentia; and
- (f) an offer to purchase property at 28-30 Reid's Lane in Deer Lake.

[77] The total value of real estate described in these filings is about \$2.75 million.

[78] The Term Sheet also provides that Travelers must be satisfied that the Companies have paid all CRA priority payments. As the CRA priority payments are not current, I presume they mean that the CRA priority debt must be retired from the proceeds of the loan.

[79] The Term Sheet lists all the Companies as borrowers. Thus, this condition would include deemed trust amounts due to CRA, or at least that portion that could rank ahead of Travelers' security if they remain unpaid on closing.

[80] However, the Proposed Monitor testified at the hearing that Travelers has agreed that the HST deemed trust debt need not be paid on closing. He also said he “understands” that CRA is open to compromising the HST deemed trust debt.

[81] Thus, it seems that Travelers will expect that the HST liability will be resolved by agreement with CRA or pursuant to a CCAA order before it advances funds under the Term Sheet.

[82] Travelers says in the Term Sheet that the total outstanding amounts to secured creditors and the CRA total is \$7,058,337. It says this must be paid on closing.

[83] Josh Collins in his affidavit filed September 13, 2022, said there is a shortfall of about \$250,000 between the amount of the Travelers’ loan and the debt the Companies must repay on closing. I will call this the Loan Gap. He said the Companies can finance the Loan Gap through a variety of sources being from:

- (a) \$253,000 owed to the Companies by Olympic Construction Ltd. He did not provide me with any evidence of this amount or an acknowledgement from Olympic that this amount is due;
- (b) a potential sale of real property in Deer Lake based on an expression of interest with an asking price of \$500,000. He said, “If this offer materializes, we will net approximately \$250,000”.¹⁹ On September 22, 2022, he provided me with an offer of purchase and sale for a piece of property in Deer Lake for less than that amount; and
- (c) sale of equipment by the Companies for about \$250,000 once they “further review our operational needs”.²⁰ This is highly contingent. It is subject to a review of operational needs. I have no evidence of the value of this equipment. I do not know if Travelers intends to take security over this equipment.

¹⁹ Affidavit of Josh Collins, filed September 13, 2022 [Collins’ First Affidavit], at para. 67(b).

²⁰ *Ibid.* at para. 67(c).

[84] Even if the Companies can access this money, I do not accept that the Loan Gap is only \$250,000.

[85] The Proposed Monitor provided an analysis of the amount Collins Contracting owes to CRA. He largely agrees with CRA's position but states that interest and penalties are not deemed trust amounts.

[86] He concludes that Collins Contracting and 51037 Newfoundland and Labrador Inc., after excluding interest and penalties, owes about \$2.2 million in Payroll deemed trust debt. He acknowledges that CRA claims Collins Contracting owes it about \$756,000 in HST deemed trust debt. However, he did not do an analysis in which he breaks out interest and penalties.

[87] He did not do a similar analysis for the remaining Companies. I only have CRA's evidence. It said that Classic Security Ltd. owes about \$348,000 in payroll deemed trust amounts and about \$151,000 in HST deemed trust debt, while H & E Designs Ltd. and FGC Holdings Ltd. owe about \$28,000.²¹ I do not know what portion of these is interest and penalties.

[88] In his second report filed on September 26, 2022, the Proposed Monitor disagrees with Josh Collins' Loan Gap. He said it is \$473,362.²²

[89] He said that the Companies now intend to close the Loan Gap by selling instead of financing one of the Reid Lane properties, thereby achieving a contribution of 100% of the sale price rather than 50% of its appraised value. This would net \$199,000.²³

²¹ Affidavit of Mark Lohnes, filed September 12, 2022 at paras. 27, 34 and 37.

²² Pre-filing Report of Grant Thornton Limited, filed September 26, 2022 [Proposed Monitor's Second Pre-Filing Report] at 5.

²³ *Ibid.* at para. 17(a).

[90] Both he and Josh Collins say Collins Contracting is a beneficiary under a \$500,000 insurance policy now, as the insureds died.²⁴ The Collinses say they discovered the existence of this policy at the end of August 2022.

[91] The Proposed Monitor said that only half of this amount, or \$250,000, is available to offset the Loan Gap. The other half will be used to bolster Collins Contracting's cash flow.²⁵ I will discuss Collins Contracting's cash flow statements later in this decision.

[92] The Proposed Monitor described how Collins Contracting intends to sell equipment to realize more cash than Travelers 90% forced liquidation financing would generate.²⁶

[93] However, the Loan Gap is likely larger unless RBC continues to hold some of its debts, notably the HASCAP.

[94] Furthermore, the Proposed Monitor says the Companies' estimated value of real estate is about \$3.3 million.²⁷

[95] However, the Companies' submitted appraisals, drive-by estimates and agreements of purchase and sale totaling about \$2.7 million. Furthermore, the Proposed Monitor says the real estate value is \$65,000 less than Travelers' estimate.²⁸ Although the difference is not material to my decision, I ask the Proposed Monitor to explain the discrepancy at or before the comeback hearing.

²⁴ *Ibid.* at para. 17(b).

²⁵ *Ibid.* at paras. 17(c) and 17(d).

²⁶ *Ibid.* at para. 18.

²⁷ *Ibid.* at para. 14(a).

²⁸ *Ibid.* at para.16(a).

[96] Travelers provides in the Term Sheet that the Companies are to repay the loan principal in 24 monthly blended installments of principal and interest, with interest at the rate of 12.75%. The loan amounts are amortized up to 120 months for real estate, and 60 for equipment. The loan balance is payable at the end of the 24 months.²⁹

[97] This would seem to require the Companies to repay large sums of monies over two years. Presumably, the Companies will need to satisfy Travelers that they can meet this obligation when it submits its forward-looking pro-forma income statement.

[98] Finally, the Term Sheet is subject to a condition that said, “Final approval of the subject Loan transaction and the Loan Agreement, in form and in substance, by [Travelers’] credit committee.”³⁰ Thus, Travelers is not yet bound to the Term Sheet.

[99] I will now turn to the second pillar of the Companies’ restructuring plan - positive cash flow from existing contracts.

The Cash Flow Statements

[100] The CCAA requires the Companies to provide weekly projected cash flow statements. The Companies should make disclosure of all material facts known to them (see *Hester Creek Estate Winery Ltd., Re*, 2004 BCSC 345 at para. 5). The standard of disclosure expected of the Companies in these cash flow statements must be realistic (see *United Used Auto & Truck Parts Ltd., Re*, (1999), 12 C.B.R. (4th) 144, 93 A.C.W.S. (3d) 411 at para. 14 (B.C.S.C.).

²⁹ *Supra* note 19, Tab L, Travelers Term Sheet [Travelers Term Sheet].

³⁰ Travelers Loan Sheet, Conditions Precedent to Closing, clause 1.

[101] I find that these cash flow statements are adequate to support an Initial Order. In the absence of other evidence, the disclosure is realistic and there is no evidence that the Companies have not disclosed all material facts known to them.

[102] If this is not so, the Companies risk an application to set aside the Initial Order. In such an application, the test is whether the undisclosed facts may well have affected the outcome had they been known at the time of the application.

[103] In his first pre-filing report, the Proposed Monitor submitted cash flow statements for a 19-week period from September 17, 2022 to January 27, 2023. He said he prepared cash flow statements for 19 weeks because this gives the Companies time to complete the Travelers refinancing.

[104] In the cash flow statements, found at Tab M of his first pre-filing report, the Proposed Monitor said:

- (a) the project cash receipts, mostly from 18 existing construction contracts, is \$2.84 million. Its costs associated with this revenue is about \$1.19 million;
- (b) the Companies' cash flow before operating expenses will be about \$1.65 million. Operating expenses will be about \$770,000. Thus, the Companies will have a net cumulative cash position of \$883,000; and
- (c) the cash flow statement includes a speculative "Potential New Projects" column. The Proposed Monitor said these might contribute net cash of \$1.2 million. But he does not include this amount as part of his calculated cumulative cash position.

[105] I have limited information on the status of Collins Contracting's contracts. The Proposed Monitor makes a general statement that the Collins Contracting's trade accounts receivables are about \$1.39 million. He said that Collins Contracting's counterparties owe them holdbacks, liquidated damages and force accounts (presumably, he means change orders under existing contracts) of about \$1 million.³¹

[106] I do not know if Collins Contracting's counterparties contest these amounts. There is no evidence that the Proposed Monitor did a risk assessment on the potential recovery of these amounts. However, I will not require this information for the purposes of the Initial Order.

[107] The Proposed Monitor said that another counterparty terminated a contract that he did include in his original cash flow. He then submitted revised cash flow statements to address the \$225,000 deficiency arising out of the termination. This project is for the Placentia Wellness Centre.³²

[108] He said Collins Contracting will replace this revenue by allocating \$250,000 from the life insurance proceeds.³³

[109] In his second report, the Proposed Monitor said, "The operational assumptions required to be met to successfully achieve the refinancing include (a) [the Companies] achieve or exceed their cash flow forecast".³⁴

[110] Josh Collins responded to my request I made on the first day of the hearing. He said, "Of the four projects where we currently have claims, we are in discussions on two of these projects [the same ones referred to by the Government of Newfoundland and Labrador that I refer to later in this decision] regarding [Collins

³¹ *Supra* note 17 at para. 22(a).

³² *Supra* note 22 at para. 20(a).

³³ *Ibid.* at para. 20(b).

³⁴ *Ibid.* at paras. 19 and 19(a).

Contracting] potentially returning to the projects to complete the work. As of the date of this affidavit we have been asked to present a plan to Western Surety on how we intend to complete the work, for their approval. That work is ongoing.”³⁵

[111] I get some comfort from the Proposed Monitor’s comments in paragraph 38 of his first pre-filing report. He says that he “has also reviewed the support provided by the Company for the Probable and Hypothetical Assumptions and the preparation and presentation of the Cash Flow Projection”.³⁶

[112] He goes on and says, “Based on [my] review, nothing has come to [my] attention that causes [me] to believe that, in all material respects:

- (a) the Probable and Hypothetical Assumptions are not inconsistent with the purpose of the Cash Flow Projection; and
- (b) ... the Probable and Hypothetical Assumption, developed by management are not suitably supported and consistent with the Company’s plans or do not provide a reasonable basis for the Cash Flow Projection, given the Probable and Hypothetical Assumptions”.³⁷

[113] However, this comfort goes only so far as he says, “The Cash Flow Forecast has been prepared by management using probable and hypothetical assumptions set out”³⁸ in the Cash Flow Projections. Thus, Collins Contracting prepared the Cash Flow Projections and the Probable and Hypothetical Assumptions.

[114] The Proposed Monitor did not include two contracts (Numbers 46–21PHP and 12–21PHC) with the Minister of the Department of Transportation and Infrastructure

³⁵ *Supra* note 12 at p. 35.

³⁶ *Supra* note 17 at para. 38.

³⁷ *Ibid.* at para. 38.

³⁸ *Ibid.* at para. 37.

(“Province”) in his cash flow projections. On September 23, 2022, the Province took a motion with respect to these contracts.

[115] It said that on April 8, 2022, the Province declared them in default. The Province called on the Surety’s performance bond. The Province has not terminated the two contracts. It said that the Surety accepted responsibility under the bonds.

[116] As the Proposed Monitor did not include these contracts in his cash flow statements, they are not relevant to this application, except to the extent they may give rise to concerns about the other contracts’ status.

[117] Under section 21 of the *CCAA*, the owner of the projects can claim set-off. If the Surety responds to these defaults, it may step into the shoes of the owner and then claim set-off.

[118] However, the Supreme Court of Canada in *Montréal (Ville) c. Restructuration Deloitte Inc.*, 2021 SCC 53, at para. 63 said, “Although s. 21 of the *CCAA* indicates that there is a right to effect compensation in proceedings under that statute, we are of the opinion that it applies only to compensation [set-off] between debts that arise *before an initial order is made* (in other words, ‘pre-pre compensation’). [Emphasis in original.]

[119] It also said at paragraph 63, “s. 21 of the *CCAA* does not grant creditors a right to pre-post compensation that would be shielded from a supervising judge's power to order a stay under ss. 11 and 11.02 of the *CCAA*.”

[120] At paragraph 62 it said “it is our view that in the vast majority of cases an initial order will, and should, stay a creditor's right to set up pre-post compensation against the debtor. Finally, where an initial order has stayed the right of creditors to pre-post compensation, the court retains the discretion to lift the stay having regard to the circumstances.”

[121] It explained the policy reason for this decision by saying at paragraph 75, “allowing pre-post compensation would undermine the effectiveness of the status quo period, would jeopardize the survival of the debtor company or the business it operates and could derail the restructuring process”.

[122] If Collins Contracting’s counterparts had declared any of the contracts in default, this could undermine the prospect of Collins Contracting’s cash flow from these contracts to the extent they seek so-called “pre-pre compensation”.

[123] I do not know whether the Surety will continue to provide construction bonding in light of these two defaults. Lack of bonding might compromise Collins Contracting’s prospects for new work.

[124] Counsel for the Surety told me that owners have declared other Collins Contracting’s contracts in default, but he had no instructions on this point. He said it was unlikely the Surety will continue to offer bonding to Collins Contracting.

[125] Counsel for the Companies advised that I should not accept this evidence as it was hearsay statements from counsel for the Surety. I agree. Surety’s counsel said he had no instructions on these points. The Surety did not submit any evidence.

[126] In his September 23, 2022 affidavit, Josh Collins provided me with information about Collins Contracting’s bonding facility with Western Surety. Such a bonding facility is essential if Collins Contracting is to bid on any significant provincial contracts. The Surety’s counsel told the Court that while a Surety facility is in place, the Surety reserves the right to issue bonds in its sole discretion.

[127] The Surety’s support is a critical part of Collins Contracting continuing to work its way out of its financial problems. Josh Collins said in paragraph 26 of his affidavit that in the last 30 days, it has bid \$1 million in new construction work. He did not tell me that these contracts required construction bonds.

[128] Again this is not determinative of whether I will grant the Initial Order, but it represents a significant contingency that Collins Contracting must resolve if it successfully restructures as a going-concern entity.

[129] Thus, the Companies' plan depends on a number of contingencies. The critical ones are:

- (a) satisfaction of the Term Sheet conditions precedent, including real estate appraisals supporting Travelers' loan valuation of \$6,796,490;
- (b) successful efforts to close the Loan Gap;
- (c) the consent of RBC to remain as the HASCAP lender subordinate to Travelers and if not, assignment of this debt to another;
- (d) resolution of the CRA deemed HST debt and interest and penalties in all of the debt; and
- (e) the accuracy of the 17-week cash flow statements provided by the Proposed Monitor.

[130] The Companies' restructuring contingency list is daunting. However, any insolvent debtor who seeks protection under the CCAA likely has a similar list.

[131] The Companies seek an Initial Order. That order will expire in 10 days. The Companies have provided more than a "germ of a plan". They presented a plan that, if successful, could present a reasonable possibility of restructuring.

[132] Therefore, the Companies have established that circumstances exist which would allow me to grant the Initial Order. I now turn to whether the Companies' conduct during the Consent Stay cause me to refuse the Initial Order?

Should the Companies' conduct during the Consent Stay cause me to refuse the Initial Order?

[133] I find that the Companies' conduct during the Consent Stay does not cause me to refuse the Initial Order. I will now explain why I made that decision.

[134] RBC says the Companies' conduct during the Consent Stay is relevant for three reasons:

- (a) The first reason is the Companies' late filings show they did not act with due diligence;
- (b) The second reason is the Companies' inaction to address its financial problems show they did not act with due diligence; and
- (c) The third reason is that the Companies should meet a more onerous standard of whether they have "a germ of a plan" because they had advantage of the Consent Stay Period.

[135] I will first deal with the Companies' late filings.

Did the Companies' late filings show they did not act with due diligence?

[136] I find that the Companies have acted with due diligence to the extent they need to in their application for the Initial Order. I will now explain why I made this decision.

[137] The Saskatchewan Court of Appeal in *Industrial Properties Regina Limited v. Copper Sands Land Corp.*, 2018 SKCA 36 at para. 23 said, "Although it is a consideration for granting an initial order, courts generally defer the in-depth analysis of good faith and due diligence to subsequent applications." It continued

and said, “If, however, the court determines the debtor corporation is not seeking CCAA protection in good faith or there is *convincing* evidence of a lack of due diligence, the court may deny an initial order ...”. [Emphasis added.]

[138] Applicants often operate under severe financial pressure when they apply for an Initial Order. They have limited time to prepare their application and information by necessity is usually preliminary. As CCAA applications are usually urgent, the court may receive information shortly before the hearing. The timelines are necessarily compressed.

[139] This issue might not have arisen if the Companies had taken its application in September instead of July and made filing shortly before the hearing dates. However, the Court could not schedule the hearing until September 16, 2022, two months after the initial filing.

[140] The parties agreed on the Consent Order. The order included the Consent Stay. Both RBC and the Companies agreed to this in their interest. The Consent Stay likely benefits both the Companies and RBC as it preserves the status quo for both for more than two months. Critically, this is not a stay under the CCAA, or under the BIA.

[141] In a perfect world, the Companies would have taken advantage of the Consent Stay to improve their plan. However, this likely proved to be impossible because on August 5, 2022, the Companies replaced the Proposed Monitor with Grant Thornton.

[142] This replacement was within their rights. The Proposed Monitor is a critical part of the CCAA process. An applicant must have confidence in their monitor. It is not unreasonable for a new monitor to need some time to file a preliminary pre-filing report.

[143] There is no doubt the Companies filed information at the last minute. The Companies did not file their cash flow statements until the Proposed Monitor did so in his first pre-filing report, one day before the hearing. He filed a revision in his second pre-filing report, after the hearing started. Section 10(2) of the CCAA requires that these must accompany the application.

[144] The receivership and CCAA applications were heard together. RBC's evidence was all filed in the receivership application. A summary of the key filings is set out in this table:

Documents	Filing Date
RBC Receivership Application (<i>BIA</i>) and supporting Affidavit	July 8, 2022
Companies' initial Application filed and supporting Affidavit	July 18, 2022
Consent Order	July 20, 2022
Companies' termination of S.R. Stack & Company Ltd. as Proposed Monitor	August 5, 2022
Affidavit of David Savoie, RBC (<i>BIA</i> proceeding)	August 5, 2022
Companies' Application to replace Proposed Monitor in the Consent Order	August 18, 2022
Affidavit of David Savoie, RBC (<i>BIA</i> proceeding)	August 24, 2022
CRA Affidavit	September 12, 2022
Affidavit of Josh Collins	September 13, 2022
Affidavit of Josh Collins	September 15, 2022
Affidavit of David Savoie, RBC (<i>BIA</i> proceeding)	September 15, 2022
Proposed Monitor's first pre-filing report	September 15, 2022
Affidavit of Josh Collins	September 23, 2022
Crown's Application	September 23, 2022
Proposed Monitor's second pre-filing report	September 26, 2022

[145] The parties all took advantage of the extra time afforded to them because of the Consent Stay Period, some more than others.

[146] CRA, a principal creditor of the Companies, filed its documents late in the process. The Province also filed its documents *after* the hearing began.

[147] The Companies filed some information I asked for after the start of the hearing. I asked for further details on the construction contracts and Collins Contracting's construction bonding. Both RBC and I asked for the equipment appraisal. RBC asked for a signed copy of the Term Sheet.

[148] Furthermore, I asked the Proposed Monitor at the end of the first day of the hearing to report to me if he became aware that there was any material change in the circumstances of the Companies' financial situation.

[149] In his second pre-filing report, he altered the cash flow statements because of a termination of a contract. He reported on the proposed use of a newly discovered \$500,000 insurance policy payout benefiting Collins Contracting. He was right to do so.

[150] Furthermore, this matter was urgent. No one asked for a postponement. No one said how they might be prejudiced by the delay. Had anyone asked me for one, I would have been reluctant to grant it. Both RBC and the Companies, without a hearing on the merits, obtained the Consent Stay that affected other creditors' rights.

[151] By its nature, CCAAs are conducted in, as the Supreme Court of Canada in *Ted Leroy Trucking* at para. 58 states, "the hothouse of real-time litigation". Late filings in these circumstances, although are not condoned, are sometimes inevitable.

[152] The Companies, in particular though, should not assume that I am satisfied with the timing of some of their last-minute filings. The Proposed Monitor and the Companies should not expect similar latitude throughout this process.

[153] I will now deal whether the Companies' inaction to address their financial problems show they did not act with due diligence.

Did the Companies' inaction to address their financial problems show they did not act with due diligence?

[154] I find it does not. I will now explain why I made this decision.

[155] RBC suggested that I should consider not only the Companies' inaction during the Consent Stay, but before.

[156] This position is inconsistent with the Supreme Court of Canada's guidance in *Callidus*. It suggests at paragraph 51, that the parties must act with due diligence in the *CCAA proceeding*, when it said, "A party's failure to participate in *CCAA* proceedings in a diligent and timely fashion can undermine ... the effective functioning of the *CCAA* regime"

[157] RBC says it asked the Companies to restructure as early as July 2021. RBC says the Companies hired two other consultants to help them with the restructure. They fired them both and hired Grant Thornton about a month and a half ago. RBC says they wasted months before they hired the Proposed Monitor.

[158] The *CCAA* focuses on the go-forward restructuring, not on the past. Someone might speculate that had the Companies taken a series of different actions, they might have avoided their financial difficulty. Perhaps they might have restructured earlier.

[159] I find that speculation about the Companies' actions which led up to its financial difficulties is irrelevant. I will not consider the Companies' failure to take action to restructure before they came to the Court seeking the Initial Order.

[160] If I were to do so, this would have the effect of denying creditor protection to debtors who are the author of their own misfortune. The CCAA, at least for the Initial Order, offers a no-fault remedy, provided that the applicants act in good faith and act with due diligence in the CCAA application.

[161] I will now deal with whether the Companies should meet a more onerous standard of whether they have “a germ of a plan” because they had advantage of the Consent Stay.

Should the Companies meet a more onerous standard of whether they have “a germ of a plan” because they had advantage of the Consent Stay?

[162] I find they should not. I will now explain why I made that decision. However, even if they should have done so, I find that they have.

[163] Justice Orsborn in *Norcon* said at paragraph 17, “The present case is a little different than the usual CCAA initial application. Norcon’s Notice of Intention to make a BIA proposal was filed on November 25, 2019, just over two weeks ago.”

[164] He continues and said, “In my view, this suggests that restructuring is not a possibility that has just appeared. Although not a lot of time has passed, the fact that the Court is being asked to continue an existing restructuring proceeding suggests that the ‘germ’ of any plan should exhibit a slightly higher possibility of coming to life than might otherwise be the case.”

[165] This may be so, but the Initial Order was not part of any formal restructuring process. There is no court-appointed receiver or monitor to assist the Companies as an intermediary to formulate a restructuring plan.

[166] I find the Consent Stay is not a stay under the *BIA* or the *CCAA*. It is a negotiated order to accommodate the Court schedule. RBC and the Companies negotiated this stay. Presumably, they did so because it was in their mutual advantage to do so.

[167] On the other hand, even if I consider that the *CCAA* application and the request for the Initial Order is a continuation of the restructuring process discussed between RBC and the Companies for over a year, I find it difficult to assess whether the Companies' "plan" exhibits "a slightly higher possibility of coming to life than might otherwise be the case".

[168] I have outlined the challenging contingencies the Companies' face in completing a successful plan. I have no way of knowing if the Companies are more likely to overcome these contingencies than "might otherwise be the case". However, the Companies did more than present "a germ of a plan". I discussed the reason for this earlier in this decision. I now turn to whether the Companies acted in bad faith.

Did the Companies act in bad faith?

[169] Although the Companies referred to RBC's alleged bad faith in their pleadings, affidavits and brief, these allegations relate to RBC's actions leading up to it demanding repayment of the Companies' loans.

[170] While the allegations may be relevant to the receivership application, they have little bearing on the Companies' application for an Initial Order. Furthermore, its counsel said he would not argue that RBC acted in bad faith.

[171] I now turn to RBC's allegation of the Companies' bad faith.

[172] In argument, RBC's counsel said the Companies acted in bad faith when they failed to report the escalation of the CRA deemed trust debt to RBC and when they failed to comply with the forbearance agreement.

[173] I find that RBC did not properly bring this issue before me. However, even if it had, there is insufficient evidence to establish that the Companies acted in bad faith. I will now explain why I made this decision.

[174] David Savoie says at paragraph 34 of his affidavit, filed August 5, 2022, that RBC did not discover the "substantial" increase in the CRA debt until November 1, 2021. He says that was the first time RBC received any FY 2021 financial statements.

[175] RBC's bad faith allegation perhaps relates to whether the Companies should have told RBC about the increased CRA debt before they revealed it in their financial statements. Perhaps the allegation relates to Collin's Contracting's failure to deliver to RBC the financial statements on time, or perhaps it relates to Collins Contracting's performance of the forbearance agreement.

[176] This imprecision on exactly what good faith obligation the Companies breached is why RBC should have expressly grounded its allegation in its pleadings, affidavits or briefs, and not merely raise the issue in their argument.

[177] The British Columbia Supreme Court dealt with a similar situation in *United Used Auto*. The court said at paragraph 15, "I am also not persuaded by the submissions of the secured lenders that the Petitioners are not acting in good faith. The facts that the Petitioners failed to abide by the terms of the forbearance agreements and that they obtained restructuring advice from Deloitte & Touche Inc. in February 1998 [the court issued its decision in November 1999] does not, in my view, demonstrate a lack of good faith in bringing these proceedings."

[178] I now turn to whether I should exercise my discretion and grant the administration fee in the Initial Order.

Should the Court exercise its Discretion to grant the administration charge?

[179] I will not grant the administration charge in the Initial Order. I will now explain why I made that decision.

[180] The Companies seek, pursuant to section 11.52(1) of the CCAA, a charge on the Companies' property to a maximum amount of \$50,000 to secure the Monitor's costs, and his and the Companies' costs for legal, financial and other experts.

[181] I must limit this administration charge to that which is reasonably necessary for the continued operation of the Companies during the initial 10-day stay.

[182] The Companies' cash flow statements show that administration costs and legal fees will be about \$45,000 up to the issuance of the Initial Order, and about \$20,000 for the two weeks beginning October 15, 2022.

[183] The cash flow statements show a positive cash position without the administration fee for the weeks ending September 30 to October 21, 2022.

[184] In the circumstances, I will not provide for an administration fee in the Initial Order. I will consider this request again at the comeback hearing.

[185] I now turn to what other provisions that were not in the draft order the Companies circulated, I should include in the Initial Order.

FURTHER ORDERS

[186] Under section 11.02(1) of the CCAA, I can make an order on any terms that I may impose.

[187] I first note that the Companies are not asking me to authorize DIP financing in the Initial Order, so I will not do so.

[188] Given some of the information deficiencies I have identified in this decision, on or before the close of business on Thursday, October 13, 2022, the Companies will file:

- (a) the FY 2022 financial statements, even if only in interim or draft form; and
- (b) a breakdown of the Companies' current contracts, expected revenue, and other information to support the projections in the cash-flow statements provided to the Court in the initial filings. The Companies should disclose if any of the contracts have been declared to be in default.

[189] The Companies and the Monitor shall file an explanation if they cannot provide this information by the deadline. I now turn to the receivership application.

OTHER MATTERS – RECEIVERSHIP APPLICATION

[190] As I have granted the Initial Order, I hereby stay RBC's receivership application.

OTHER MATTERS - OUTSTANDING MOTION AND APPLICATION

[191] A motion and application remain outstanding.

[192] The first is that the Province asks that I order the Consent Order, or by extension the Initial Order, does not affect the Province's ability to engage the bond, remedy the defaults, and complete the contracts declared in default in the manner directed by the Surety.

[193] Second is that the Companies ask that I hold one of the Companies' contract counterparties in contempt of the Consent Order.

[194] The parties should, at the comeback hearing, be prepared to discuss a process to resolve both matters if I do not set the process before then.

DISPOSITION

[195] I hereby:

- (a) grant the Initial Order described in Schedule "A" annexed; and
- (b) appoint Grant Thornton Limited to monitor the business and financial affairs of the Companies.

[196] I hereby set the comeback hearing for October 17, 2022, at 10:00 a.m. I make no order as to costs.

ALEXANDER MACDONALD
Justice

SCHEDULE "A"

2022 01G 1964

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies'*
Creditors Arrangement Act, R.S.C. 1985, c.
C-36, as amended (the "CCAA")

AND IN THE MATTER OF an application
of Edward Collins Contracting Limited,
Classic Security Ltd., FGC Holdings Ltd.,
51037 Newfoundland and Labrador Inc. and
H & E Designs Ltd. (collectively, "ECC" or
the "Company");

INITIAL ORDER

Before the Honourable Justice Alexander MacDonald on September 16, 2022,
September 28-29, 2022 and October 5, 2022:

THIS APPLICATION made by Edward Collins Contracting Limited, Classic Security Ltd., FGC Holdings Ltd., 51037 Newfoundland and Labrador Inc. and H & E Designs Ltd. (collectively, "ECC" or the "Applicant") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an Order substantially in the form filed with the Application was heard on the 16th, 28th and 29th of September, 2022.

ON READING the affidavits of Francis Collins, Josh Collins, David Savoie, Mark Lohnes and the Exhibits attached thereto, the consent of Grant Thornton Limited ("GTL") to act as Court-appointed monitor of ECC (in such capacity, the "Monitor"), and the Pre-Filing Reports of GTL dated September 13th and September 23rd 2022;

ON HEARING the submissions of counsel for the Company, counsel for the Royal Bank of Canada, and counsel for the Canada Revenue Agency, and such other counsel that were present, no one else appearing for any party although duly served as outlined in the affidavit of service dated the 15th day of July, 2022, and on reading the consent of GTL to act as Monitor:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Materials filed, as set out in the affidavit of service is hereby deemed adequate notice so that this Application is properly returnable today and hereby dispenses with further service thereof. Further service of Court materials, including the Materials, may be facilitated by the Monitor as prescribed by paragraph 28 below.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that Edward Collins Contracting Limited, Classic Security Ltd., FGC Holdings Ltd., 51037 Newfoundland and Labrador Inc. and H & E Designs Ltd. (collectively, “ECC” or the “**Company**”) is a Company to which the CCAA applies.
3. Capital terms not otherwise defined herein shall have the meaning ascribed to them in the within Application.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Company shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Honourable Court, the Company shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Company is authorized and empowered to continue to retain and employ the employees, consultants, independent contractors, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of its Business or for the carrying out of the terms of this Order.
5. **THIS COURT ORDERS** that the Company, shall be entitled to continue to utilize its cash management system currently in place, or replace it with another substantially similar cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Company of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Company, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of compromise or arrangement with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.
6. **THIS COURT ORDERS** that the Company shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:
 - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

- (b) the fees and disbursements of any Assistants retained or employed by the Company in respect of these proceedings, at their standard rates and charges; and
 - (c) amounts owing for goods and services supplied to the Company, if in the opinion of the Monitor, the supplier or vendor of such goods or services is necessary for the operation and preservation of the Business or Property.
7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein the Company shall be entitled but not required to pay all reasonable expenses incurred by the Company in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance and security services and lease payments for mining equipment used in the operation of the Business; and
 - (b) payment for goods or services supplied to the Company following the date of this Order.
8. **THIS COURT ORDERS** that the Company shall remit, in accordance with legal requirements, or pay:
- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
 - (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Company in connection with the sale of goods and services by the Company, but only where such Sales Taxes are accrued or collected after the date of this Order; and
 - (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Company.
9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA the Company shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be

negotiated between the Company and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order. The Monitor, on behalf of the Company, may pay such Rent twice monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein the Company is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Company to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

NO PROCEEDINGS AGAINST THE COMPANY OR THE PROPERTY

11. **THIS COURT ORDERS** that until and including the 17th day of October, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Company or the Monitor, or affecting the Business or the Property except with the written consent of the Monitor and the Company, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Company or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Company or the Monitor, or affecting the Business or the Property are hereby stayed and suspended except with the written consent of the Monitor and the Company, or leave of this Court, provided that nothing in this Order shall (i) empower the Company, to carry on any business which the Company is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

13. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Company, except with the written consent of the Monitor and the Company, or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Company or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Company, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Company, and the Company shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid the Company in accordance with normal payment practices of the Company or such other practices as may be agreed upon by the supplier or service provider and the Company or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Company. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

APPOINTMENT OF MONITOR

16. **THIS COURT ORDERS** that Grant Thornton Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Company with the powers and obligations set out in the CCAA or set forth herein and that the Company and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Company pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

17. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Company's receipts and disbursements;
 - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
 - (c) assist the Company in its dissemination of reports and other information to the Secured Creditors (as defined herein) and their respective counsel;
 - (d) advise, in consultation with the Company, the preparation of the Company's cash flow statements and reporting;
 - (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Company, to the extent that is necessary to adequately assess the Company's business, cashflow, and financial affairs or to perform its duties arising under this Order;
 - (f) be at liberty to engage with Company legal counsel or retain independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
 - (g) perform such other duties as are required by this Order or by this Court from time to time.
18. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or be considered management of the Business, or any part thereof.
19. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

20. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Company with information provided by the Company in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Company is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Company may agree.
21. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
22. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Company shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Company on a weekly basis and, in addition, the Company is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Company reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
23. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose, the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Supreme Court of Newfoundland and Labrador in Bankruptcy and Insolvency.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

24. **THIS COURT ORDERS** that the Company and all its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf shall fully co-operate with the Monitor in the exercise its powers under this Order or any other Order of the Court, including by:
 - (a) advising the Monitor of the existence of any Property of which such party has knowledge of;
 - (b) providing the Monitor with immediate and continued access to any Property in such party's possession or control;
 - (c) advising the Monitor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the

Company, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information ("**Records**") of which such party has knowledge of; and

- (d) providing access to and use of the Records, including any accounting, computer, software and physical facilities relating thereto, and including providing the Monitor with instructions on the use of any computer or other system as requested by the Monitor and providing the Monitor with any and all access codes, account names and account numbers that may be required to gain access to the Records, provided however that nothing in this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

LIMITATION ON THE MONITOR'S LIABILITY

- 25. **THIS COURT ORDERS THAT** the Monitor is not and shall not, for any purposes, be deemed to be a director, officer, employee, receiver, receiver-manager, or liquidator of the Company.
- 26. **THIS COURT ORDERS THAT** the Monitor is not and shall not for the purposes of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) be deemed to be a legal representative or person to whom s. 150(3) of that Act applies.
- 27. **THIS COURT ORDERS THAT** that the rights, protections, indemnities, charges, priorities and other provisions in favour of the Monitor set out in the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, any other applicable legislation, and any other Order granted in these proceedings, all shall apply and extend to the Monitor in connection with the Monitor carrying out the provisions of this Order, amended as necessary to give effect to the terms of this Order.

SERVICE AND NOTICE

- 28. **THIS COURT ORDERS** that the Monitor shall (A) make this Order publicly available in the manner prescribed under the *CCAA*, (B) send, in the prescribed manner by electronic means, a notice to every known creditor who has a claim against the Company of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the *CCAA* and the regulations made thereunder.

GENERAL

- 29. **THIS COURT ORDERS** that the Monitor, on behalf of the Company, may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from subsequently acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Company, the Business or the Property.
31. **THIS COURT ORDERS** that each of the Company and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
32. **THIS COURT ORDERS** that a hearing for the balance of the relief sought by the Company in the Notice of Motion is hereby scheduled before this Court for the 17th day of October, 2022 at 10:00 a.m. or such other date as determined by this Court (the “**Comeback Hearing**”).
33. **THIS COURT ORDERS** that on or before the close of business on Thursday, October 13, 2022, the Company shall provide the Court and each creditor referred to in paragraph 28 above, in the manner of service provided for in paragraph 28 above, with the following information: (the Company and the Monitor shall file an explanation if they cannot provide this information by the deadline):
- (a) a detailed breakdown of the companies’ current contracts, expected revenue, and other information to support the projections in the cash-flow statements provided to the Court on the initial filing. The Company should disclose if any of the contracts have been declared to be in default; and
 - (b) the FY 2022 financial statements, even if only in draft or interim form and any other information this Honourable Court may request.

ISSUED at St. John's, Newfoundland and Labrador this 5th day of October, 2022.

TAB 2



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Andrews v. Canada (Attorney General)*, 2019 NLSC 42

Date: February 19, 2019

Docket: 200601T1519

BETWEEN:

**GLEN ANDREWS, IVAN BURTON,
RICK KEAN AND RICHARD THOMAS
ROSE**

PLAINTIFF

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

Before: Justice Alphonsus E. Faour

Place of Hearing: St. John's, Newfoundland and Labrador

Dates of Hearing: June 12, 13, 14 and July 17, 2018

Summary:

This is an application by the Federal Crown for a summary trial seeking dismissal of the Plaintiffs' action in contract. In considering whether the evidence supported the components required in establishing the existence of a contract between the parties, the analysis reveals the elements do not exist. The application is granted and the Plaintiff's action is dismissed.

Appearances:

John R. Sinnott, Q.C.
Jessica Thompson and
Tokunbo Omisade

Appearing on behalf of the Plaintiff
Appearing on behalf of the Defendant

Authorities Cited:

CASES CONSIDERED: *Andrews v. Canada (Attorney General)*, 2008 NLTD 145, aff'd 2009 NLCA 70; *Andrews v. Canada (Attorney General)*, 2014 NLCA 32; *Dalley v. Northern Arm (Town)*, 2016 NLTD(G) 68; *McCabe v. Verge* (1999), 182 Nfld. & P.E.I.R. 135, 1999 CarswellNfld 283; *Donovan Homes Ltd. v. Modern Paving Ltd.*, 2011 NLCA 39; *GenRep Ltd./Ltee v. G & D Shipping Ltd.*, 2012 NLCA 50; *Olivieri v. Sherman*, 2007 ONCA 491; *Pitcher v. Downer*, 2013 NLTD(G) 82, rev'd 2017 NLCA 13; *Creston Moly Corp. v. Sattva Capital Corp.*, 2014 SCC 53; *100193 P.E.I. Inc. v. R.*, 2015 FC 932; *Wells v. Newfoundland*, [1999] 3 S.C.R. 199; *Happy Adventure Sea Products (1991) Ltd. v. Newfoundland & Labrador (Minister of Fisheries & Aquaculture)*, 2006 NLCA 61; *Andrews v. Canada (Attorney General)*, 2009 NLCA 70

STATUTES CONSIDERED: *Fisheries Act*, R.S.C., 1985, c. F-14, *Fishery (General) Regulations* S.O.R./93-53; *Rules of the Supreme Court*, 1986, S.N.L. 1986, c. 42, Sched. D.

REASONS FOR JUDGMENT

FAOUR, J.:

INTRODUCTION

[1] This is an application by the Federal Crown for a summary trial. Dismissal of the Plaintiff's action in contract is sought.

[2] The action was commenced on April 7, 2006. The Plaintiffs are, or were, crab fishermen from various communities in the Province adjacent to Division 3K

and who had formed a loose association of full-time crab harvesters (the “Association”).

[3] The Plaintiffs allege that certain commitments made by the Federal Minister of Fisheries and Oceans in 1994 respecting crab quotas constituted a contractual arrangement. They say that contract was breached in 2000 when a subsequent Minister changed the quota arrangement. They claim damages for that breach, as the reduction in their quota allocations was not in accord with what they say were the contractual commitments of the Minister. Since it is an action in contract, and not one for judicial review of the Minister’s decision, the Plaintiffs argue that the proceeding is properly before this Court.

[4] The Defendant does not take issue with the basic facts. It agrees that the quota arrangement was changed. However, it says that the facts do not form the basis for a contract. Moreover, the Defendant submits that the decisions on quotas were within the exclusive discretion of the Minister and, therefore, cannot be the subject of a contract.

BACKGROUND

[5] In the early 1990s there was a crisis in the cod fishery off the coast of this Province. In response, the federal government declared a moratorium on the harvesting of cod on July 2, 1992. That meant there would be no income from the fishery for thousands of fishermen. In the following years there was a significant increase in the stocks of crab. The Minister of Fisheries and Oceans, for reasons of social and economic policy, wished to allocate some of that increase to those displaced by the moratorium. The relevant backdrop to this action is set out in the Plaintiffs’ amended Statement of Claim, of which paragraphs 8-10 state:

8. Between 1984 and 1989 landings of snow crab for the Newfoundland region were in the 6,700 ton to 9,700 ton range, were 11,000 in 1990 and increased each year in the 1990’s to 69,000 tons in 1999, and remained well over 50,000 tons in the years 2000-2004. Total allowable catches for the Newfoundland Region also increased in the 1980’s and reached 11,000 tons in 1990, and increased each year throughout the 1990’s to 61,185

tons in 1999 and the total allowable catch in the years 2000-2005 was 51,169 tons, 52,267 tons, 56,981 tons, 56,240 tons, 53,740 tons, and 49,943 tons respectively. The total quota for Division 3K increased from 8,575 tons in 1993 to 18,200 tons in 1999 and has remained since then substantially above the 1993 quota.

9. The Plaintiffs and each of them did not share in the dramatic increases in landings, total allowable catches, and quotas within 3K. Instead a commitment was made by the Defendant to the Plaintiffs and each of them and to 3K Fulltime Crab Fishermen generally that the long term (1988-1993) level in traditional areas of approximately 3,100 tons shared by 3K Fulltime Crab Fishermen would be maintained and this allocation for the 3K fulltime crab fishing fleet in traditional areas would not be reduced below the long term level of 3,100 tons unless conservation of crab stocks in areas fished by the 3K fleet required an overall reduction in quota below that experienced in 1993.
10. The commitment made by the Defendant to maintain the 3K full time crab fleet at its long term (1988-1993) level in traditional areas of approximately 3,100 tons and not to reduce such allocation below this long term level unless conservation required an overall reduction in quota below that experienced in 1993 was given in exchange for agreement by the Plaintiffs and each of them and the full time 3K Crab fishing fleet generally whereby they would not participate in proportionate increases in the 1990's and would be reduced in 1995.

[6] The Statement of Claim goes on to allege that all of the elements of a contract were present in the discussions between the Minister and the Plaintiffs in the fall of 1994. Since the Minister was interested in reallocating some of the expected increase in crab stocks to other inshore fishermen to lessen the impact of the moratorium, the Plaintiffs say they agreed to forgo what they felt was their entitlement to increases in their share of the quota proportionate to the increase in the overall Total Allowable Catch (TAC). The consideration on the part of the Plaintiffs was their agreement to the resulting reallocation, and their promise not to oppose the Minister's plan, in exchange for the promise of the Minister that their quota would not fall below the specified minimum. When, after 2000, their quota was reduced below the agreed amount, they allege a breach of that agreement. The agreement was based on a commitment by the Minister that their allocation would not be reduced below a certain minimum, except if necessary for conservation. Their claim is based on the losses suffered when the subsequent Minister failed to honour the commitment made. The damages are the reduction in value of their snow crab landings during the relevant period. They claim cumulative losses of in excess of \$3,000,000.

[7] There is some history here. After the Statement of Claim was issued, the government brought an application to strike out the Statement of Claim, which was successful. The application judge, in approving the application, followed the precedent of an earlier action involving one Bert Andrews (*Andrews v. Canada (Attorney General)*, 2008 NLTD 145, aff'd 2009 NLCA 70). However, unlike the decision of the Court of Appeal in *Bert Andrews*, in this case, the Court of Appeal, in a decision cited as *Andrews v. Canada (Attorney General)*, 2014 NLCA 32 decided that the claim should not be struck out and should proceed to trial. There, the issues of whether there was a viable cause of action would be argued and played out. The matter was remitted to this Court for a hearing on the merits.

ISSUES

[8] This proceeding raises three issues:

- (i) Is the Summary Trial procedure appropriate in this case?
- (ii) Was a Contract formed between the parties such that the Government of Canada is liable?
- (iii) Does the Plaintiffs' claim offend the anti-fettering doctrine?

[9] Both parties agreed that the Summary Trial procedure is appropriate to determine the question. I agree and will not consider further the factors set out in the decision in *Dalley v. Northern Arm (Town)*, 2016 NLTD(G) 68. Without addressing these factors, I find that the threshold stage has been met, and it is appropriate for me to consider the merits of the issues in this proceeding on the basis of a Summary Trial pursuant to Rule 17A. The parties have also agreed that the question before me is on liability alone, and accordingly, they have not addressed the assessment of damages.

[10] Having addressed the first issue I will proceed with analysis of the second issue. It is unnecessary for me to deal with the third issue at length because of my ruling on the second issue; however, I will make some comments about it after I finish a detailed discussion of the main issue.

A. THE ISSUE OF VIABLE CAUSE OF ACTION IN CONTRACT

[11] As noted above, the basic facts of the matter are not in dispute. Counsel for Canada accept the basic facts as set out by the Plaintiffs, but, of course, not the interpretation placed on them. They agree that crab quotas increased throughout the 90s, and for several years after 1995 the quota allocated to the 3K harvesters stayed above 3,100 tonnes. They also agree that it was reduced in the management plan of 2000. They agree with the facts forming the premise of the Plaintiffs' case, and acknowledge that if there is a contract as alleged, then the quota amounts cited by the Plaintiffs are accurate. The issue to determine is whether the facts surrounding the discussions with the Minister constitute the formation of a contract. This question requires an examination of the elements of contract formation, namely: offer, acceptance, consideration, intention to create legal relations, and certainty of terms. These elements of a contract are essentially settled law, and neither party in this proceeding took issue with this structure of analysis.

[12] The Defendant argues that in the discussions between the Minister and the Plaintiffs, any commitments made by the Minister are not contractual in nature as they speak to a consultation process leading to the exercise of ministerial discretion, which is not justiciable. To conclude that a contract was formed would be to offend the anti-fettering doctrine. The Plaintiffs maintain the Defendant exercised any discretion he may have had over quotas and made an agreement having the force of a contract.

a) Contract Formation

[13] It is settled law that there are several elements which must be present in the formation of a contract. In *McCabe v. Verge* (1999), 182 Nfld. & P.E.I.R. 135, 1999 CarswellNfld 283, the Court of Appeal in this Province determined the existence of a contract arising from settlement discussions. At paragraph 21 the Court stated:

21 Accordingly, there was a valid contract of settlement entered into during the telephone conversation. All of the elements of offer, acceptance, consideration, intention to create legal relations and certainty of terms were present. ...

[14] In *Donovan Homes Ltd. v. Modern Paving Ltd.*, 2011 NLCA 39, the Court of Appeal reaffirmed the notion that certainty of terms must be present. In a reference to the *McCabe* decision written by Green, J., the court commented on the issue of certainty of terms, at paragraph 33:

33 Justice Green's statement characterizes "certainty of terms" as an element of a contract. It is well established that certainty of a contract's essential terms and completeness of a contract, in that it must contain the terms essential to its operation, are required in order for a contract to be enforceable. ...

[15] However, at paragraph 37, the Court also noted that some terms may not be essential to the formation of a contract:

37. The authorities leave no doubt that essential terms which go to the core of an agreement must be settled in order for a contract to be enforceable. Equally, there is no doubt that non-essential terms and details do not have to be settled in order for legal effect to be given to the reasonable expectation of the parties. Indeed, in the case of a contract meant to endure over an extended period of time, it may be that details or other non-essential matters are not even able to be determined at the time the parties agree to contract.

[16] Also see *GenRep Ltd./Ltee v. G & D Shipping Ltd.*, 2012 NLCA 50 where the Court of Appeal provided a similar analysis at paragraph 15:

15. The existence of the basic elements of a contract — offer, acceptance and consideration — raise questions of mixed fact and law and often involve factual findings derived directly or inferred from the evidence respecting the conduct and actions of the parties.

[17] It is also accepted that the test to contract formation is an objective one: a subjective view of one party is insufficient to create binding legal relations.

Objectively, one must be convinced that there was a *consensus ad idem*. The Ontario Court of Appeal in *Olivieri v. Sherman*, 2007 ONCA 491 discussed the attributes of reaching agreement at paragraph 44-45:

44. A determination as to whether a concluded agreement exists does not depend on an inquiry into the actual state of mind of one of the parties or on the parole evidence of one party's subjective intention. See *Lindsey v. Heron Co.* (1921), 64 D.L.R. 92 (Ont. C.A.). Where, as here, the agreement is in writing, it is to be measured by an objective reading of the language chosen by the parties to reflect their agreement. As was stated by Middleton J.A. in *Lindsey* at 98-9, quoting *Corpus Juris*, vol. 13 at 265:3

The apparent mutual assent of the parties essential to the formation of a contract, must be gathered from the language employed by them, and the law imputes to a person an intention corresponding to the reasonable meaning of his words and acts. It judges his intention by his outward expressions and excludes all questions in regard to his unexpressed intention. If his words or acts, judged by a reasonable standard, manifest an intention to agree in regard to the matter in question, that agreement is established, and it is immaterial what may be the real but unexpressed state of his mind on the subject.

45. Accordingly, in my view, it was an error in principle for the motion judge to decide this issue based on the subjective intent of one side to the bargain rather than on an objective reading of the counter-offer.

[18] In this Province, Marshall, J. in *Pitcher v. Downer*, 2013 NLTD(G) 82 (rev'd on other grounds 2017 NLCA 13) noted the importance of objectively finding agreement before a contract may be found. She said at paragraph 32:

32. Agreement is the essence of a contract: G.H.L. Fridman, *The Law of Contract* (Second ed., 1986), at page 3. Therefore, to be a valid contract, the parties to a contract must have a meeting of the minds, which is referred to as "consensus ad idem".

[19] She went on to clarify that such agreement must be found on an objective basis at paragraph 45:

45. Further, with respect to the Plaintiff's submissions regarding the absence of a meeting of the minds or "consensus ad idem", the Plaintiff was of the view

that the test for determining whether there was consensus ad idem is that of the "objective, reasonable bystander". In support of this contention, the Plaintiff's counsel referred to the case of *Gunvaldsen-Klaassen v. Bulpitt*, 2009 NSSC 66 (N.S. S.C.), where the Nova Scotia Supreme Court referred to G.H.L. Fridman in *The Law of Contract* (Fifth ed., 2006) and stated as follows, at paragraph 32:

32. The determination of a valid agreement is discussed by Fridman (sic) in *The Law of Contract* (Fifth Ed.; 2006) at p. 15:

Constantly reiterated in the judgments is the idea that the test of agreement for legal purposes is whether parties have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract. The law is concerned not with the parties' intentions but with their manifested intentions. It is not what an individual party believed or understood was the meaning of what the other party said or did that is the criterion of agreement; it is whether a reasonable man in the situation of that party would have believed and understood that the other party was consenting to the identical terms. As Fraser C.J.A. said in *Ron Ghitter Property Consultants Ltd. v. Beaver Lumber Co.*:

the parties will be found to have reached a meeting of the minds, in other words be ad idem, where it is clear to the objective reasonable bystander, in light of all the material facts, that the parties intended to contract and the essential terms of that contract can be determined with a reasonable degree of certainty.

...

Sometimes it is a simple matter to decide what the parties have manifested to each other, and consequently, whether they have agreed, and if so, upon what. This is especially true where a document containing their agreement has been prepared and signed by the parties. If the plain wording of the document reveals a clear and unambiguous intent, it is not necessary to go further. Indeed, once that has been done, it may not be possible to have recourse outside such document, either to other written material or to parol evidence from the parties or anyone else, in order to explain, or otherwise clarify what is contained in the document.

If there is no single document to which reference can be made in order to decide if a contract exists between the parties, but a series of negotiations, then everything that occurs between the parties relevant to the alleged contract must be considered by the court which is faced with the problem of deciding the issue. From what they have said, done, or written, in combination if necessary, there must be established a bargain or an agreement. ...

[20] In both the *Olivieri* and *Pitcher* cases the courts were concerned with determining the existence of a contract where written documents were in evidence. In this case, notwithstanding the Crab Management Plan (CMP)'s mention of the minimum quota for the fleet, the verbal negotiations between the parties were not reduced to writing. Therefore, the parties' actions and testimony form the evidence from which an objective bystander must determine whether a contract was formed.

[21] In making a determination whether a set of facts constitutes elements in the formation of a contract, the Supreme Court of Canada has commented on the importance of a contextual approach: *Creston Moly Corp. v. Sattva Capital Corp.*, 2014 SCC 53, at paragraphs 56-58.

[22] In the context of public policy and Ministerial setting of policy, the case of *100193 P.E.I. Inc. v. R.*, 2015 FC 932 is helpful. The basis of the alleged contract was a speech by the Minister in the House of Commons. In an action similar to the current matter, the Plaintiffs sued on an alleged contract. At trial, the court articulated a series of questions which may be relevant in this case. The court stated, at paragraph 49:

49. Even taken at face value, this evidence immediately raises many questions. For instance: were these alleged representations made at one time or at different times? Which representations constituted the offer? Did the offer have any terms when it was made? Did any negotiations take place? Was the offer accepted? When did the Plaintiffs accept the offer? Was anyone appointed as an agent of the fishers, or did they all individually accept the offer? How did they communicate their acceptance of the offer? If the agreement was made orally, where did they accept the offer? What "legal options" did the commercial fishers give up?

[23] In that case, the court posed these questions in response to a claim that a contract existed between the Plaintiffs and the Minister. With the foregoing in mind, I turn to the evidence of whether there was, objectively, an offer, an acceptance, whether consideration was present, whether the evidence discloses an intention to create legal relations, and whether there was sufficient certainty with respect to terms of the alleged agreement.

(i) Offer and Acceptance: Offer

[24] The Plaintiffs allege that the contract was formed in 1994. At that time, then Minister of Fisheries, the Honourable Brian Tobin, is said to have offered the 3K fleet 3,100 tonnes of crab quota for an indefinite time as long as conservation was not in issue. The promise was made, according to the Plaintiffs, in exchange for their support for a significant reallocation of crab quota.

[25] Two Plaintiffs testified to the conversations they had with Minister Tobin. Both of them, Rick Kean and Ivan Burt were members of the Executive of the Association of full-time crab harvesters in the 3K division. They both referred to three meetings during the fall of 1994 that were critical to the formation of a contract. The first was at the Newfoundland Hotel in St. John's. The second was at the Minister's Regional Office in the Baine Johnson Building in St. John's. The third was at the Minister's Office in Ottawa on December 4, 1994, arising from an invitation from the Minister for the Plaintiffs to travel to Ottawa to discuss the issue of crab quotas. While the witnesses were unable to identify the exact dates of the first two meetings, all accepted that the meetings took place.

[26] Mr. Kean was not present at the first meeting, but Mr. Ivan Burt was in attendance. Both men testified that at the meeting held at the Newfoundland Hotel, the Minister wanted their support for his plan for new entrants into the crab fishery. They said he promised that their quota would not go below 3,100 tonnes, and would be included in the CMP for the following year. They also said that part of that offer was the Last In, First Out (LIFO) principle, that new entrants would be the first to leave the fishery should conservation require a reduction. This would provide protection for those with the longest commitment and, hence, the greatest investment in the fishery. They said the Minister offered a guarantee of the minimum level of quota in exchange for their support with his new plan to bring new entrants into the fishery.

[27] Mr. Tobin testified that he recalled being aware of the concerns of the fishermen in the 3K zone. He spoke of the challenges of managing a resource with many competing interests. At the relevant time, there were thousands of fishermen and plant workers negatively affected by the cod moratorium imposed in 1992. He said the scientists advised him that at the same time as the cod stocks had diminished almost to the point of extinction, it appeared that the crab stock was growing and was quite healthy. His dilemma was how to allocate the increase in crab stocks. One approach would have been to let it go to the existing license holders. Alternatively, he was interested in “sharing the wealth” with those displaced by the moratorium. He was of the view that there was room to allow allocations to other fishermen.

[28] He recalled the first meeting with the Plaintiffs at the Newfoundland Hotel. He didn’t deny that a discussion of the new entrants and some minimum level of quota took place. But he was adamant there was no *quid pro quo* – a guarantee of quota and the LIFO principle in exchange for support. He said the Minister did not have the authority to make that kind of promise. He said in his testimony that he objected “strongly to the notion of a contract.”

[29] Mr. Kean and Mr. Burton testified that the second meeting at the Baine Johnson Building in St. John’s raised the same issues. Both were present at that meeting. They said they expressed their concern about the Minister’s plan. Mr. Kean said his concerns were both for the stock – that overfishing might lead to the same outcome that ended the cod fishery – and for his personal circumstances – he had invested in a brand-new fishing vessel and had a significant debt as a result. Both men said that Mr. Tobin repeated his offer to guarantee a minimum quota in exchange for support, and that he would apply the LIFO principle to any future reductions because of conservation requirements.

[30] Mr. Tobin recalled the meeting at the Baine Johnson Building. He didn’t specifically recall using the figure of 3,100 tonnes, but it was written in the CMP for 1995, so it was safe to assume it was discussed. But, he said, the fact of discussing it is not a guarantee of a minimum quota.

[31] Mr. Tobin acknowledged that in his discussions he would have reassured the fishermen about his intention to allocate a minimum level of quota, but he adamantly denied that the plan was contingent on their support. He said there was no contract. As for the LIFO principle, he noted that it was not included in the CMP, indicating that it was not part of his reassurance. He did confirm that his intent at the time was to attempt to ensure some stability for the fulltime fleet in 3K, but that he was trying to develop a plan whereby large numbers of inshore fishermen might benefit from the significant increase in the biomass of crab.

[32] Subsequent to the second meeting, the Minister invited the representatives of the Association of harvesters in 3K to come to Ottawa to meet for a further discussion on the issue. At that meeting on December 4, 1994, both men said the Minister again asked for support for his plan for new entrants in exchange for assurance about the 3,100-tonnes minimum quota for the 3K fulltime fleet.

[33] Mr. Tobin did not deny that the meeting took place, but again, strongly objected to the notion of a contract. He agreed that the figure of 3,100 tonnes was probably discussed, as it was in the CMP for the following years. He reiterated that he did not seek their consent for his plan. He said he did not need it. But as a Minister of the Crown, he would usually try to seek support for any new policy initiative. He said any discussions would have been in that context.

[34] Mr. Burton and Mr. Kean said they could not confirm that their Association was in agreement until they met with the members. They said that following the Ottawa meeting such a meeting took place in Gander. There were no minutes taken at the meeting, and no correspondence with the Minister about the terms of any agreement.

[35] The testimony of the three men depict two different perspectives on the discussions at the three meetings held some 24 years ago. Mr. Tobin was adamant that as Minister, he lacked the power to contract for future amounts and any discussions with the Plaintiffs were in the context of consultations in pursuance of his policy role. He acknowledged that the 3,100 tonnes was in the CMP and that he hoped to have the fleet's support in his decision, but he said it was not an offer

in the contractual sense. The Plaintiffs on the other hand believe that a firm offer was made by the Minister: 3,100 tonnes unless conservation dictated otherwise and if so, then the LIFO principle would apply.

[36] The elements of the offer, according to the Plaintiffs, was the assurance that their quota would not go below 3,100 tonnes, and that if it did, then LIFO would apply. The Plaintiffs say that the insertion of the quota amount in the CMP for 1995 was evidence of a contract. That quota was included in the CMP for subsequent years until 2000. In the CMP for that year, a lower quota was stated, giving rise to this action. In all, the amount of quota discussed was included in the CMP for five years, and it was reduced in subsequent years. As for LIFO, there is no mention of it in the CMP for any of the years.

[37] The evidence supports the fact that discussions took place. However, a determination that in the context of the Minister's role any comments would have amounted to an offer as the Plaintiffs allege is not credible. An objective observer would have seen these discussions as part of the Minister's policy-making role. In that role, he would have had many discussions with various stakeholders.

[38] The Plaintiffs' case also has some difficulty with the other side of the alleged deal. They say that the offer of an assured quota was made in exchange for their support. However, it was clear that the Minister did not need their support in order to proceed with his plan for the crab fishery. As a politician and Minister responsible for fisheries policy he sought their support. However, in a legal sense, their support was not necessary.

[39] Having regard to the circumstances of a Minister in a political and public policy role, it is hard to see that the representations made in the meetings to which the Plaintiffs have referred were anything more than consultations with stakeholders in an industry with many competing interests. While the Plaintiffs may have considered that an offer arose from the discussions, when one considers, objectively, the circumstances surrounding the meetings, I cannot find that a *consensus ad idem* was achieved. The evidence does not satisfy me that an offer was, in fact, made.

[40] If the meetings to which the evidence refers gave rise to an offer in contract, the other elements of contract formation have to be examined. I will consider the issue of acceptance next.

(ii) Offer and Acceptance: Acceptance

[41] The evidence on acceptance of the Minister's "offer" came from the affidavits and testimony of Ivan Burton and Rick Kean. As executive members of the Association of 3K fulltime crab fishermen, one or both of them were present at the meetings with the Minister, as well as meetings of the Association.

[42] Mr. Kean said in his testimony that the Minister's proposal was in exchange for their support of his plan. When asked how that support would be manifested, he said that the members of the Association would not oppose him publicly on what he intended to do. He said their opposition was out of concern for the crab stocks, and they did not want crab to be depleted by over-fishing as had happened with cod stocks.

[43] Mr. Kean said they did not accept the Minister's proposal at any of the meetings, including the last one in Ottawa on December 4, 1994. He said they had to consult with the members of the Association. A few days after the Ottawa meeting, the association of crab fishermen met at a hotel in Gander. It appears they discussed what had happened in the Ottawa meeting, but no minutes were kept of the proceedings at the meeting. There was no other record of what happened at the meeting. There was no letter to either the Association members or to the Minister recording the terms of an agreement. Both Mr. Kean and Mr. Burton agreed no communication was sent to the Minister outlining acceptance of what the Minister had discussed.

[44] For the purposes of this stage of the analysis, if I accept that the Minister, on behalf of the Defendant, made an offer, when can it be said that the Plaintiffs accepted this offer? Presumably the Association approved it at the meeting, but there is no record of the meeting. Neither Mr. Kean nor Mr. Burton could point to

a decision or any action of the Plaintiffs that indicated acceptance nor any communication of acceptance to the Minister, either in writing or by other means.

[45] As a general rule, it is not enough for one to whom an offer is made to assent inwardly; the offeree must communicate acceptance to the offeror, or to someone authorized by the offeror to receive it. There was no evidence of communication of the acceptance to the Minister or the Department or anyone authorized by the offeror to receive it.

[46] I conclude that even if there was an offer, there was no acceptance. Acceptance by the offeree must be communicated to the offeror. There was no communication. Therefore there was no acceptance, which could be part of the formation of a contract.

(iii) Consideration

[47] Consideration is an essential part of a contract. Consideration is something of value that passes from one party to another. Usually consideration is the price paid for the subject of the contract. However, forbearance from doing something to which a party has a legal right has been found to constitute consideration: (*GenRep* at para. 18.)

[48] In this case, the Plaintiffs argue that consideration in this matter was twofold: first, a promise to support the Minister's plan, not oppose it; and second, their agreement to the resulting reallocation of quota., which meant they would receive less than their expectation. That reallocation would limit their quota in subsequent years. They argue that their agreement to the plan constituted their giving up a benefit. Mr. Burton, in his testimony, said that he knew the Minister did not require the support of the 3K fleet, but wanted it.

[49] There are several issues to consider. First, there is no evidence that a declaration of support, or even non-opposition, was issued by the Plaintiffs. So it is a live issue as to whether any consideration actually passed.

[50] Secondly, even if their forbearance could be seen as consideration, the quota was something to which they had no entitlement beyond the current year. By section 10 of the *Fishery (General) Regulations* S.O.R./93-53, made under authority of the *Fisheries Act*, R.S.C., 1985, c. F-14 (the “Act”), a license is valid for only one year. A license holder had entitlement to quota for the term of the license, and by specific wording in the document, had no entitlement beyond that. While it was accepted that the practice of the Department was to renew the licenses annually, the *Act* and *Regulations* are quite specific in the limited nature of the entitlement. They had no legal entitlement to give up as consideration for the alleged contract.

[51] I accept that consideration may be very small. Some legal texts say a “peppercorn” is sufficient. But the concept of consideration requires something to be given or promised in exchange for the promise to be enforced. Even if the elements of offer and acceptance were present, the argument of the Plaintiffs on the issue of consideration is weak. While they did not oppose the Minister’s plan, they did not communicate that intent. The Minister did not require their support to proceed with his plan, so there was no benefit passing from the Plaintiffs to the Minister. And finally, even if they agreed to accept a limit on their quota, the reality is they had no entitlement beyond the current year.

[52] Accordingly, the Plaintiff has not established to my satisfaction that there was consideration for the alleged agreement.

(iv) Intention to Create Legal Relations

[53] In considering all of the circumstances, to find a contract there must be evidence that both parties intended to be bound. Minister Tobin testified that he would not create a legal contract guaranteeing anyone an amount of fishing quota. He said it would be contrary to the Minister’s role of managing, conserving and

developing the fisheries in the public interest. In any event, he said he did not have the authority to make a contract in respect of quota, as it would fetter his discretion in managing the fishery. He said quota in the fishery is a common property resource, and he was not able to make a contract and never intended to do so. His affidavit emphasized this position, at paragraph 6:

6. As Minister, I never would have intended to create a legal contract with any fisher guaranteeing them an amount of fishing quota. The role of the Minister of Fisheries and Oceans is to manage, conserve and develop Canadian fisheries, a common property resource, on behalf of Canadians, in the public interest; not on behalf of any individual fishers or fishery associations.

[54] The Plaintiffs' evidence also does not support an intent to create legal relations. Mr. Burton and Mr. Kean both testified that while these discussions were very important to their livelihood, none of the discussions were ever reduced to writing. They both said that they did not consult legal counsel, nor did they commit any aspect of the discussions to writing. Even the meetings of the Association had no record of proceedings, nor was there any correspondence with the Minister's office or departmental offices to confirm the intent.

[55] In Mr. Burton's testimony he confirmed the absence of many of the certainties one would expect in a contractual relationship. He said there was no discussion of the duration of any commitment. He confirmed the Minister never said that the quota would never change. He specifically said that their objective was to have a reference to the discussions in the CMP. He said, "it was all we could hope for." Mr. Kean testified much to the same effect. He said "we wanted it in the CMP. We were trying to protect our quota." I take it that this was an acknowledgment on the part of both men that it was a discussion about policy, not contract. The CMP was issued each year and was valid for one year.

[56] I accept that in retrospect, the Plaintiffs operated under the belief that the commitment had legal effect. However, their actions and understandings at the time do not objectively support this interpretation of the discussions. The Minister, in his testimony, did not agree that there was any intent to form a contract, nor did he think he had the power to contract. This supports a finding that at the time, there was no intention to create legal relations.

(v) Contents

[57] The final element in determining whether a contract was formed relates to the certainty of its contents. A good starting point is the comment of Boswell, J. in the trial decision in *100193 PEI Inc.* In paragraph 49 (quoted above) he raised several questions that are relevant:

- i. Did the offer have any terms when it was made?
- ii. Was the offer accepted, and when was the offer accepted?
- iii. Who were the parties to the alleged agreement, and what was the role of the individual members of the Association in accepting the offer?
- iv. What was the duration of the offer?
- v. What “legal options” (consideration) did the Plaintiffs give up?

i. Terms

[58] The only terms noted by the Plaintiffs were the quota of 3,100 tonnes and the acceptance of the LIFO principle in exchange for support. I accept that the quota was discussed and was inserted into the CMP for 1995 and several subsequent years. As for the LIFO principle, it may have been discussed, and Mr. Tobin did not deny that it could have been discussed, but it was not reflected in any of the future CMPs the Department issued. This provision lacks the certainty required to ground a contract.

[59] As for the support that was to be the *quid pro quo*, there was never any definition put around this. It was never determined how the support would be communicated or who would declare it. More importantly, Mr. Tobin said he was not looking for consent to his plan, since the Plaintiffs did not have a veto. He was looking for support of a fisheries policy in a policy-making context. The provision of support was too vague to be a contractual term.

ii. Acceptance

[60] As discussed above, there was no definitive acceptance of the Minister's plan. There was no indication of acceptance by the Plaintiffs at any of the meetings held with the Minister, and the meeting of the Association did not result in any communication of acceptance.

iii. Parties

[61] I accept that the parties were sufficiently defined for the purposes of a contract. While there was some uncertainty as to the membership of the Association at any particular time, the Plaintiffs were clearly indicated and identifiable. However, from the perspective of performance of any requirements of the contract, it is uncertain as to whom would have been responsible to indicate support, if it had been forthcoming.

iv. Duration

[62] The plan of the Minister resulted in the quota of 3,100 tonnes being placed in the CMP for 1995-99. It was in 2000 and onward the quota was changed. The Plaintiffs confirmed that no duration was discussed with the Minister, but that their expectations were that the quota would be in effect indefinitely. Mr. Kean said he expected to have the quota as long as he had a license. However, he also agreed that the Minister made no comment about duration. In the context of the alleged contract, duration would be an essential term. It was not discussed, and, other than the one-year duration of each CMP, there is no evidence to support any period of time during which the quota would be maintained, and certainly no evidence of an

indefinite quota. In addition, it would be unreasonable, if there was a contract, to have such a commitment to be indefinite. The Minister could not agree to such a term as it would fetter his ability to manage the fishery.

v. *“Legal Options”*

[63] The Plaintiffs say they agreed to take a lower quota than that to which they felt they should have been entitled. However, they gave up nothing, as they had no entitlement beyond the current licensing year. As a common property resource, the Plaintiffs had no proprietary interest in quota. It was granted on an annual basis by licenses issued by the Department under the direction of the Minister. The Plaintiffs had no right to sue for quota no matter how long they had been the beneficiaries of licensed quota. Therefore, there was nothing they could offer as consideration since they had no legal entitlement beyond the current year.

b) Summary

[64] On the evidence before me, I am unable to find that there was a contract entered into between the Plaintiffs and the Minister. Even if it could be said that there was a form of an offer made, to consist of the quota and the LIFO principle in exchange for support, and I have found there was no offer, the allegations of contractual formation fail on all the other elements.

[65] There was no indication of acceptance by the representatives of the Association at the meetings with the Minister, nor was there evidence of communication of acceptance by the members of the Association following the meeting in Gander.

[66] There was no valid consideration. The promise to support, or to not oppose, the Minister’s plan, does not constitute consideration. In particular, in a policy-

making and political context, support does not carry with it any legal connotation. It does not go beyond the idea of consultation with stakeholders in the formation of policy. Further, the Plaintiffs did not give up anything to which they had a legal entitlement. In alleging an agreement to accept 3,100 tonnes annually, there would have to be some evidence that they had a proprietary interest in a higher quota. The legal regime in place indicates that they had no interest beyond the current year. There was nothing that could constitute consideration for the alleged agreement.

[67] On the issue of an intention to create legal relations, as I have noted, even the Plaintiffs' account of the discussions with the Minister did not disclose that they felt this was a process that would result in a binding agreement. They were hoping to influence the contents of future CMPs, not enter into legal relations.

[68] Finally, there is no evidence of certainty of essential terms that would constitute the contract. Indeed, even if I were to find that there was an offer and acceptance of that offer, the formation of a contract fails when one tries to delineate its terms. I am not convinced that there was a *consensus ad idem* of the parties – in either the terms of the agreement, or in intention to form an agreement.

[69] One further point needs to be stated. The witnesses for the Plaintiffs lauded Mr. Tobin for his consultative efforts. Mr. Kean said that he “. . . was good at talking to fishermen.” Mr. Burton said, “. . . Tobin was a good Minister of Fisheries. He listened to us.” It seems to me that he was fulfilling his role as Minister in consulting with stakeholders. To say now that his practice of consulting with fishermen would lead to legal relations and binding agreements would be to punish a good minister and reward a minister who refused to consult. One of the downsides to making this a contract is the chilling effect it could have on any future consultations for the development of policy. In a democracy with a vibrant political process, that would be unacceptable.

B. MINISTERIAL DISCRETION AND THE ANTI-FETTERING DOCTRINE

[70] Notwithstanding that my decision on the question of contract formation resolves the matter, I will deal, albeit briefly, on the third issue of whether the anti-fettering doctrine prohibits such a contract.

[71] The Plaintiffs argued that, notwithstanding the rule against fettering discretion, the Minister had full powers to contract. In section 4 of the *Department of Fisheries and Oceans Act*, R.S.C., 1985, c. F-15, the Minister is authorized to exercise all of the powers of Parliament in the specified subject matter, involving fisheries, oceans, etc. It was argued that this includes the power to contract.

[72] It was acknowledged that there might be constitutional limitations, in particular, the prohibition against binding a successor. In *Wells v. Newfoundland*, [1999] 3 S.C.R. 199, the Supreme Court of Canada provided that contracts with the Crown may be binding even if legislation changes the administrative regime supporting the contract. On that basis, damages may be claimed even if the policy behind the contract changes lawfully.

[73] The principles outlined in the *Wells* case, however, are applicable to contracts in the context of employment or services. They do not deal with the same issue as fettering in a policy context. In *Happy Adventure Sea Products (1991) Ltd. v. Newfoundland & Labrador (Minister of Fisheries & Aquaculture)*, 2006 NLCA 61 the Court of Appeal explicitly affirmed the anti-fettering doctrine. In that case, the Minister had entered into a written agreement that required the issuance of a processing license for specified minimum amounts of crab in subsequent years. The court held that the agreement fettered the Minister's discretion, and therefore was unenforceable. It stated, at paragraphs 27-28:

27. The conclusion follows in the case before this Court that the Agreement is unenforceable to the extent that it fetters the discretion of the Minister to issue or refuse a fish processing licence, or to attach terms and conditions that the Minister considers appropriate (subsection 5(2) of the Act), and advisable and necessary (subsection 32(2) of the regulations).

28. In the result, the companies' applications for a declaration that the Minister is prevented from reducing their crab quota, and damages related to the requested declaration, must fail. It is not necessary to proceed with a consideration of the

second issue, that is, whether the applications judge erred in his interpretation of the Agreement.

[74] An examination of the *Wells* and *Happy Adventure* cases highlights the distinction between contracts relating to business or employment, and those that affect ministerial discretion in a policy context. The *Wells* case supports the proposition that even following legislation abolishing his position, the Plaintiff still retained the benefit of the contract of employment. It was argued that it can be applied in this case, in that the existence of a contract does not prevent the government from changing the policy, but it is still obligated to honour any consequences arising from breach of the contract due to the policy change.

[75] Apart from the requirement to prove a contract, this case is quite different. In *Wells*, the contract was for services and was quite distinct from the legislative enactment that created the position. In this case, the alleged contract goes to the heart of the policy issue and would have the effect of abridging the Minister's discretion to manage the fishery.

[76] In *Andrews v. Canada (Attorney General)*, 2009 NLCA 70, the Court of Appeal was dealing with identical issues as before this Court in this matter. The Plaintiffs were other members of the 3K Crab Fishermen's Association who, like the Plaintiffs in this action, claimed damages arising from the same circumstances. The court affirmed a lower court's decision to strike the action. Its comments on the discretion of the minister are germane to this action. At paragraph 83, the court stated the applicable principles:

83. To summarize, the above decisions support several conclusions. First, where, pursuant to legislation, a minister is authorized to exercise discretion in the public interest, that discretion may not be constrained for future use or fettered either directly or indirectly, unless the legislation otherwise provides. Indirect fettering includes exposing the minister or government to liability for damages or payment of compensation for failure to exercise the discretion in a particular way. Despite the apparent harshness of the result, an agreement, implied undertaking or representation having the effect of fettering the minister's authority is unenforceable and damages are not available. ...

[77] In applying the law to the same set of facts grounding the current action, the court went on to state at paragraph 84:

84. Applying these principles to the appeal now before this Court leads to the conclusion that it is plain and obvious the appellant fishers' action cannot succeed. In accordance with the legislation, the Minister is clothed with discretion to issue crab licences, and to include a condition regarding quota, for "the proper management and control" of the fishery or for the "conservation and protection of fish" (see paragraph 66, above). Crab licences are issued annually resulting in yearly exercise of the Minister's discretion. That discretion must be exercised in the public interest and may not be fettered directly or indirectly. A claim for damages for failure to exercise the discretion in a particular manner amounts to an improper indirect fettering of the Minister's discretion. As a result, the fact that the Minister made a "commitment" to the appellant fishers some years earlier cannot ground a claim in damages. ...

[78] Notwithstanding its decision in *Bert Andrews*, the Court of Appeal in this case decided that the issue should not be decided on a striking application but should go to a trial on the merits. However, the principles stated apply to find that if there were a contract, it would offend the anti-fettering doctrine governing ministerial discretion and would thereby be unenforceable. These principles are equally applicable in a trial on the merits of this action. If I had found the existence of a contract, it would therefore be unenforceable and damages would not be available. As I have found that the Plaintiffs have not made out the elements of the contract they allege, it is not necessary for me to issue a decision on this aspect of the matter.

DISPOSITION

[79] The Defendant's application for summary judgement in this matter is granted. The Plaintiffs' action in contract is dismissed, as the facts on which they rely do not constitute the basis for a contract. Judgment is entered for the Defendant.

[80] The Defendant Crown shall have its costs in respect of this trial in accordance with Column 3 of the Scale of Costs attached as an Appendix to Rule 55 of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sched. D.

ALPHONSUS E. FAOUR
Justice

TAB 3



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Pittman's Enterprises Ltd. v. Mike Kelly & Sons Limited*,
2021 NLSC 126

Date: October 6, 2021

Docket: 201704G0162

2021 NLSC 126 (CanLII)

BETWEEN:

PITTMAN'S ENTERPRISES LTD.

PLAINTIFF

AND:

MIKE KELLY & SONS LIMITED

DEFENDANT

Before: Justice Peter N. Browne

Place of Hearing:

Corner Brook, Newfoundland and Labrador

Dates of Hearing:

June 7 – 10, 2021 and June 29, 2021

Summary:

The Plaintiff sued the Defendant for payment of two invoices issued in 2017 totaling \$115,460 for blast rock material removed from the Plaintiff's quarry following the expiration of the Defendant's subordinate permit in 2016. The Defendant claimed that the materials removed in 2017 originated from its surplus materials blasted in 2016 for which they paid royalties to the Crown as required under the *Quarry Materials Act, 1998*.

The Plaintiff's claim was dismissed with costs on a Column 3 basis. The evidence did not establish, on a balance of probabilities, an agreement existed between the parties to transfer entitlement of the Defendant's surplus materials to the Plaintiff following the expiration of the 2016 subordinate permit. The materials removed by the Defendant in 2017 were from its portion of its 2016 surplus. The materials had become intermixed when the Plaintiff rehabilitated the quarry floor during the 2016 permit year.

Appearances:

Keith S. Morgan	Appearing on behalf of the Plaintiff
David P. Goodland, Q.C.	Appearing on behalf of the Defendant

Authorities Cited:

CASES CONSIDERED: *McCabe v. Berge* (1999), 182 Nfld. & P.E.I.R. 135, 135 A.P.R. 135 (Nfld. C.A.); *Imperial Oil Ltd. v. C & G Holdings Ltd.* (1986), 58 Nfld. & P.E.I.R. 326, 39 A.C.W.S. (2d) 48 (Nfld. S.C. (T.D.)); *May & Butcher Ltd. v. R.* (1929), [1934] 2 K.B. 17 (U.K. H.L.); *Carter v. Long & Bisby* (1896), 26 S.C.R. 430; and *Modern Paving Ltd. v. Donovan Homes Ltd.*, 2011 NLCA 39

STATUTES CONSIDERED: *Quarry Materials Act 1998*, S.N.L. 1998 c. Q-1.1

REASONS FOR JUDGMENT

BROWNE, J.:

INTRODUCTION

[1] In 2016, Pittman's Enterprises Ltd. ("PEL") and Mike Kelly & Sons Ltd. ("MKS") entered into an arrangement regarding the use of an undeveloped quarry located near Parson's Pond Head on the Northern Peninsula.

[2] PEL obtained the quarry permit but provided MKS with permission to apply for a subordinate permit on the basis that they assumed responsibility for readying the area as a quarry. This included clearing trees, rock and soil (overburden), and establishing the quarry through drilling and blasting. Large rock, or armour stone would be created from the blasting. The armour stone was unnecessary to MKS' needs so it was agreed PEL would be entitled to this material.

[3] The parties did not discuss what would happen to any unused material blasted by MKS at the expiration of its subordinate permit.

[4] The arrangement continued over the summer and fall of 2016 until the expiry of the permit on December 31, 2016. In February 2017, MKS required access to the quarry to obtain its unused blast rock for two projects: Baker's Brook Bridge and Rocky Harbour Waste Management.

[5] An issue arose as to provenance of this blast rock. In a Statement of Claim filed on July 4, 2017, PEL claimed payment for two unpaid invoices related to the removal of blast rock in 2017 following the expiration of MKS' subordinate permit.

[6] The Defence filed by MKS on August 21, 2017 claimed that the 2016 arrangement did not provide PEL with ownership of any blast rock that remained on the quarry site following the expiration of their subordinate permit. MKS alleged the quarry materials used for its two 2017 projects originated from its unused blast rock from 2016.

POSITION OF THE PARTIES

PEL

[7] It is acknowledged that as part of the 2016 arrangement, MKS hired a professional drilling and blasting company to produce 100,000 plus tonnes of quarry material. PEL claims it understood MKS would be using this material for one project, the establishment of culverts for Parks Canada in Gros Morne National Park. During the excavation for the project the quarry flooded and MKS had to use pumping equipment in order to continue to remove recoverable material from the pit.

[8] By the end of July 2016 MKS had removed all the recoverable blast rock and left the quarry which flooded again. In August, PEL rehabilitated the quarry floor by blasting and filling it with blast rock and large armour stone.

[9] In the late summer and fall of 2016,, both PEL and MKS were using the quarry for materials. PEL was involved with a breakwater project in Cow Head that required the armour stone from the original MKS blast. PEL continued its blasting operations into the fall and acknowledge that at this time there were stockpiles of rock crushed by MKS that remained on the quarry site.

[10] By the end of the 2016 permit year PEL claims the only accessible material remaining in the quarry was its own blast rock apart from the MKS stockpile of crushed stone.

[11] In February 2017, PEL was contacted by MKS to request access to the quarry to obtain blast rock for its 2017 projects. The material required was in addition to their 2016 stockpile of crushed material. PEL informed MKS they could have access to the additional material subject to agreeing to pay specific rates. The rates would be determined by whether the material was blasted by PEL or blasted by MKS.

[12] PEL claims MKS agreed to this arrangement and removed material from the quarry. It is agreed that neither MKS nor PEL conducted any blasting in the quarry in 2017 before MKS removed the blast rock for its projects.

MKS

[13] According to MKS, the arrangement between the parties in 2016 did not contemplate what would happen to the ownership of any blast rock created by MKS before the expiration of their subordinate permit.

[14] In May 2016, MKS blasted approximately 105,000 tonnes of rock from the quarry. Of that amount, it provided PEL with 10,500 tonnes of armour stone as part of the original arrangement. Of the remaining 94,500 tonnes of material, approximately 58,727 tonnes were crushed into “class A” and “class B” aggregates and stockpiled near the quarry site. An additional 500 tonnes of rip-rap (rubble) was also stockpiled leaving 35,273 tonnes of usable quarry material known as blast rock remaining in the quarry. Between July 7 and October 13, 2016, MKS removed a further 6,152 tonnes of blast rock.

[15] At the end of 2016, MKS claims it had stockpiles of class A and class B aggregates and 29,121 tonnes of blast rock. Between March and May 2017, MKS had two projects which required blast rock from the underwater portion of the quarry: (i) Rocky Harbour Waste Management site (15,000 tonnes) and (ii) a bridge replacement at Baker’s Brook (10,100 tonnes).

[16] MKS acknowledged discussions occurred with PEL in February 2017 about prices for additional material to be removed but stipulated that the rates would only apply to new materials blasted by PEL or MKS during the 2017 permit year. It rejected PEL’s assertion that in 2016 it removed all of its useable supply of blast rock. MKS claims it completed its two projects in 2017 using the blast rock from its 2016 surplus.

ISSUES

[17] The issues to be determined are:

- a. Did the 2016 oral agreement between PEL and MKS contemplate who would be entitled to any surplus blast rock following the expiration of the 2016 quarry and subordinate permits?
- b. Did MKS remove all of its blast rock in 2016 or did intermixture occur when PEL rehabilitated the quarry floor in August 2016?
- c. Did MKS agree to pay PEL for the blast rock it removed from the quarry floor in 2017?

EVIDENCE

[18] At trial, PEL called three witnesses: Devin Pittman, the company Vice-President; Bernard Pittman, the company President; and Christopher Pittman, a supervisor and blaster with the company. MKS called six witnesses: Don Matthews, a retired engineer who was the Project Manager in 2016; Jim Kasemets, General Manager of Nfld. Hard-Rok; Dennis Hutchings, Crusher Superintendent; Wade Muggeridge, Loader and Scale Operator; Peder Pederson, Construction Superintendent; and Dave Kelly, co-owner of MKS.

[19] In addition to the oral evidence, the evidence included numerous documents, emails/texts, photographs, and videos entered as exhibits, as well as portions of transcripts from the discovery of Devin Pittman.

[20] At the close of trial I requested the parties provide both written and oral submissions which I found extremely helpful. Where possible, I relied on both the oral and documentary evidence to support a factual finding.

PEL

Devin Pittman

[21] The Plaintiff, PEL, is a general contracting company which has been in existence for approximately 40 years. Devin Pittman is one of three Directors and is the Project Manager.

[22] Mr. Pittman was the main witness for the Plaintiff. He testified that in May 2016 his company was approached by MKS' Project Manager, Don Matthews. Mr. Matthews indicated they were having difficulty securing materials for a federal project from the adjoining quarry owner.

[23] The parties came to an arrangement whereby PEL, as the permit holder for the quarry, agreed to issue a subordinate permit to MKS in exchange for taking on the responsibility of creating the quarry.

[24] Following the blasting, MKS set up a crushing operation to create class A stones (7.62 cm-12.70 cm in diameter) and class B stones (10.16 cm to 20.32 cm in diameter) for a Parks Canada project in Gros Morne.

[25] Given the size of the initial blast, it created a deep hole in the floor of the quarry that constantly filled with water that had to be pumped out regularly.

[26] After MKS had finished its crushing operation in July, Mr. Pittman claims the quarry was completely empty of rock and the floor was covered in water. He

provided the Court with a photo from August 9, 2016 (Exhibit DP #12) which showed the extent of the water coverage.

[27] In August, PEL rehabilitated the quarry floor by drilling and blasting rock to get above the water table and built a floor to make the quarry driveable.

[28] During the fall of 2016, PEL was involved in a large construction project. Mr. Pittman testified he saw MKS trucks removing blast rock. He contacted MKS co-owner, Dave Kelly, and told him he would not permit MKS to remove any more material. As far as Mr. Pittman was concerned, by the end of 2016, all the blast rock that remained in the quarry had been created by PEL.

[29] In February 2017, Mr. Pittman testified that he was driving to St. John's with his father when he received a call on his cell phone from Don Matthews. Mr. Matthews said they needed access to the quarry to take materials for two upcoming projects. According to Mr. Pittman, he "made it clear" that MKS had "removed everything and more" and that he would only supply materials at cost.

[30] The call was followed by an email exchange on February 28, 2017 between Mr. Pittman and Mr. Matthews (Exhibit DP #15) which went as follows:

Devin Pittman
From: Don Matthews
Sent: February 28, 2017 12:43 PM
To: Devin Pittman
Cc: Dave Kelly; Peder Peterson
Subject: RE: PP Quarry

Agree that's fine either way
Will stay in contact to determine what quantities will be required

-----Original Message-----

From: Devin Pittman
Sent: Tuesday, February 28, 2017 11:43 AM
To: donm ...
Subject: PP Quarry

Don,

I spoke with Peter (sic) yesterday and he advised you'll be using some material from Parsons Pond Head. Just wanted to clarify what we discussed last week. PEL can drill and blast the material at a rate of \$4/tonne including royalties. Alternatively, MKS can drill and blast the material plus a cost of \$1.40/per tonne including royalties.

I trust this is satisfactory.

Regards,

Devin Pittman
Pittman's Enterprises Ltd.

[31] After this exchange, the MKS Construction Superintendent, Peder Peterson, showed up at the PEL office saying they were in a time crunch and needed the material. Mr. Pittman testified he trusted Mr. Pederson so he allowed the MKS crew to remove the materials from the quarry floor.

[32] On cross-examination, Mr. Pittman admitted that when he discussed the pricing for 2017 (Exhibit DP #15) he had not contemplated MKS coming in to the quarry and removing blast rock from the quarry floor. He was also asked about any records of the blasts that were conducted by PEL in 2016. He advised the Court that they were in the possession of their Blaster-in-Charge, Colton Bennett, and that Mr. Bennett's former girlfriend had destroyed them. Mr. Pittman was unable to assist the Court with regard to the number, the dates, or the removal of blast rock yielded from their blasts.

Bernard Pittman

[33] Bernard Pittman is the company President. Mr. Bernard Pittman confirmed there was a call to his son's cell while they were driving to St. John's in early 2017. He recalled that Don Matthews wanted to get certain material from the quarry and some discussion about the price of \$4.00 per tonne.

Christopher Pittman

[34] Christopher Pittman was the supervisor at the quarry and assisted Colton Bennett with PEL's blasting. He confirmed Devin Pittman's evidence that during the rehabilitation process, they blasted materials into water to fill the pond so as to make the quarry accessible.

[35] In cross-examination, Mr. Christopher Pittman confirmed that he was not the person in charge of PEL blasting activities. When asked about the location of the company's Dangerous Good/Bills of Lading for the transportation of explosives, he had no explanation as to whether they existed.

[36] On redirect, Mr. Christopher Pittman estimated there may have been as much as 20 feet of water in the quarry. They did not drain the water to investigate if there was any blast rock fill remaining before they began blasting and filling in the floor.

MKS*Don Matthews*

[37] Don Matthews is a retired engineer with the Department of Transportation who began working as a Project Manager with MKS in 2015.

[38] Mr. Matthews testified that in 2016 MKS had been awarded a contract from Parks Canada to install culverts from Rocky Harbour to Cow Head. There were several quarries in the local area they could use but settled on PEL's quarry at Parson's Pond Head.

[39] He confirmed the arrangement with PEL was that they would be given a subordinate permit in exchange for starting the quarry.

[40] In addition to the Parks Canada project, MKS also needed materials for a waste management project in Rocky Harbour. He estimated MKS would need approximately 100,000 tonnes of rock. When questioned by PEL's legal counsel as to why the MKS subordinate permit application contained a lower number than the projected blast yield, Mr. Matthews explained that the industry practice was to insert a low number on the application as royalties are payable up front at the time of filing the application. Instead, contractors paid their royalties based on the material that was used by the end of the permit year.

[41] He recalled having a discussion with Devin Pittman in February 2017 in which Mr. Pittman suggested that MKS had removed all its material and there was no rock left. Mr. Matthews testified that he disagreed with Mr. Pittman's suggestion and told him there was rock remaining but it was covered by water.

[42] On cross-examination, Mr. Matthews was shown Exhibit DP #30. This was a photo of the quarry floor filled with water. It was sent to him in an email from Devin Pittman on February 22, 2017. He admitted it was representative of the state of the pit when they left in July 2016 but the water was never drained to determine how much water or rock was actually present.

Jim Kasemets

[43] Mr. Kasemets is the General Manager of NL Hard-Rok. He confirmed his company was hired by MKS to drill and blast at the Parson's Pond Head site. He

explained how the blast was conducted and that as part of the blasting plan they used a subdrill. A subdrill creates a blast below the floor grade and creates additional material.

[44] Mr. Kasemets was shown Exhibit JK #1 and he confirmed that NL Hard-Rok invoiced MKS on May 26, 2016 \$213,989.83 for blasting 105,573 tonnes of rock.

Dennis Hutchings

[45] Mr. Hutchings is a Crusher Superintendent with MKS. He managed a crew of five that operates a rock crusher. Once the rock is crushed, it is placed in the bucket of a front-end loader and moved to a stockpile. The bucket on the loader has a scale and the buckets are counted by the crusher operator.

[46] Prior to the crew leaving in July 2016, Mr. Hutchings felt there was five to six meters of blast rock left on the quarry floor. He based this estimation on the fact that the MKS pumps were still draining water from the quarry floor. Mr. Hutchings told the Court his crew were required on another project so they had to leave. He recalled the backhoe was still digging blast rock out of the water after the pumps had stopped draining the water.

[47] On cross-examination, Mr. Hutchings was questioned about Exhibit DH #1, the bucket counts from the loader. Plaintiff's counsel had Mr. Hutchings acknowledge that between June 28 and July 5 the counts were high but between July 6 and July 18 the numbers went down. Plaintiff's counsel suggested that was because the rock materials were harder to obtain. Mr. Hutchings was not able to offer an explanation.

Wade Muggeridge

[48] Mr. Muggeridge operated the front-end loader and scales for MKS at the quarry. One of his responsibilities included keeping daily totals of the loads sent to

the Parks Canada project. Besides keeping totals for Parks Canada, he recorded totals for other MKS projects, including contracts for Nalcor, Budgells Equipment and the Department of Transportation and Works.

[49] During Mr. Muggeridge's evidence he was shown photos from Exhibit DP #12. He observed that the photos taken on July 14 indicate there was MKS blast rock located at the back of the quarry and on the quarry floor. The photos of August 9, 2016 show MKS stockpiles of class A, class B, and blast rock.

[50] Mr. Muggeridge remained at the quarry until October 13, 2016 and was able to observe PEL's efforts to rehabilitate the quarry floor. He testified that from what he saw, PEL levelled out the quarry with material from the MKS blast. He felt there was more MKS rock left than what PEL brought in from their own blasts.

[51] On cross-examination, Mr. Muggeridge testified that he helped create a stockpile of blast rock for MKS and pointed it out on the August 9 photo of Exhibit DP #12. On occasion, PEL trucks would take some of the MKS blast rock from the stockpile and used the stockpile to help fill in the water on the quarry floor. He disagreed with Plaintiff's counsel's suggestion that the depth of the water in the pond was 15 to 20 feet deep.

[52] When he left on October 13, 2016, Mr. Muggeridge felt there was still MKS blast rock left in the quarry located towards the back and that material from PEL's blasting would have ended up on top of the MKS material.

Peder Pederson

[53] Mr. Pederson was a Construction Superintendent with MKS in 2016 and 2017. His only dealings with PEL occurred in 2017 while he was working on the Rocky Harbour Waste Management project.

[54] Around February 20, 2017, he was told by Don Matthews to go to the Parson's Pond Head quarry to get leftover blast rock.

[55] Mr. Pederson testified he went to PEL and first spoke with Bernard Pittman who told him to deal with his son, Devin. Mr. Pederson did and recalled there was no discussion about price or the cost of materials. He would never have discussed or agreed to any terms as he would not have had the authority to do so.

[56] He recalled that Devin Pittman did not tell him they could not get their rock so he moved in equipment on February 26. An excavator and a six-wheel articulated truck took the quarry materials from the floor to the top of the quarry to allow the water to drain. The materials came from the floor at the back.

[57] Mr. Pederson was shown Exhibit DP #15. His understanding from speaking with Don Matthews was that if MKS did not have enough materials then they would have to go to PEL and ask for a price.

[58] On cross-examination, Mr. Pederson confirmed that when he went with the equipment on February 26 he was not aware of any discussions between PEL and Don Matthews about prices. Mr. Pederson was shown an email exchange he had with Devin Pittman on May 10, 2017. According to Mr. Pederson, he sent it along to Don Matthews who said he would look into it. He did not hear anything until months later.

David Kelly

[59] Mr. Kelly is a 50 percent owner of MKS and has worked for the company for 41 years. He described their business as heavy civil construction.

[60] In 2016, MKS had a contract with Parks Canada and a waste management project in Rocky Harbour that had gotten delayed. He estimated he needed 100,000 tonnes of rock material for both.

[61] He agreed with PEL they would ready and establish the quarry. The cost to ready was approximately \$25,000 and the blasting and drilling \$213,989.88.

[62] When asked the reason for removing his crusher crew from the quarry in July 2016, Mr. Kelly explained they were required at a site in Plum Point to make aggregate for asphalt.

[63] He denied they did not go back because there was no material left at the quarry rather they had already crushed as much rock as they needed.

[64] Over the course of 2016 there were occasions where each company availed of the other's work product. Mr. Kelly cited examples where PEL took some of their blast rock and asked for 10 loads of class A. Similarly, around the third week of October, PEL loaded rip-rap for MKS.

[65] Mr. Kelly testified that at the end of 2016, MKS had somewhere between 25,000 to 30,000 tonnes of blast rock remaining on the floor of the quarry. This did not include their stockpile of class A and B. After he received the two invoices (Exhibits DP #19 and DP #20) he spoke with Bernard Pittman who said the rock belonged to PEL. Mr. Kelly disagreed and said it belonged to MKS. The conversation lasted 10 minutes.

THE LAW

Contract formation

[66] To make out a claim in contract, a plaintiff must prove the existence of a contract, breach of contract, and damages flowing from the breach. The test is on a balance of probabilities.

[67] The elements of a valid contract are: offer, acceptance, consideration, intent to create legal relations, and certainty of terms (see *McCabe v. Berge* (1999), 182 Nfld. & P.E.I.R. 135, 135 A.P.R. 135 (Nfld. C.A.) at paragraph 21). In order for a contract to be enforceable, it must contain the terms essential to its operation (see *Imperial Oil Ltd. v. C & G Holdings Ltd.* (1986), 58 Nfld. & P.E.I.R. 326, 39 A.C.W.S. (2d) 48 (Nfld. S.C. (T.D.)). At paragraph 144, Goodridge, J. stated the underlying principle is that all of the terms of the agreement between the parties must be settled. There may, of course, be things left to be determined.

[68] In making this statement, Goodridge, J. relied on the English House of Lords decision in *May & Butcher Ltd. v. R.* (1929), [1934] 2 K.B. 17 (U.K. H.L.), in particular the statement of Viscount Dunedin:

To be a good contract there must be a concluded bargain, and a concluded contract is one *which settles everything that is necessary to be settled* and leave nothing to be settled by agreement between the parties. Of course it may leave something which still has to be determined, but then that determination must be a determination which does not depend upon the agreement between the parties.

Intermixture

[69] Intermixture occurs when tangible items are inseparably combined. English and Canadian law in the area has been influenced by Roman law which distinguished between separable (*commixito*) and non-separable mixing (*confusio*).

[70] If items belonging to two or more people become mixed and it is possible to segregate them, then ownership can often be determined. When separation is not sensible, something must be done to ascertain the proprietary entitlements of rival claimants.

[71] When there is innocent intermixture the parties share the combined mass as co-owners, their portion being based on their relative contribution (if determinable) otherwise equally. This common law rule known as innocent intermixture was set out by the Supreme Court of Canada in *Carter v. Long & Bisby* (1896), 26 S.C.R. 430 as follows:

Where the owner of chattels, having the legal property in them, has had his property mixed with similar chattels belonging to other persons so that out of the mass thus commingled the chattels originally belonging to each person are indistinguishable, as in the case which has so frequently happened of a quantity of saw-logs being thus mixed, the rule at common law is that where this has been done without fraud or wrong an original owner is entitled to take from the mass an equivalent in quantity and quality for the property which he has lost by the mixing, and he is treated as having a legal title to such property.

The Quarry Materials Act, 1998

[72] Quarry permits and subordinate quarry permits are governed under the *Quarry Materials Act 1998*, S.N.L. 1998 c. Q-1.1 (the “Act”). Under sections 5(2)(a) and 6(2)(a), the quarry materials to which the permits apply are vested in the Crown and under section 5(2)(b) and 6(2)(b) the permits are for a period of not more than one year:

5. (2) The minister may issue a quarry permit to a person who applies under subsection (1) provided that

(a) the quarry materials to which the permit applies are vested in the Crown;

(b) the permit is for a period of not more than one year;

6. (2) The minister may issue a subordinate quarry permit to a person who applies under subsection (1) provided that

- (a) the quarry materials to which the subordinate permit applies are vested in the Crown;
- (b) the subordinate permit is for a specified period of not more than one year.

ANALYSIS

Issue 1: Did the 2016 oral agreement between PEL and MKS contemplate who would be entitled to any leftover blast rock following the expiration of the 2016 quarry and subordinate permits?

[73] The evidence is clear the parties entered into an arrangement in May 2016 to develop a quarry. This agreement required MKS to undertake the necessary efforts to establish the quarry. I find that PEL knew of the extensive nature of MKS' blasting efforts and how much rock material it would generate.

[74] The agreement addressed the terms under which MKS would be issued a subordinate permit to remove material from the quarry. These terms were:

- a. clear the overburden;
- b. create the quarry by conducting the necessary drilling and blasting; and
- c. pay the required provincial royalties and allow PEL to keep the excess armour stone from the original blast.

[75] At trial, Devin Pittman acknowledged the agreement only addressed the surplus armour stone, not other materials produced from the original blast. However, in his opinion, MKS had removed all of its recoverable blast rock and any remaining

blast rock left on the quarry floor was the result of PEL's blasting so they retained ownership of this material.

[76] PEL did not provide the Court with any evidence to challenge the testimony of Mr. Jim Kasemets that MKS paid \$213,000 for 105,573 tonnes of blast material. Mr. Kasemets explained how his company planned the blast, the size of the area to be blasted and the calculations used to yield the amount of rock produced.

[77] I accept the evidence of Dennis Hutchings, MKS' Crusher Superintendent, that prior to the crushing crew's departure on July 26, 2016, they had crushed the following amounts of product from the blast rock:

PRODUCT	TONNES
class A	17,235
class B	40,232
One-inch clean stone	1,260
TOTAL	58,727

[78] An additional 500 tonnes of rip-rap (rubble) was stockpiled. According to Wade Muggeridge, between July 7 and October 13, 2016, MKS removed a further 6,152 tonnes of blast rock for three small jobs.

[79] I find, given the evidence of Mr. Kasemets, that approximately 10 percent of the blast would have generated 10,500 of armour stone then MKS would have had approximately 29,121 tonnes of blast rock remaining in the quarry.

[80] I also accept the evidence of David Kelly and Don Matthews that the reason for the demobilizing of the crushing crew around July 26, 2016 was because they were needed for an asphalt project. The crew did not return because the Parks Canada project required less material than estimated and there was a sufficient stockpile of crushed material remaining at the quarry.

[81] Based on the evidence led by both parties, I am unable to find that the oral agreement reached between them in May 2016 contemplated the possibility of MKS leaving blast rock behind at the expiration of its 2016 subordinate permit.

[82] Relying on the words of Goodridge, J. in *Imperial Oil Ltd.*, a good contract is one which settles everything that is necessary to be settled. I find, therefore, the 2016 agreement did not settle on any terms of what was to happen to any MKS surplus blast rock that remained in the quarry after the expiration of the 2016 permit.

Issue 2: Did MKS remove all of its blast rock in 2016 or did intermixture occur when PEL rehabilitated the quarry floor in August 2016?

[83] Devin Pittman testified that in early August 2016 following the departure of the MKS crushing operation, the quarry was empty of blast rock. He suggested to the Court that he assumed this from speaking with one of the crushing crew.

[84] At this point, the quarry contained water and various witnesses speculated as to its depth. The evidence disclosed that PEL's rehabilitation did not involve draining or pumping the water but drilling, blasting, and excavating blast rock to get above the water table and build a floor across the pit. Devin Pittman, who testified regarding the efforts, was not able to offer the Court any objective figures regarding the material blasted except to indicate he felt it was substantial enough to make the quarry floor drivable.

[85] PEL's rehabilitation of the quarry was observed by Wade Muggeridge. Mr. Muggeridge testified that PEL created a pad at water level using blast rock that had been stockpiled by MKS. Once PEL pushed the blast rock out into the water, the equipment worked their way around the perimeter of the quarry using blast rock from the original MKS blast. He pointed out the location of the MKS blast rock using the August 9, 2016 photo from Exhibit DP #12.

[86] According to Mr. Muggeridge, PEL leveled out the quarry floor with material from the MKS blast. By the time he left the quarry on October 16, 2016, there was a lot more MKS blast rock in the quarry than what PEL had brought in from its own blasting. He also observed that shortly before he left, PEL had blasted a drain in the base of the pit to remove any excess water.

[87] I accept the evidence of Mr. Muggeridge that when PEL conducted its rehabilitation of the quarry floor, besides using their own blast rock they used the surplus blast rock belonging to MKS from its original blast.

[88] Based on this evidence and the absence of any evidence tendered by PEL as to the amount of blast rock it realized from its blasting, I find intermixture occurred.

[89] Relying on *Carter v. Long & Bisby*, I find that MKS had legal title to take from the quarry floor an amount of blast rock equivalent to approximately 29,000 tonnes. This was the amount remaining in the quarry at the expiration of its permit in 2016.

[90] Under the *Act*, permit holders do not acquire a proprietary interest in quarry materials. This interest remains vested in the Crown under section 5(2)(a) and 6(2)(a). They do, nonetheless, have the right to excavate and remove the material from an area for which the Crown is paid a royalty.

[91] I accept the evidence of Don Matthews and David Kelly that industry practice was to pay royalties only after materials were delivered. This practice developed as a result of the requirement that royalties were payable in advance of the issuance of the permit. Mr. Matthews also testified that it was common practice to allow subordinate permit holders to return the following year to take any material blasted in the previous year.

[92] Exhibits DK #1 and DK #2 show the amount of royalties paid by MKS based on the quantity of material removed from the quarry in 2016 and 2017. These

amounts align with David Kelly's evidence that MKS used just under 90,000 tonnes of material for all its projects and they left behind approximately 5,000 tonnes.

[93] The blast rock removed by MKS in 2017 was part of its original blast material. It removed 15,000 tonnes for the Rocky Harbour project and 10,100 tonnes for the project at Baker's Bridge. Intermixture of the blast rock occurred when PEL rehabilitated the floor. MKS paid royalties on the amount of blast rock it removed in 2017.

Issue 3: Did MKS agree to pay PEL for the blast rock it removed from the quarry floor in 2017?

[95] Devin Pittman testified he was contacted by Don Matthews in early 2017, on his cellphone, about accessing the quarry for material. He made it very clear to Mr. Matthews that MKS had removed everything from the quarry floor.

[94] Following his discussion, Devin Pittman sent an email to Don Matthews on February 28, 2017 (Exhibit DP #15) referencing the telephone discussion and setting out rates for drilling and blasting rock material.

[95] I accept the evidence of Don Matthews that during the telephone conversation with Devin Pittman he disagreed that MKS did not have any surplus blast rock remaining at the quarry. His understanding from reading Exhibit DP #15 was that if MKS required more rock material in addition to their surplus then the pricing rates provided by Devin Pittman were acceptable.

[96] I also accept the evidence of Peder Pederson that when he spoke to Devin Pittman about sending a MKS crew to the quarry to remove the remaining blast rock he was never informed by PEL that it took the position MKS did not have any remaining material in the quarry. Mr. Pederson, like Don Matthews, understood from reading Exhibits DP #15 and DP #16 that the rates being suggested by PEL

would be for any additional rock blasted in 2017 and did not relate to MKS' surplus from 2016.

[97] Mr. Pederson's evidence is supported by Exhibit DP #18, an email he sent to Devin Pittman on May 10, 2017 in response to Mr. Pittman's request for tonnage information. Mr. Pederson supplied the tonnage information for the crush rock from their stockpile and the blast rock removed by his crew. He viewed the email as simply a matter of PEL keeping track of materials remaining at the quarry.

[98] I am of the view that a plain reading of Exhibits DP #15 and DP #16 suggests Devin Pittman was proposing rates for future blasting of rock material for the 2017 permit year not for blasting which had occurred in 2016. Further, when Peder Pederson and his crew arrived to remove the blast rock, it was not made clear by Devin Pittman that he would be invoicing MKS for blast rock removed from the quarry floor that had been created in 2016.

[99] Accordingly, I rely on the reasons provided by our Court of Appeal in its decision in *Modern Paving Ltd. v. Donovan Homes Ltd.*, 2011 NLCA 39 at paragraphs 32 – 33 where it held that in order for a contract to be enforceable, there must be certainty surrounding the essential terms.

[100] In the present case, there was no certainty surrounding the essential term of when rates would be payable by MKS to PEL for blasting of materials. While PEL may have intended the rates to apply to materials it blasted in 2016, this was not communicated clearly in the email Exhibit DP #15 especially after Don Matthews rejected Devin Pittman's suggestion that MKS did not have any surplus blast rock from 2016. A more reasonable interpretation of the exchange is that the rates were to apply to the 2017 permit year depending on whether PEL or MKS did the drilling and blasting.

[101] I find there was no agreement between the parties to pay the invoices issued by PEL to MKS on May 10, 2017 and May 15, 2017.

CONCLUSION AND DISPOSITION

[102] The agreement reached between the parties in 2016 did not contemplate MKS having a surplus of blast rock at the expiration of their 2016 subordinate permit.

[103] In August 2016 when PEL rehabilitated the quarry floor, they used MKS surplus blast rock with their own blast rock causing intermixture.

[104] The evidence supports the finding that at the time of the removal of the blast rock in 2017, MKS had a surplus of 29,121 tonnes remaining in the quarry. It removed and paid royalties on 25,100 tonnes of blast rock.

[105] MKS did not agree to pay PEL for the removal of its own blast rock created in 2016. The agreement was for additional materials blasted in 2017.

[106] PEL has failed to establish, on a balance of probabilities, the existence of an enforceable agreement with MKS to pay the invoices claimed.

[107] The action is dismissed with costs to the Defendant on a Column 3 basis.

PETER N. BROWNE
Justice

TAB 4

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160518

Docket: A-204-15

Citation: 2016 FCA 155

**CORAM: NADON J.A.
TRUDEL J.A.
STRATAS J.A.**

BETWEEN:

**APOTEX INC.
and APOTEX PHARMACHEM INC.**

Appellants

and

**ALLERGAN, INC., ALLERGAN SALES, LLC.
ALLERGAN USA, INC. and KYORIN
PHARMACEUTICAL CO., LTD.**

Respondents

Heard at Ottawa, Ontario, on December 9, 2015.

Judgment delivered at Ottawa, Ontario, on May 18, 2016.

REASONS FOR JUDGMENT BY:

STRATAS J.A.

CONCURRED IN BY:

**NADON J.A.
TRUDEL J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160516

Docket: A-204-15

Citation: 2015 FCA 155

CORAM: NADON J.A.
TRUDEL J.A.
STRATAS J.A.

BETWEEN:

APOTEX INC.
and APOTEX PHARMACHEM INC.

Appellants

and

ALLERGAN, INC., ALLERGAN SALES, LLC.
ALLERGAN USA, INC. and KYORIN
PHARMACEUTICAL CO., LTD.

Respondents

REASONS FOR JUDGMENT

STRATAS J.A.

[1] Some time ago, the respondents, Allergan, Inc. *et al.*, brought an action in the Federal Court against the appellants, Apotex Inc. *et al.*, for patent infringement.

[2] Later, the parties discussed settlement. At one point, Allergan concluded that a settlement had been reached. Apotex disagreed. So Allergan moved in the Federal Court for an order enforcing what it says are the terms of settlement. Apotex opposed.

[3] The Federal Court (*per* Hughes J.) found that the parties had settled the litigation. On March 24, 2015 it issued an order enforcing the terms of the settlement: 2015 FC 367.

[4] Apotex appeals to this Court. It submits that the Federal Court erred in principle in finding that there was a settlement agreement. I agree with Apotex's submission. Therefore, I would allow the appeal, set aside the Federal Court's order, and grant Apotex its costs here and below.

A. Basic facts

[5] Allergan brought an action in the Federal Court (file T-1267-10) alleging that Apotex has infringed Canadian Patent No. 1,340,316 by selling, manufacturing and exporting products containing gatifloxacin.

[6] Settlement discussions took place from April 2012 to March 2014. The record before us contains an initial set of letters, emails, draft Minutes of Settlement enclosed with emails, and reporting letters to the Federal Court, which was managing the action.

[7] Later in these reasons, I shall look at some of what the parties said in some of these documents. For present purposes, I shall focus on the documents the Federal Court relied upon to find that the parties had settled the action.

[8] The Federal Court found (at paras. 44-50) that a settlement had been reached. In the course of its reasons, it examined two sets of documents:

- *The initial exchange: three letters and an email.* A couple of years after Allergan started the action, Apotex sent Allergan a letter offering to settle it. Allergan replied by letter, seeking clarification “to advance this case towards settlement.” Apotex supplied that clarification. An email followed that was silent concerning the clarification. These three letters and one email were all sent in April 2012. The Federal Court suggests (at paras. 44-46) that as a result of these communications an agreement was essentially in place and all that happened afterward was minor and non-essential.
- *The January 13, 2014 - February 24, 2014 exchange.* Following the initial exchange, twenty-three months of emails followed. The parties also exchanged a number of draft Minutes of Settlement. In the end, discussions broke off. However, the Federal Court found that an email sent by counsel for Allergan on February 24, 2014 accepted the terms contained in draft Minutes of Settlement enclosed with an email counsel for Apotex sent on January 13, 2014. The Federal

Court concluded (at paras. 48-51) that this was a matching offer and acceptance as to all terms.

[9] In October 2014, six months after negotiations fell apart, Allergan moved for an order enforcing the settlement agreement it thought it had reached. In its view, although the parties did not place signatures on a formal agreement, the parties had reached agreement on all essential terms.

[10] The Federal Court concluded that the parties had reached a settlement agreement and so it granted Allergan's motion.

B. Analysis

(1) The jurisdiction of the Federal Courts to consider whether the parties have reached a settlement agreement

[11] Before the Federal Court, the parties accepted that it had jurisdiction to decide the motion. Nevertheless, knowing its status as a statutory court and recognizing that it had to be certain of its jurisdiction, the Federal Court prudently considered this issue.

[12] The Federal Court held that it had jurisdiction to determine whether a patent infringement action had been settled and, if so, to enforce the settlement agreement (at paras. 32-33). It cited the Federal Court's jurisdiction over patent infringement actions under s. 20 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, ss. 54(2) of the *Patent Act*, R.S.C. 1985, c. P-4 and several

authorities confirming its jurisdiction, such as *Kellogg Co. v. Kellogg*, [1941] S.C.R. 242, [1941] 2 D.L.R. 545 and *Flexi-Coil Ltd. v. Smith-Roles Ltd.* (1980), [1981] 1 F.C. 632, 50 C.P.R. (2d) 29 (T.D.).

[13] On the issue of jurisdiction, I agree with the Federal Court and substantially adopt its analysis. I would add the following. Contract law, when viewed in a vacuum, is normally under provincial jurisdiction. However, the Federal Court has jurisdiction when the contract law issue before the Court is part and parcel of a matter over which the Federal Court has statutory jurisdiction, there is federal law essential to the determination of the matter, and that federal law is valid under the constitutional division of powers: *ITO-Int'l Terminal Operators v. Miida Electronics*, [1986] 1 S.C.R. 752, 28 D.L.R. (4th) 641; *Canadian Transit Company v. Windsor (Corporation of the City)*, 2015 FCA 88, 384 D.L.R. (4th) 547.

[14] The Federal Court had jurisdiction for another reason. The existence or non-existence of a settlement agreement affects the status of proceedings before this Court. If the former, the action subsists; if the latter, it does not. As part of its plenary powers, this Court has jurisdiction to rule upon whether or not a proceeding subsists: *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626, 157 D.L.R. (4th) 385 at paras. 35 to 38; *Canada (National Revenue) v. RBC Life Insurance Company*, 2013 FCA 50, 443 N.R. 378 at paras. 35-36; *Mazhero v. Fox*, 2014 FCA 226 at para. 9.

[15] Where both the Federal Court and a provincial superior court have concurrent jurisdiction over the matter, the Federal Court may decline jurisdiction, stay the matter before it, and give

way to the provincial superior court because it considers the provincial superior court to be a more appropriate forum: *Federal Courts Act*, above, s. 50.

(2) The requirements for a settlement agreement

(a) General principles

[16] This case concerns whether a settlement agreement has been reached in a common law jurisdiction. The following summary of the requirements for a settlement agreement is restricted to common law jurisdictions. The requirements in Québec, in particular under ss. 1385-1396 of the *Civil Code of Québec*, C.Q.L.R., c. C-1991, should await a future case.

[17] After canvassing some of the jurisprudence concerning the formation of settlement agreements, the Federal Court set out the requirements as follows (at para. 41):

- for there to be a binding contract, there must be an offer and acceptance wherein the terms of the offer are matched by the terms of the acceptance;
- the acceptance must be unequivocal;
- there can be an offer and acceptance so as to create a binding contract even where the parties contemplate the execution of a more formal document;
- negotiations as to the more formal document do not necessarily mean that an offer or acceptance has been repudiated.

[18] As shall be seen from the discussion below, the first proposition needs to be qualified. A settlement agreement arises once there is a matching offer and acceptance on all essential terms;

continuing disagreement over unessential terms is immaterial. This notion of essential terms, in fact, is quite central to the law concerning settlement agreements. Indeed, it is quite central to the outcome of this case.

[19] I do not disagree with the remaining propositions, stated in their generality. However, they do not supply all the principles necessary to decide this case or other such cases.

[20] A court will find that a settlement agreement has been reached when certain requirements are satisfied. I have grouped these into five separate matters to be considered.

– I –

[21] First, the court must find on the evidence before it that, objectively viewed, the parties had a mutual intention to create legal relations.

[22] The test is whether a reasonable bystander observing the parties would conclude that both parties, in making a settlement offer and in accepting it, intended to enter into legal relations: see, *e.g.*, *McCabe v. Verge* (1999), 182 Nfld. & P.E.I.R. 135 at para. 13 (Nfld. C.A.); *British Columbia (Minister of Transportation & Highways) v. Reon Management Services Inc.*, 2001 BCCA 679, 208 D.L.R. (4th) 175 at para. 24.

[23] The requirement of an objective, mutual intention to create legal relations does not mean that there must be formality. Settlements need not be reached through counsel or in pre-planned, formal discussions.

[24] Indeed, many cases show that—sometimes much to the surprise of clients and lawyers alike—seemingly idle conversations can have binding, legal consequences. Binding settlements can arise from impromptu, informal communications in relaxed, non-business settings. See, *e.g.*, *McCabe*, above at para. 11; *UBS Securities Canada, Inc. v. Sands Brothers Canada Ltd.*, 2009 ONCA 328, 95 O.R. (3d) 93 (C.A.); *Ward v. Ward*, 2011 ONCA 178, 104 O.R. (3d) 401 at para. 64; *RTS Flexible Systems Limited v. Molkerei Alois Muller Gmbh*, 2010 UKSC 14, [2010] 1 W.L.R. 753 at para. 45.

– II –

[25] Second, like all other agreements, a settlement agreement must satisfy the requirement that there be consideration flowing in return for a promise. In settlement agreements, this is almost certainly never a problem—by definition, settlements are compromises, and so there will be consideration flowing both ways.

– III –

[26] The Court must also find, as an objective matter, that the terms of the agreement are sufficiently certain: see, *e.g.*, *Bawitko Investments Limited v. Kernels Popcorn Limited* (1991),

53 O.A.C. 314, 79 D.L.R. (4th) 97 at pp. 103-104 at p. 104 (Ont. C.A.); *Olivieri v. Sherman et al.*, 2007 ONCA 491, (2007), 86 O.R. (3d) 778 at para. 49 (C.A.). Where the parties “express themselves in such fashion that their intentions cannot be divined by the court...the agreement will fall for lack of certainty of terms”: John McCamus, *The Law of Contracts* (Toronto: Irwin Law, 2005) at p. 91. Another way of putting this is that the court must be satisfied that the parties were objectively *ad idem* or were objectively of a common mind.

[27] It is not for the courts to amend the parties’ offer and acceptance and make the terms certain. The Court will not make “a new agreement for the parties” where they “were never *ad idem*”: *Kelly v. Watson* (1921), 61 S.C.R. 482, 57 D.L.R. 363.

[28] That being said, where the parties were objectively of a common mind and “intended some legal relationship to exist between them,” often their reasonable expectations can be discerned and “courts will generally strive to give effect to [them]”: *Hunt River Camps/Air Northland Ltd. v. Canamera Geological Ltd.* (1998), 168 Nfld. & P.E.I.R. 207, 517 A.P.R. 207 at pp. 217-18 (Nfld. C.A.); see also, *e.g.*, *Canada Square Corp. v. Versafood Services Ltd.* (1982), 34 O.R. (2d) 250, 130 D.L.R. (3d) 205 (C.A.); *Olivieri*, above at para. 50.

[29] Lack of certainty of terms leading to a finding that there was no agreement is something quite different from the presence in an agreement of words that have a range of meaning. For example, words like “disparage” or “scientific” may have a range of meaning but as long as a court can divine a meaning from those terms in the circumstances of a particular case, the agreement is not void for uncertainty: see *Olivieri*, above at para. 49.

– IV –

[30] An agreement does not arise until there is matching offer and acceptance on all terms essential to the agreement: *Olivieri*, above at para. 32; *Fieguth v. Acklands Ltd.* (1989), 59 D.L.R. (4th) 114, 37 B.C.L.R. 62 (C.A.) at para. 35; *Bawitko*, above at pages 103-04. Disagreement, objectively assessed, on an essential term will mean that there is no agreement: *Reon Management Services Inc.*, above at para. 34.

[31] How does a court decide what terms are essential and what terms are not?

[32] The court is to view the specific facts of the case objectively in light of the practical circumstances of the case and ask whether the parties intended to be legally bound by what was already agreed or, in other words, whether an “honest, sensible business[person] when objectively considering the parties’ conduct would reasonably conclude that the parties intended to be bound or not” by the agreed-to terms: *G Percy Trentham Ltd v Archital Luxfer Ltd* (1992), [1993] 1 Lloyd’s Rep 25, 63 B.L.R. 44 (C.A.) at paras. 50 and 86; *Ward* at para. 61; *Hughes v. City of Moncton*, 2006 NBCA 83, 304 N.B.R. (2d) 92 at para. 6. Put another way, looking not through the eyes of lawyers, but through the eyes of reasonable businesspeople stepping into the parties’ shoes, was there something essential left to be worked out? See *Investors Compensation v. West Bromwich Building Society*, [1998] 1 All E.R. 98; [1998] 1 W.L.R. 896 (H.L.); *Chartbrook v. Persimmon Homes*, [2009] UKHL 38, [2009] A.C. 1101; *Re Sigma Finance*, [2009] UKSC 2, [2010] 1 All E.R. 571. Another way of putting it is to ask how “a reasonable [person], versed in the business, would have understood the exchanges between the parties”:

Bear Stearns Bank plc v. Forum Global Equity Ltd., [2007] EWHC 1576 (Q.B.D. Comm.) at para. 171.

[33] When courts find that there has been an agreement on essential terms, they will often imply non-essential terms into the agreement: *McCabe*, above at para. 20; *Fieguth*, above; *Hughes*, above at para. 6. The lack of agreement on non-essential terms will not stand in the way of a finding of an agreement. Put another way, “it is not necessary that the original contract include all the ancillary terms that are already implicit in its content”: *Ward*, above at para. 54. “Even if certain terms of economic or other significance to the parties have not been finalized, an objective appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a pre-condition to a concluded and legally binding agreement”: *RTS Flexible Systems*, above at para. 45. For example, assuming an agreement on essential terms is otherwise in place, courts can imply terms concerning the granting of a release, the manner of payment and the timing of payment: *Fleguth*, above at para. 21; *Hodaie v. RBC Dominion Securities*, 2012 ONCA 796 at para. 3; *Imperial Oil Ltd. v. 416169 Alberta Inc.*, 2002 ABQB 386, 310 A.R. 338. Often these will be “mere formalities or routine language”: *Bawitko*, above at p. 106.

[34] A vexed question is whether words such as “subject to formal agreement” in an offer or acceptance will forestall the existence of an agreement until the formal agreement is signed. The question is vexed because the answer turns on constructing the communications between the parties, sometimes a challenging task.

[35] Even though parties might agree that they will draw up a later formal written agreement evidencing the terms of the settlement, they may have already bound themselves because they have agreed, orally or in writing, to all the essential terms. Put another way, “[t]he fact that a further document was required to formalize the agreement between these parties is not an impediment to finding that [an oral or written exchange constitutes] a binding contract if the terms in the [exchange] contain agreement on all of its essential terms”: *Gutter Filter Company LLC v. Gutter Filter Canada Inc.*, 2011 FC 234 at para. 11.

[36] In some circumstances, however, words such as “subject to reaching a formal agreement” can be enough to ensure that there is no agreement until the formal agreement has been signed: *Olivieri*, above at para. 48. The question is whether the parties have only reached “an agreement to later agree on essential provisions” or “to defer the binding nature of the agreement until the execution of the proposed subsequent formal contract”: *Ward*, above at para. 53.

[37] As the Court of Appeal for Ontario wrote in *Bawitko* (at p. 104):

When they agree on all of the essential provisions to be incorporated in a formal document with the intention that their agreement shall thereupon become binding, they will have fulfilled all the requisites for the formation of a contract. The fact that a formal written document to the same effect is to be thereafter prepared and signed does not alter the binding validity of the original contract.

However, when the original contract is incomplete because essential provisions intended to govern the contractual relationship have not been settled or agreed upon; or the contract is too general or uncertain to be valid in itself and is dependent on the making of a formal contract; or the understanding or intention of the parties, even if there is no uncertainty as to the terms of their agreement, is that their legal obligations are to be deferred until a formal contract has been approved and executed, the original or preliminary agreement cannot constitute an enforceable contract. In other words, in such circumstances the “contract to make a contract” is not a contract at all. The execution of the contemplated formal document is not intended only as a solemn record or memorial of an already

complete and binding contract but is essential to the formation of the contract itself.

[38] In the end, whether or not a “subject to formal agreement” clause precludes a finding of agreement is a question of construction. That question focuses on “whether the execution of the further contract is a condition or term of the bargain, or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through”: *Calvan Consolidated Oil & Gas Ltd. v. Manning*, [1959] S.C.R. 253 at p. 261, 17 D.L.R. (2d) 1; *Hatzfeld-Wildenburg v. Alexander*, [1912] 1 Ch. 284 at pp. 288-89. In the former case, there is no enforceable contract; in the latter, there is.

[39] This is assessed objectively, looking at the correspondence passing among the parties, with a view to ascertaining whether the parties, through an exchange of matching correspondence, intended to create immediate legal relations: *Newbury v. Sun Microsystems*, [2013] EWHC 2180 at paras. 19-24 (Q.B.D.). Some courts have used subsequent conduct of the parties to shed light on whether there has been an agreement on essential terms: *Bawitko*, above at p. 107; *Ward*, above at paras. 55, 65, 68-76; *Andrews v. Lundrigan*, 2009 ONCA 160, 247 O.A.C. 15 at para. 8; *Dominak v. Lockhart*, 2014 BCCA 432, 65 B.C.L.R. (5th) 318 at para. 35.

– V –

[40] In particular cases, other requirements might arise. For example, legislation can create special requirements for certain types of contracts, such as the need for an agreement for a sale of land to be evidenced in writing: see, e.g., *An Act for Prevention of Frauds and Perjuries*, 29

Chas. 2 c. 3, (Eng., 1677); and by way of illustration see *Girouard v. Druet*, 2012 NBCA 40, 386 N.B.R. (2d) 281.

[41] Legislation can also forbid the making of certain contracts. It can also incorporate certain mandatory terms into agreements notwithstanding the parties' actual agreement.

[42] Where agents for the parties, such as counsel, are conducting the negotiations, the usual law relating to the formation of contracts through agents applies.

[43] Thus, in the case of parties represented by counsel, if both counsel possess the apparent authority to bind their clients—neither has qualified their authority at the outset or neither has qualified an offer or acceptance by saying it is “subject to my client’s approval” or “subject to instructions”—then a matching offer and acceptance by counsel binds the clients. A lawyer’s explicit reservation of the client’s authority to decide whether an offer is accepted means that there can be no agreement until the client is heard from.

(b) The standpoint of the court in assessing the requirements for a settlement

[44] The Federal Court suggested (at para. 42) that when assessing whether the requirements for a settlement agreement are met, the Court must adopt a “subjective standard, not an objective one.”

[45] I disagree. In assessing whether the requirements are met, the Court must adopt an objective standpoint. This can be seen from almost all of the cases set out above. They continually speak of objective, not subjective, evaluations of the evidence.

[46] So, for example, in determining whether a party has accepted a settlement offer, the court is not interested in the party's actual intentions. Rather, the standpoint is objective:

If, whatever a [person's] real intention may be, [the person] so conducts himself [or herself] that a reasonable [person] would believe that he [or she] was assenting to the terms proposed by the other party, and that the other party upon that belief enters into a contract with him [or her], the [person] thus conducting himself [or herself] would be equally bound as if he [or she] had intended to agree to the other party's terms.

(*Smith v. Hughes* (1871), L.R. 6 Q.B. 597 at p. 607, 19 W.R. 1059 and see, most recently, *RTS Flexible Systems*, above at para. 45.)

[47] Put another way, the subjective reservations of one party do not prevent the formation of a binding agreement if, to all objective, outward appearances, the parties have intended to create legal relations and have agreed in the same terms on the same essential subject matter: *Newbury*, above at para. 14, citing *Air Studios (Lyndhurst) Limited T/A Entertainment Group v. Lombard North Central PLC*, [2012] EWHC 3162 at para. 5 (Q.B.D.).

[48] Accordingly, evidence into the actual state of mind or subjective intention of the parties is irrelevant: *Lindsay v. Heron & Co.* (1921), 50 O.L.R. 1, 64 D.L.R. 92 (Ont. S.C. (A.D.)).

Where the parties are exchanging written communications, intentions are to be measured by an

objective reading of the language chosen by the parties to reflect their agreement: *Olivieri*, above at para. 44; *Andrews*, above at para. 8.

[49] The same point was put well in *Lindsay*, above at pp. 98-99:

The apparent mutual assent of the parties essential to the formation of a contract, must be gathered from the language employed by them, and the law imputes to a person an intention corresponding to the reasonable meaning of his words and acts. It judges of his intention by his outward expressions and excludes all questions in regard to his unexpressed intention. If his words or acts, judged by a reasonable standard, manifest an intention to agree in regard to the matter in question, that agreement is established, and it is immaterial what may be the real but unexpressed state of his mind on the subject.

[50] The whole course of the parties' negotiations must be considered and an objective test must be applied: Hugh Beale, ed., *Chitty on Contracts*, 31st ed. (London: Sweet & Maxwell, 2012), vol. 1, paras. 2-028 and 2-029.

[51] In this case, the Affidavit of Erin McIntomny, filed by Allergan, appends the various letters, emails and draft Minutes of Settlement without commentary. The Affidavit of Benjamin Hackett, filed by Apotex, does likewise but adds relatively uncontroversial context surrounding the documents. Both affidavits largely let the documents speak for themselves, allowing the Court to assess the matter objectively. If it were necessary, the affidavits could have provided objective information about the circumstances surrounding the negotiations, but here they did not need to do so. Quite properly, neither affidavit offers evidence as to the parties' subjective intentions. This is the proper approach.

(c) A warning

[52] The foregoing shows that a settlement agreement may be reached quickly without formality and, from a subjective standpoint, sometimes unexpectedly: settlement agreements almost always involve consideration, settlement discussions usually take place in a context where an intention to create legal relations can be presumed, informal discussions can count, a meeting of minds is assessed objectively, an agreement on all essential terms is binding even though the parties are still negotiating over other terms and, unless essential, terms such as the provision of releases can be easily implied into an agreement to complete it. The recent decision of the Supreme Court of the United Kingdom in *RTS Flexible Systems*, above, underscores these points.

[53] This has practical ramifications. If a party does not want to be bound until it has agreed to all terms it subjectively considers essential to the deal, in every offer it communicates it must make that wish objectively clear.

(3) Applying these principles to the facts of this case

[54] As mentioned above, in finding that the parties had reached a settlement agreement, the Federal Court focused on two sets of evidence. First, an initial exchange: three letters and an email in April 2012. Second, an exchange of emails on January 13, 2014 and February 24, 2014.

[55] I shall examine these two bases. Then I shall examine the rest of the documents in the record before us. In my view, applying the proper principles set out above, it is not possible to find that the parties reached a settlement agreement.

(a) The initial exchange: three letters and an email in April 2012

[56] As mentioned above, the negotiations began with the exchange of three letters and one email in April 2012.

[57] The Federal Court held that all the essential terms were agreed to in this exchange. It said (at paras. 45-46) that the e-mail exchanges and the draft formal agreements exchanged afterward only added “added preambles,” minor words “such as that the agreement is binding on heirs, assigns, etc.,” and “fussing as to the wording of the Minutes of Settlement.”

[58] This holding suffers from several errors that warrant our interference.

[59] The Federal Court asserted that all the essential terms were agreed to in this exchange without considering the law as to essentiality and how it applies in the case. In setting out four legal propositions that govern the case, it did not mention essentiality. Further, it did not analyze what terms were essential in accordance with the principles discussed above. As will be seen, these principles take the analysis in a different direction.

[60] In reaching its conclusion, the Federal Court said that it must apply a “subjective standard, not an objective one, as to whether there has been a binding contract” (at para. 42). As is evident from the discussion of the principles above, this was in error. As will be seen, at a key portion of its analysis, the Federal Court appears to have been distracted by Allergan’s subjective view of the importance of certain terms that had to be negotiated out, rather than keeping to an objective assessment of the matter from the standpoint of a reasonable businessperson.

[61] Taken together, this constitutes legal error that warrants our interference: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. As this matter applies to contractual formation rather than interpretation, the recent words on the appellate standard of review in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633 do not apply. But even if they did, *Sattva* maintains the *Housen* position that an error of law or extricable principle will justify appellate interference (at para. 53).

[62] The first letter in this initial exchange, dated April 9, 2012, was from Apotex to Allergan. It proposed the following terms:

1. This offer shall remain open for acceptance until 1 minute after the commencement of trial or until such time prior thereto that it is withdrawn in writing.
2. [Allergan] will discontinue the action on a without costs basis.
3. [Apotex] will undertake:
 - a. that no gatifloxacin containing formulations will be manufactured for commercial sale by [Apotex] in Canada until expiry of Canadian Patent No. 1,340,316 (the ‘316 patent’);
 - b. that any use of gatifloxacin API in Canada by [Apotex] to expiry of the ‘316 patent will be solely for regulatory and/or experimental use;

- c. that no gatifloxacin containing formulations manufactured by [Apotex] for regulatory and/or experimental use to expiry of the '316 patent will be sold commercially; and
- d. that any gatifloxacin API that has not been used for regulatory and/or experimental use by expiry of the '316 patent will be destroyed on expiry of the '316 patent.

[63] By letter dated April 20, 2012, Allergan asked for clarification as to the scope of paragraph 3 both in terms of parties and locations:

Could you please clarify whether this undertaking relates to any manufacturer in Canada for commercial sale anywhere in the world until after expiry of the '316 patent. Or whether it contemplates that there will be no manufacturer for commercial sale in Canada but would permit commercial manufacture for commercial sale outside of Canada until expiry of the '316 patent.

...

In addition, could you please confirm that the undertaking given by [Apotex] would extend to any company under the power or control or affiliated with [Apotex].

[64] Allergan said the clarifications it requested were “relatively minor concerns.” That may have been said for tactical reasons in the negotiation or that might have been its subjective view, but, as I will explain later—looking at the matter objectively—an issue as to the scope of the restrictions to be placed upon Apotex under the deal is significant, not minor.

[65] In a letter dated April 24, 2012, Apotex offered a clarification regarding the scope of paragraph 3:

We are writing to confirm that the undertaking not to manufacture gatifloxacin containing formulations for commercial sale by [Apotex] in Canada until after the expiry of the '316 patent relates to manufacture in Canada for commercial sale

anywhere in the world and that the undertaking extends to any company under the power or control of or affiliated with [Apotex].

[66] Apotex added some additional comments on its clarification:

Please understand that, in providing you with the undertaking, the Apotex companies do not require regulatory approvals that commercial manufacture be done at the same site as development. For the U.S., for example, there would have been and is no difficulty transferring manufacture to a site outside of Canada. It has always been Apotex's intent to do that, until expiry of the Canadian patent.

In the latter regard, the reason that Apotex has not launched in the U.S. on that basis is that your clients have destroyed the market by switching the market to a changed product while Apotex was litigating and awaiting litigation.

[67] In response, counsel for Allergan sent an email three days later. The email did not state that Apotex's offer was accepted. It said nothing about whether the clarification was satisfactory or whether the additional comments on the clarification caused it concern. Instead, the email from counsel for Allergan advised that "we are making good progress in settlement discussions." It also added that counsel did not have instructions from his client and would not have those instructions for another two weeks. Those two weeks went by—in fact, more weeks went by—without word from counsel from Allergan about whether his client had supplied instructions. By early June 2012, counsel for Allergan circulated draft Minutes of Settlement "to get the ball rolling" subject to his client's "input." By late June 2012, he circulated a revised draft, subject to his client's input and instructions. Afterward, the parties began to negotiate and differ over the scope of the restrictions to be imposed upon Apotex, the subject-matter of what was originally paragraph 3 in the April 9, 2012 letter.

[68] Viewing this evidence objectively from the standpoint of a businessperson—not subjectively—the three letters and the email cannot constitute an offer and acceptance. Properly characterized, they are an offer on one side and on the other side, at its highest, a statement of optimism that progress towards a deal was being made and a reservation that Allergan, the contracting principal, needed to consider the matter and decide whether it agrees. The circulation of draft Minutes of Settlement afterward was not an exercise in papering a deal on all essential terms already agreed to by the parties. Rather, it and subsequent iterations and surrounding discussions became a means by which the scope of the restrictions upon Apotex, originally in paragraph 3 of the April 9, 2012 letter and never agreed to, were debated.

[69] At this point, it is useful to assess whether the scope of the restrictions upon Apotex was an essential term. If one were to adopt a subjective standpoint in assessing the matter, one would note Allergan’s comment that the clarifications it requested were “relatively minor concerns.” The Federal Court, adopting a subjective standpoint, appears to have bought into that characterization, agreeing that the concerns were minor (at paras. 43-44), characterizing the later discussions in twenty-three months of emails and draft Minutes of Settlement—many of which concerned the scope of the restrictions upon Apotex—as “fussing and wordsmithing” over minor issues.

[70] We must view the emails and drafts objectively from the standpoint of a reasonable businessperson, not subjectively. Viewed in that way, the scope of the restrictions upon Apotex was not at all minor. It was a substantial part of the consideration that Allergan was to receive under the contemplated agreement.

[71] Objectively viewed, we have Allergan, the holder of a patent prohibiting others from manufacturing, selling and distributing a patented invention. It has sued those that it believes have been violating that prohibition, namely Apotex. The reasonable businessperson, viewing the matter objectively, would appreciate that in any settlement, a patentee in Allergan's position would want clarity about exactly who, if anyone, would be manufacturing, selling and distributing the invention in the future. Objectively viewed and objectively assessed, the scope of the restrictions upon Apotex was an essential term. The three initial letters and the email in April 2012 do not objectively show an offer and acceptance of that essential term.

(b) The exchange of communications on January 13, 2014 and February 24, 2014

[72] In an email dated January 13, 2014, counsel for Allergan advised that it had "recommended that [its] client accept the revisions...as encapsulated in the attached [draft agreement] and our client is inclined to accept subject to completing one additional step on their end." It asked counsel for Apotex to "confirm that the attached is acceptable to your client." A couple of weeks later, counsel for Allergan proposed certain amendments to the draft agreement.

[73] In an email dated February 14, 2014, counsel for Apotex responded. He rejected the latest amendments proposed on the draft agreement and added that "we are, however, willing to recommend to our clients that we accept your prior draft, circulated January 13, 2014."

[74] In an email dated February 24, 2014, counsel for Allergan advised that “[further] to our discussions this morning, our clients agree to accept the terms that you put forward in your email dated December 14, 2013 and as captured in the draft circulated January 13, 2014.”

[75] The Federal Court found that there was an agreement arising from the exchange of these emails. However, on this evidence, it is not legally possible to find an agreement.

[76] In the February 14, 2014 email, counsel for Apotex only agreed to recommend to his client that it agree. In so saying that, counsel for Apotex stated that he did not have authority to bind his client; he would have to check with his client. So while Allergan was willing to agree to the draft that was circulated on January 13, 2014, Apotex’s position was unknown.

[77] This is not a case where counsel for Apotex possessed apparent authority to bind his client. Counsel made it very clear that he did not possess that authority and would have to check with his client.

[78] In a letter to the Federal Court dated March 17, 2014, counsel for Allergan gave an update on the status of the action. Counsel for Allergan summarized the events that had taken place:

Briefly, on December 13, 2013 counsel for Apotex offered revisions to the Minutes of Settlement. On January 13, 2014 counsel for [Allergan] accepted counsel for Apotex’s revisions. On February 14, counsel for Apotex confirmed its position subject to confirmation by Apotex. On February 24, [Allergan] confirmed its acceptance of the Minutes of Settlement. On February 26 and March 17 counsel for [Allergan] asked counsel for Apotex when the Minutes of Settlement would be signed. We are still awaiting confirmation. [emphasis added]

[79] That confirmation never came. In fact, in its letter to the Federal Court dated March 17, 2014, Apotex confirmed that “we have consistently communicated to counsel for [Allergan] that we did not have instructions regarding the revised Minutes of Settlement and had recently communicated to counsel that we were awaiting instructions regarding the current proposed revised Minutes of Settlement.”

[80] In finding an agreement based on the January 13, 2014 and February 24, 2014 emails, the Federal Court found that (at para. 46) “[i]n the back and forth, the solicitors are careful to protect their backsides by using words such as ‘subject to my client’s instructions’ or ‘I will seek instructions’.” But this is no minor thing that can be glossed over or ignored. When counsel for Apotex told counsel for Allergan that he would have to check with his client, he was saying that he did not have the authority to bind his client. In these circumstances, there could be no legally-effective acceptance of Allergan’s offer based solely on the words of counsel for Apotex.

[81] In conclusion, Allergan agreed to the Minutes of Settlement circulated on January 13, 2014. But Apotex never did, either in its own right as a principal or through counsel with apparent authority to settle. On these facts, there can be no settlement agreement.

(c) The remaining communications between the parties: no settlement agreement

[82] Examining all of the remaining communications between the parties, I find that at no time was there a matching offer and acceptance on all essential terms. Indeed, most of the parties’ communications, objectively viewed, show disagreement over the scope of the

restrictions to be imposed on Apotex (originally in paragraph 3 in the initial exchange of letters). As I have said, this was an essential term. There was never a matching offer and acceptance on it.

[83] From time to time, the parties proposed different wording and the differences significantly affected the scope of the restrictions. True, as the Federal Court suggested (at para. 46), the difference would be small bits of wording like “for or,” “by or for,” or “or for.” But to the objective businessperson, small bits of wording can have a huge difference. This was not just “fussing and wordsmithing,” as the Federal Court said (at para. 45).

[84] Compare, for example the last two versions of the clause concerning the restrictions to be imposed on Apotex. The wording changes are small but the potential effect on the scope of the restrictions upon Apotex is significant.

[85] On December 13, 2013, the relevant clauses read as follows:

2. The Defendants [Apotex] agree and undertake as follows:
 - (a) that gatifloxacin or gatifloxacin formulations will not be made, used or imported into Canada for or by the Defendants for commercial sale in Canada or for commercial sale anywhere in the world for or by the Defendants until expiry of Canadian Patent No. 1,340, 316 (the “’316 Patent”);
 - (b) that any and all manufacture, import and/or use of gatifloxacin into Canada by or for the Defendants before expiry of the ’316 Patent will be solely for regulatory or experimental use;
 - (c) that no gatifloxacin or gatifloxacin formulation used or manufactured by or for the Defendants for regulatory and/or experimental use before expiry of the ’316 Patent will be sold commercially; and

(d) that any gatifloxacin or gatifloxacin formulation that has not been used for regulatory or experimental use by expiry of the '316 Patent will be destroyed on expiry of the '316 Patent.

(e) "The Defendants" means each Defendant separately or collectively, and includes the officers, directors, servants, employees, shareholders, agents, representatives, privies and partners of each Defendant together with all those over whom each Defendant has authority, interest or control or with whom each Defendant acts in concert.

3. This agreement is binding on and benefits the parties, their respective successors and assigns.

[86] On January 13, 2014, the relevant clauses read as follows:

2. The Defendants [Apotex] agree and undertake as follows:

(a) that no gatifloxacin or gatifloxacin formulations has or will be imported into Canada, exported from Canada, made in Canada, assigned in Canada or used in Canada by the Defendants for commercial use or sale in Canada or for commercial use or sale anywhere in the world for or by the Defendants until expiry of Canadian Patent No. 1,340, 316 (the "'316 Patent");

(b) that any and all manufacture in Canada of gatifloxacin or gatifloxacin formulations, import into Canada of gatifloxacin or gatifloxacin formulations, export from Canada of gatifloxacin or gatifloxacin formulations, assignment in Canada of gatifloxacin or gatifloxacin formulations or use in Canada of gatifloxacin or gatifloxacin by or for formulations by the Defendants before expiry of the '316 Patent shall be solely for regulatory and/or experimental use; and

(c) that any and all gatifloxacin or gatifloxacin formulations used for regulatory and/or experimental use will not be used in Canada, assigned, sold in Canada or exported from Canada by or for the Defendants, but shall be promptly destroyed once no longer required for regulatory or experimental use.

3. This Agreement is binding on and benefits the parties, their respective successors, assigns or any company under the power or control of or affiliated with the Defendants.

[87] The differences are subtle. But there is no question that from an objective standpoint the restrictions on Apotex imposed by the clauses have materially differing scope.

[88] For the foregoing reasons, I find that the parties never reached a settlement agreement.

C. A later motion

[89] While judgment in this appeal was under reserve, Allergan moved for judgment dismissing the appeal on the ground that the '316 Patent had expired and so the appeal was moot. Apotex opposed the motion.

[90] This Court issued an order dismissing the motion. In doing so, it followed the principles the Supreme Court set out in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, 57 D.L.R. (4th) 231.

[91] In our view, the appeal was not moot. Whether or not the matter was settled could have practical significance for the parties. For example, if the parties did settle the action, then Apotex would have been subject to obligations under the settlement agreement, obligations that, if breached, could be the foundation for a future damages claim.

[92] Even if the appeal no longer had any practical significance, this Court would have exercised its discretion in favour of hearing the matter. Due to the absence of authority from this

Court on the legal points in this appeal and due to some uncertainty in the parties' positions on the state of the law, it was in the public interest for us to determine this appeal.

D. A final observation

[93] For the benefit of future cases like this, a final observation regarding the Federal Court's order needs to be made.

[94] In its motion, Allergan sought an order enforcing the parties' alleged settlement agreement. In granting Allergan's motion, the Federal Court did not just declare that the parties had reached a settlement and identify the terms of the settlement. It set out what it considered to be the exact terms of the settlement agreement and it ordered Apotex to comply with those terms.

[95] In effect, the alleged settlement agreement was replaced by a court order. And if Apotex were to breach that order, Allergan could launch proceedings against Apotex for contempt. Normally, parties that breach settlement agreements expose themselves to a contractual claim, not proceedings for contempt of court.

[96] The record before the Federal Court did not justify the sort of order it made. All it had before it was a *bona fide* dispute about whether there was a settlement agreement. At no time did Apotex suggest that if there were a settlement agreement it would disobey it. In these circumstances, if the Federal Court considered that the parties had reached a settlement, it only

needed to declare that a settlement agreement had been made and identify the documents in the record that evidence it.

[97] In the end, the over-extensive nature of the Federal Court's order does not matter. The order must be set aside because the parties did not reach a settlement agreement.

E. Proposed disposition

[98] Therefore, I would allow the appeal, set aside the order dated March 24, 2015 of the Federal Court in file T-1267-10, dismiss the motion, and award the appellants their costs here and below.

“David Stratas”

J.A.

“I agree
M. Nadon J.A.”

“I agree
Johanne Trudel J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-204-15

**APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE HUGHES
DATED MARCH 24, 2015, NO. T-1267-10**

STYLE OF CAUSE:

**APOTEX INC. and APOTEX
PHARMACHEM INC. v.
ALLERGAN, INC., ALLERGAN
SALES, LLC. ALLERGAN USA,
INC. and KYORIN
PHARMACEUTICAL CO., LTD.**

PLACE OF HEARING:

OTTAWA, ONTARIO

DATE OF HEARING:

DECEMBER 9, 2015

REASONS FOR JUDGMENT BY:

STRATAS J.A.

CONCURRED IN BY:

NADON J.A.
TRUDEL J.A.

DATED:

MAY 18, 2016

APPEARANCES:

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FOR THE APPELLANTS

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Adam Heckman

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FOR THE RESPONDENTS

TAB 5

Supreme Court of Newfoundland and Labrador, Court of Appeal

McCabe v. Verge

Date: 1999-10-27

Jean Dawe, for the appellant;

Philip Buckingham, for the first and second respondent.

(98/99)

October 27, 1999.

[1] **Green, J.A.:** The issues engaged on this appeal underscore the importance of attention to detail in the making of an offer to settle a lawsuit.

Background

[2] Counsel for the insurers of the defendant respondents (the Verges) in a motor vehicle collision case made a written Offer to Settle pursuant to rule 20A of the **Rules of the Supreme Court, 1986**. The offer simply stated that the Verges offered to settle the claims of the plaintiff McCabe, inclusive of prejudgment interest and costs, for a fixed sum. No reference was made to the necessity of providing a discontinuance of the action or a release of the claims. The offer was made directly to McCabe who was then acting without a lawyer. McCabe says he never received it.

[3] Counsel for the Verges later reiterated the offer by telephone in much the same language but added that his clients would also require a release and discontinuance. The form and contents of the release were not discussed. In the words of counsel for the Verges:

“And I said, well, if you are prepared to accept it, we will offer it to you. In addition we would require a final release and notice of discontinuance. And that was the gist of the discussion.”

[4] McCabe agreed with the proposal and counsel set about requisitioning the settlement funds from his insurer client. Subsequently, counsel wrote McCabe enclosing a Notice of Discontinuance for filing and a form of release for execution. He ended by saying that “upon receipt of this documentation, we will forward to you our trust cheque

[5] Thereafter, McCabe was represented by legal counsel. She redrafted the form of release and forwarded it duly signed by McCabe, together with her undertaking to file the discontinuance, to counsel for the Verges. He took issue with the form of the redrafted

release. He wrote McCabe's counsel saying that he required the original release and that if it was not received in 7 days the settlement offer was "revoked".

[6] Within the 7 day period, McCabe's counsel submitted a further revised draft, duly executed by McCabe, asserting that there was a contract of settlement and that the offer was not capable of withdrawal. Counsel for the Verges replied that "the settlement was conditional upon these documents being executed in the form as provided" and that inasmuch as McCabe had not complied, the settlement was "void". He prepared to proceed with the litigation.

[7] In response, McCabe made application in the Trial Division for judgment in the amount of the settlement upon execution and delivery by him of a release in the form he was prepared to sign. He argued that a contract of settlement existed and that he had performed his obligations thereunder, thereby entitling him to payment of the settlement funds.

The Judgment at First Instance

[8] The trial judge disagreed. He concluded that no contract of settlement had been formed. There was no *consensus ad idem*. All that had occurred was a series of negotiations involving offers and counteroffers as to the terms of the release to be signed which was an "essential part" of the bargain. In his oral judgment he used the following words:

"... they did not discuss really the form of the release or how it was to be resolved. They did not contemplate frankly that matters would break down on that point, and it's only subsequently when the point was addressed, when a release was drafted in a form acceptable to the defendants and forwarded that the difficulties became apparent. So I conclude really that there was not an enforceable contract, as is contended by the Plaintiff, so the application is dismissed."

Appeal Decision

[9] I disagree with the trial judge. There was *consensus ad idem*, leading to a concluded and binding contract, the terms of which are ascertainable from the express language used by the parties and from terms that can be implied to give business efficacy to the contract. McCabe performed his end of the bargain by delivering a release that satisfied the obligation contemplated by the deal. He thereby became entitled to the settlement money. An explanation of how I arrive at this conclusion is required.

Analysis

(a) General Principles

[10] The trial judge purported to apply principles of contract law to what were essentially undisputed facts and concluded that a contract had not been formed. The issues involved questions of mixed law and fact. This Court is in just as good a position as the trial judge to be able to apply the law to the facts. See **Atlific (Nfld.) Ltd. v. Hotel Buildings Ltd. and Newfoundland** (1994), 120 Nfld. & P.E.I.R. 91; 373 A.P.R. 91 (Nfld. C.A.), at p. 101. Accordingly the judge's analysis is susceptible to appellate review.

[11] A settlement agreement does not require any formalities to be valid: **Picco v. Picco** (1987), 66 Nfld. & P.E.I.R. 117; 204 A.P.R. 117; 12 R.F.L.(3d) 345 (Nfld. U.F.C.). Accordingly, a contract of settlement is capable of being formed by means of a telephone conversation if the requisite elements of offer, coincident acceptance, consideration, intention to create legal relations and certainty of terms are present. A settlement agreement can be created outside of the mechanisms provided by rule 20A. Thus, while an acceptance of an offer to settle might not be in compliance with rule 20A.05 if it is not, as in this case, made in writing and in or substantially in the form provided by the rules, and may not therefore trigger the availability of the application-for-judgment remedy under rule 20A.07, it may still have the effect of creating a contract of settlement and lead to enforcement according to ordinary contractual principles.

(b) Formation of the Settlement Agreement

[12] The reiteration by telephone of the previous written offer was not a mere invitation to enter into negotiations. The actions of counsel for the Verges, both before and after the call, belie this. The original offer, even without reference to a release, was made as a formal offer to settle under rule 20A. By their nature such offers to settle must be intended to be capable of maturing into a binding settlement upon acceptance. Otherwise, the purpose of the rule promoting settlements would be frustrated. As this court's decision in **Odeco Drilling of Canada Ltd. v. Hickey Estate and Hickey** (1986), 59 Nfld. & P.E.I.R. 150; 178 A.P.R. 150 (Nfld. C.A.), observes, at p. 154, the obligation to supply a discontinuance of the action and a release of claims associated therewith is ordinarily implied in any settlement agreement. The absence of an express reference to such matters in the offer and acceptance leading to the agreement therefore will not in itself mean that the parties did not intend to contract at that point. Counsel for the Verges is an experienced litigation counsel who must be taken to know this. His telephone call to

McCabe merely reiterated the previous offer but made explicit what was implicit in the original that the claim would have to be discontinued and released.

[13] Subject to issues of incompleteness, therefore, a reasonable bystander observing the parties would conclude that, in making the offer, counsel for the Verges intended to enter into legal relations if the offer were to be accepted. This is supported by the actions of counsel immediately upon McCabe signifying his agreement. He requisitioned the funds in order to fulfill his side of the bargain.

[14] The terms of the offer were sufficiently clear that McCabe was capable of knowing what he was purporting to accept and he did, in fact, unequivocally accept them. There was no vagueness in the offer that could lead to the conclusion that the agreement was incomplete on the ground that it could not be ascertained that the offer and acceptance were coincident. This is not a case of, to use Davies, C.J.'s, words in **Kelly v. Watson** (1921), 61 S.C.R. 482, the court having "to make a new agreement for the parties as to which they themselves were never ad idem".

[15] Nor could it be said that the arrangement that was struck was simply an agreement to agree in the future on the precise terms of the release. If that had been the intent, counsel for the Verges could easily have stipulated on the telephone that any deal accepted by McCabe would be, in the time-honored phraseology, "subject to" the execution of a release in form and substance acceptable to him [see footnote 1]. There was nothing in the circumstances of the discussion to indicate that the parties intended that the agreement they struck would not be binding on them until all of the documentation was complete; rather, the circumstances are more consistent with a final agreement having been reached which the parties intended to have performed by the delivery of formal documentation later on, in a manner roughly analogous to an agreement for the sale of realty which is binding but contemplates the subsequent delivery of deeds, releases and other documentation (the details of which might have to be settled by further discussion) at a later date. Indeed, the presupposition behind the recognition in the **ODECO** case that a settlement agreement may be binding even though the requirement of the provision of a release is only implied is that the precise wording of the terms of the release need not be settled at the time agreement is reached.

[16] In the instant case, in the absence of any indication that either side was contemplating the necessity of further negotiation on what the release would contain, the only reasonable inference to be drawn by the reasonable bystander was that the parties

were making an agreement to resolve, fully and finally, the dispute between them at the time of their telephone conversation.

(c) Uncertainty of Terms

[17] The question that remains, however, is whether notwithstanding the apparent congruence of offer and acceptance and the intent to create legal relations, the terms of the deal were so uncertain as to render the apparent agreement unenforceable. Where it is clear that parties to a putative contract intended by their actions to enter into legal relations, a court, although not able to “make a new agreement for the parties” will nevertheless be reluctant to hold the apparent agreement void on grounds of uncertainty but will strive to give meaning and effect to the bargain contemplated by them.

[18] In **Kelly v. Watson**, Davies, C.J., referred to the fact that the court will “struggle against the difficulty ensuing from vagueness in the terms of the agreement.” In **Hunt River Camps/Air Northland Ltd. v. Canamera Geological Ltd.** (1998), 168 Nfld. & P.E.I.R. 207; 517 A.P.R. 207 (Nfld. C.A.), I stated, for the majority, at pp. 217-218;

“... even when there is some lack of clarity in what the parties have purported to agree on, that lack of clarity will not necessarily render the ‘agreement’ unenforceable. The courts will generally strive to give effect to the reasonable expectations of the parties, objectively determined, where it is apparent that they intended some legal relationship to exist between them. ...

“The court will generally take a broad view of the dealings between the parties with a view to making an objective determination of their reasonable common expectations and within that framework will strive to give effect to them by using all reasonable means to advance, rather than frustrate, the commercial intent. ...

“Included within the means of giving effect to the parties’ contractual intent is the technique of implying terms to flesh out the agreement in order to give it business efficacy, thereby ensuring its commercial purpose will be achieved. It is only if the uncertainty cannot be resolved by the use of implied terms or other suitable techniques that the court will be driven to throw up its hands and conclude that the ‘agreement’ is void for uncertainty.”

[19] A reasonable objective bystander would conclude that the general intent and aim of the transaction in this case was clear. In return for the payment of the settlement sum, McCabe was to give up, fully and finally, any and all claims that he had, either directly against the Verges or indirectly against others that might cause those others to claim against the Verges, arising out of the accident referred to in the statement of claim, which was the subject of the lawsuit that was being compromised. Claims arising out of the accident identified in the litigation were the only matters that were being discussed. A release of anything more would not have been in the reasonable contemplation of the

parties. By the same token, McCabe could not expect to give up anything less and retain the right to sue in some more limited respect, if to do so would involve the Verges in further litigation arising out of the accident in question as a result of his claims. The original offer to settle was made in the context of the existing litigation. Certainly, if accepted under rule 20A.03, it could have related to nothing else. If an offer made under rule 20A stipulated for some collateral advantage unrelated to the issues in the litigation, it would not be regarded as a bona fide offer. The offer reiterated in the subsequent telephone conversation was clearly related to exactly the same subject-matter as the previous offer. If the proposed arrangement was to involve something different, it would have to have been stipulated expressly.

[20] The achievement of the reasonable expectations of the parties can therefore be facilitated by the implication of a term as to the scope of the release that was contemplated. It meets the “business efficacy” and “officious bystander” tests for implication of terms. The term that can be implied is as follows: The plaintiff will execute and deliver in favour of the Verges an instrument which contains a full and final release of all claims, and a covenant to indemnify them in respect of any further proceedings taken by him, in relation to the motor vehicle accident and other events referred to in the statement of claim. (It is necessary to include, in effect, an indemnity because a reasonable bystander would conclude that the Verges needed assurances that they would not be dragged back into any litigation by any future actions of McCabe as litigant).

(d) Performance of the Agreement

[21] Accordingly, there was a valid contract of settlement entered into during the telephone conversation. All of the elements of offer, acceptance, consideration, intention to create legal relations and certainty of terms were present. The Verges were obligated to pay the settlement funds and in return McCabe was obligated to discontinue the proceeding and provide an effectual release that fully and finally released, and indemnified in respect of, all claims over which he had control arising out of the accident.

[22] The question then becomes whether the purported performance of the contract by McCabe was in accord with its terms, express and implied and, if not, whether any non-performance was a breach going to the root of the contract, thereby entitling the Verges to treat it as a repudiation excusing them from the obligation to pay the settlement money.

[23] In **Fieguth v. Acklands Ltd.** (1989), 37 B.C.L.R. 62 (B.C.C.A.), McEachern, C.J. B.C., in dealing with a settlement of a wrongful dismissal action observed at p. 70:

“In these matters it is necessary to separate the question of the formation of contract from its completion. The first question is whether the parties have reached an agreement on all essential terms. ... That is what happened here and as a settlement implies a promise to furnish a release and, if there is an action, a consent dismissal unless there is a contractual agreement to the contrary, there was an agreement on all essential terms.

“The next stage is the completion of the agreement. If there are no specific terms in this connection either party is entitled to submit whatever releases or other documentation he thinks appropriate. Ordinary business and professional practice cannot be equated to a game of checkers where a player is conclusively presumed to have made his move the moment he removes his hand from the piece. One can tender whatever documents he thinks appropriate without rescinding the settlement agreement. If such documents are accepted and executed and returned then the contract, which has been executory, becomes executed. If the documents are not accepted then there must be further discussion but neither party is released or discharged unless the other party has demonstrated an unwillingness to be bound by the agreement by insisting upon terms or conditions which have not been agreed upon or are not reasonably implied in these circumstances.”

[24] In this case, the initial draft of the release prepared by counsel for the Verges was rejected by McCabe. As explained by McCabe’s counsel at the time of the submission of the first redraft, the changes were made to make it clearer that the execution of the release was not to have any incidental effect on separate claims being made by McCabe’s wife who was allegedly injured in the same accident and in respect of which she had commenced a separate proceeding against the Verges. The response of counsel for the Verges was to demand that the original release be signed and delivered within 7 days, or the settlement offer would be “revoked”.

[25] No explanation for his position was given except to assert that the provision of the original release was necessary “to comply with our agreement respecting settlement”. In argument, however, counsel submitted that the revised document signed by McCabe appeared to limit his release of existing claims, and his covenant to indemnify the Verges in relation to any action by him that would precipitate any other claims against them, to situations involving claims for “personal injuries or property damage”. He suggested that that did not preclude a potential claim by McCabe for loss of his wife’s services as a result of the injury to her which arose out of the same accident.

[26] Counsel for the Verges did not regard the submission of the revised release as a repudiation of the agreement at that point; he gave McCabe another 7 days to comply. Indeed, as **Fieguth** emphasizes, where the terms of a release have not been stipulated at the time of the agreement, either party can submit drafts of documents believed to be appropriate to accomplish the aims of the settlement without risking rescinding the agreement. The submission of a draft that is not acceptable to the other side does not in

itself amount to a repudiation of the agreement unless it demonstrates an unwillingness to be bound any further. McCabe's actions cannot be so characterized.

[27] Within the time stipulated, McCabe submitted a further revised executed release which purported to cover "any damage or loss of whatever type or nature" and removed the offending and potentially limiting phrase "personal injury or property damage" from the indemnity clause. However, the document excepted out the "matters related to the Releasor's wife" in her separate action. Counsel for the Verges remained intransigent and was not prepared to countenance any variation from his own draft; accordingly, he took the position that failure to execute his version meant that there had not been any agreement reached on the terms of the release and he was free to withdraw the "offer", which he purported to do.

[28] He quite candidly admitted that he did not at the time undertake any real analysis of the revised draft to determine whether it was an effective release; rather, he felt "comfortable" with his own form, knew it would accomplish his objectives, and felt he had a right to insist on it. Given my conclusion that a settlement agreement had already been reached, it follows that he in fact did not have a unilateral right to insist on his own form, where, as here, he did not expressly stipulate that his form be used. He was incorrect when he stated in his final "revocation" letter that "the settlement was conditional upon these documents being executed in the form provided". His evidence on cross-examination demonstrates that such a stipulation was not made. It was simply a term of the deal that "a" release (i.e. an effective release in relation to the events which were the subject of the litigation) be provided.

[29] Once an agreement is reached, the question as to whether one party may resile from it depends on whether the other party has properly performed his or her end of the bargain and, if there has been only defective performance, whether that defective performance is of such a serious nature as to permit the resiling party to treat it as a repudiation, thereby justifying not performing his own obligation. The focus thus must be placed on McCabe's purported performance. Did the second revision of the release amount to an effective release of all of McCabe's claims relating to the accident and give an appropriate assurance that the Verges would not have to face further litigation as a result of any action taken by McCabe? In my view it did.

[30] By its terms, the document purported to release the Verges from any claims in relation to any damage or loss of whatever type or nature in consequence of the motor

vehicle accident which was the subject of the action; further, it contained a covenant by McCabe not to take any other proceedings in relation to the same subject matter against any third party who might claim contribution or indemnity from the Verges, and an indemnity in respect of the costs associated with McCabe's precipitation of any proceeding directly or indirectly against the Verges.

[31] Counsel for the Verges maintained, however, that the exception inserted by McCabe in relation to the other action taken by McCabe's wife somehow detracted from the proper scope of the release. I do not agree. The settlement related only to McCabe's legal claims arising out of the accident. It could not have contemplated, and indeed did not contemplate, some incidental effect on legal claims which McCabe's wife may have had in her own right in relation to the same accident.

[32] Taking into account the rationale expressed by McCabe's solicitor at the time of submission of the first redraft, it is a fair inference that the clause was inserted out of an abundance of caution to ensure that it was perfectly clear that although both McCabe's and his spouse's claims arose out of the same event, the claims of the latter remained unaffected by the settlement. In fact, it was probably unnecessary in the circumstances. The rest of the release makes it clear that it is only the claims of McCabe that were effectively barred; indeed he had no legal power to purport to release his wife's claims. Further, it would have been outside the scope of the settlement to expect him to indemnify the Verges in respect of claims of someone else (his wife) unless of course those claims were precipitated by legal action pursued by McCabe himself. Nor is it reasonable to conclude that the exception inserted by McCabe was a surreptitious attempt to reserve to himself the right to sue for loss of his wife's services as a result of the injury to her. The general words of the release would cover such claims, if made by him. In any event, it must be remembered that the limitation period for commencement of any claims arising out of the accident had long expired. Any claims which McCabe's wife may have in her own right, even if they included a claim for loss of, say, housekeeping capacity (and thus, indirectly, a claim relating to her inability to provide services to McCabe) would be claims in her own right and could not be said to be contemplated as falling within the terms of what was expected to be released as a result of the settlement with McCabe.

Conclusion and Disposition

[33] It can be concluded, therefore, that McCabe executed and delivered to the solicitor for the Verges a release that was in accord with his obligation. He performed his part of the bargain and thereby became entitled to performance by the Verges.

[34] Accordingly, I would allow the appeal, set aside the order dismissing the appellant's claim and order that judgment be entered in his favour as follows: Upon delivery to the solicitor for the respondents of a duly executed release in the form marked as Exhibit "C" attached to the affidavit of Ronald McCabe filed in this proceeding and upon the filing of a Notice of Discontinuance in Cause 1996 St. J. No. 3623, the defendants-respondents shall pay to the plaintiff-appellant the settlement sum of \$12,500, together with prejudgment interest, in accordance with the **Judgment Interest Act**, from May 7, 1998 (the date when the release was delivered) to July 30, 1998 (the date of the impugned order of the trial judge) and post-judgment interest thereafter. The appellant shall also have his costs on a party and party basis in this Court and in the court below.

Appeal allowed.

Footnotes

1. I would note in passing that such an option would probably not be an available technique in an offer to settle made under rule 20A, since by its nature an offer made under rule 20A.01 must be capable, by its acceptance under rule 20A.03, of creating a binding settlement capable of enforcement under rule 20A.07. If the terms of a release to be given as part of a settlement are crucial, therefore, the nature of those terms that the acceptor is to be expected to comply with should be spelled out in the offer.

TAB 6

Olivieri v. Sherman et al.

[Indexed as: Olivieri v. Sherman]

86 O.R. (3d) 778

Court of Appeal for Ontario,
Rosenberg, Gillese and Lang JJ.A.
July 3, 2007

Civil procedure -- Settlement -- Motion judge finding that respondents' written offer to settle was conditional on elaboration of certain words used in offer -- Motion judge erring in basing that conclusion on respondents' evidence of their subjective intent rather than on objective reading of offer -- Nothing in offer indicating that it was conditional in any respect. [page779]

The appellant conducted clinical trials to assess a drug manufactured by the respondent A Inc. She developed certain concerns about the drug. Ultimately, she sued the respondents for damages for defamation, and A Inc. counterclaimed for damages for defamation and injurious falsehood. A mediation was directed. In the course of the mediation, the respondents made a written offer to settle which contained terms that the appellant would not disparage A Inc., the drug in question or the clinicians and researchers who used it, and that the parties would only express future views about the drug in scientific forums. The appellant accepted the offer in writing. The respondents subsequently took the position that there was no settlement agreement, maintaining that their offer represented a consensus on certain principles but that a final settlement was subject to further documentation agreed on by all parties. The appellant brought a motion to enforce the alleged settlement agreement. The motion was dismissed. The motion judge found that the agreement was conditional on

further elaboration and negotiation of the words "disparage" and "scientific". The appellant appealed.

Held, the appeal should be allowed.

In coming to the conclusion that the offer was conditional on elaboration of the words "disparage" and "scientific", the motion judge relied on the evidence of the respondents as to their intent, which was based on discussions they and their counsel had with the mediator. A determination as to whether a concluded agreement exists does not depend on an inquiry into the actual state of mind of one of the parties or on the parole evidence of one party's subjective intention. Where, as here, an agreement is in writing, it is to be measured by an objective reading of the language chosen by the parties to reflect their agreement. Viewed objectively, there was nothing in the counter-offer to suggest that it was an agreement to agree or conditional in any respect. It was not made "subject to" agreement on any of the specified documents or terms. The parties reached agreement on all of the essential terms of the settlement agreement, and the appellant was entitled to a declaration that the parties entered into an enforceable settlement.

Cases referred to

Bawitko Investments Ltd. v. Kernels Popcorn Ltd., [1991] O.J. No. 495, 79 D.L.R. (4th) 97 (C.A.); Canada Square Corp. v. Versafood Services Ltd. (1982), 34 O.R. (2d) 250, [1981] O.J. No. 3125, 130 D.L.R. (3d) 205, 15 B.L.R. 89 (C.A.) (sub nom. Canada Square Corp. v. VS Services Ltd.); Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc., [1995] O.J. No. 3773, 59 A.C.W.S. (3d) 401 (C.A.), affg [1995] O.J. No. 721, 53 A.C.W.S. (3d) 1183 (Gen. Div.); Eli Lilly & Co. v. Novopharm Ltd., [1998] 2 S.C.R. 129, [1998] S.C.J. No. 59, 161 D.L.R. (4th) 1, 227 N.R. 201, 80 C.P.R. (3d) 321; Fieguth v. Acklands Ltd., [1989] B.C.J. No. 857, 37 B.C.L.R. (2d) 62, 59 D.L.R. (4th) 114 (C.A.); Lindsey v. Heron & Co., [1921] O.J. No. 75, 50 O.L.R. 1, 64 D.L.R. 92 (S.C. (App. Div.));

Stonehocker v. King, [1993] O.J. No. 2653, 43 A.C.W.S. (3d) 735 (Gen. Div.)

APPEAL from the order of Campbell J., [2006] O.J. No. 3217 (S.C.J.), dismissing a motion to enforce a settlement agreement.

Sheila Block and Paul Michell, for appellant.

Katherine L. Kay and Adrian C. Lang, for respondents.
[page780]

The judgment of the court was delivered by

[1] GILLESE J.A.: -- Dr. Nancy Olivieri was a physician and medical researcher at the Hospital for Sick Children ("HSC") and the University of Toronto.

[2] In the 1980s, Dr. Olivieri pursued clinical research in thalassemia, a genetic blood disorder. Thalassemia patients require regular blood transfusions. A side effect is the build-up of excess iron. Patients take drugs called iron chelators to remove excess iron.

[3] Dr. Olivieri and her colleagues conducted clinical trials to assess the efficacy and safety of an oral iron chelator called deferiprone. Apotex Inc., a major Canadian pharmaceutical manufacturer, sponsored the research. Dr. Barry M. Sherman is Apotex's chairman. Jack M. Kay is the president of Apotex. I will refer to Apotex, Dr. Sherman and Mr. Kay, collectively, as the "respondents".

[4] Dr. Olivieri developed concerns about deferiprone. She told Apotex of her concerns.

[5] Dr. Olivieri and Apotex disagreed on the underlying science and proper course of action in light of her concerns.

[6] On May 24, 1996, Apotex terminated the clinical trials.

[7] The dispute that underlies the present appeal relates to statements made by Dr. Olivieri about deferiprone and the events that followed the termination of the trials, and the response by the respondents to those statements.

[8] Dr. Olivieri commenced various defamation actions including:

- The "60 Minutes action" against Apotex and Dr. Sherman;
- The "National Post action" against Mr. Kay and Apotex; [See Note 1 below]
- The "CBC action" against Dr. Sherman. [See Note 2 below]

[9] In the 60 Minutes and National Post actions, Apotex counterclaimed against Dr. Olivieri for defamation and injurious falsehood.

[10] On consent, the 60 Minutes and National Post actions were consolidated into a single action, in which Dr. Olivieri sought \$20 million in general damages and \$10 million in aggravated and punitive damages, and Apotex sought \$20 million in general and special damages. [page781]

[11] Discoveries took place in 2002, 2003 and 2004. In the 60 Minutes action, the respondents' counsel examined Dr. Olivieri for some 29 days. Dr. Olivieri's counsel examined the respondents for approximately 20 days. The parties produced more than 10,000 documents.

[12] Each party moved to compel answers to questions refused in discovery. On June 14, 2004, Master Albert ordered the parties to answer certain questions but declined to order them to answer other questions.

[13] The parties appealed and cross-appealed the order of Master Albert. On September 17, 2004, Sanderson J. dismissed

the respondents' appeal and allowed Dr. Olivieri's cross-appeal.

[14] Master Albert also directed a joint mediation in the 60 Minutes and CBC actions. The parties agreed to George Adams, Q.C., as mediator.

[15] The mediation took place on November 2 and 3, 2004. Dr. Olivieri attended with her counsel Paul Michell (60 Minutes action) and Christopher Ashby (CBC action). Dr. Spino and Dr. Sherman attended for the respondents, along with their counsel, David Brown, Adrian Lang and Jessica Bookman. A CBC representative attended with counsel.

[16] The mediation began on November 2, 2004, with a plenary session of all parties and counsel. The parties and counsel then separated into three rooms (Dr. Olivieri; respondents; CBC defendants), where they remained for the rest of the day. Mr. Adams conducted "shuttle diplomacy" among the parties. No other plenary session ever took place.

[17] At the end of the first day, Dr. Olivieri made three alternative offers to the respondents, each of which contained a term that the parties would enter into a non-disparagement agreement.

[18] On the second day of the mediation, the parties reconvened in their separate rooms. Towards the end of that day, the respondents made a handwritten counter-offer to Dr. Olivieri on three sheets of "flip chart" paper (the "counter-offer"); most of the counter-offer was in the handwriting of the respondents' counsel. Dr. Spino initialled the counter-offer on behalf of the respondents. Dr. Olivieri also initialled the counter-offer.

[19] The counter-offer contained a public part (Part A) and a confidential part (Part B). A redacted copy of the counter-offer reads as follows:

PRIVILEGED AND CONFIDENTIAL

Part A -- To be made public

1. Joint settlement statement -- all litigation dismissed --
claims and counterclaims.
2. Filing of consent dismissals.
3. Statement by Dr. Olivieri:

"Dr. Olivieri acknowledges that research over the last
five years has revealed that Deferiprone will assist some
patients in the treatment of thalassemia and wishes
Apotex well in this important work."

4. Statements by both parties: Olivieri and Apotex/Sherman/
Kay:
 - a. Mutual expressions of regret for language that they
used in past years about each other.
 - b. Agreement by same parties not to disparage each other
in the future:
 - i. Apotex/Sherman/Kay will not disparage Olivieri
and her supporters;
 - ii. Olivieri will not disparage Apotex, clinicians,
researchers who use deferiprone, or deferiprone;
and
 - iii. Parties will only express future views about
deferiprone in scientific forum.

5. All of the above to be contained in a press release.

Part B -- To be confidential

1. [Deleted for confidentiality reasons]

2. Olivieri to provide Apotex with data listed in paragraph 160 of the statement of defence and counterclaim. Apotex can use this for regulatory purposes but no consequences to Olivieri.
3. Full and final mutual releases of all claims/potential claims existing as at settlement date, including all actions commenced by Olivieri [or] by Apotex.

[20] By the conclusion of the mediation on November 3, 2004, Dr. Olivieri had not accepted the counter-offer because she wanted time to consult with HSC about her legal fees. She was given 48 hours within which to accept the counter-offer.

[21] The following day (November 4, 2004), Mr. Michell e-mailed a transcription of the counter-offer to Mr. Brown and sought permission to send a copy to HSC's counsel on a confidential basis.

[22] Mr. Brown replied by e-mail that afternoon, advising that the respondents did not consent. He did not suggest there was any need for agreement on subsequent documents.

[23] Other written communication was exchanged between counsel by letter and e-mail on November 4, 2004; in one e-mail [page783] from Mr. Brown to Mr. Michell it was noted that Dr. Olivieri would not be able to complete the settlement until she had resolved outstanding issues with HSC.

[24] Dr. Olivieri decided to accept the counter-offer and so instructed her counsel. On November 5, 2004 -- that is, within the 48-hour window -- Mr. Michell so advised Mr. Brown by telephone. He also confirmed Dr. Olivieri's acceptance by letter (sent by FAX) that day, again attaching a transcription of the counter-offer.

[25] As well, Mr. Michell wrote to Ms. Lang on November 5, 2004, enclosing full-sized copies of the three "flip chart" pages. Again, there was nothing in her response to suggest that the agreement was conditional or subject to further

documentation.

[26] On December 10, 2004, Sanderson J. ordered the respondents to pay costs of \$7,050 plus GST and disbursements to Dr. Olivieri, forthwith. The respondents did not pay this order until July 2006, more than a year and a half later.

[27] There was no further communication between counsel for almost a year.

[28] On October 31, 2005, after Dr. Olivieri reached a settlement with HSC, her counsel advised counsel for the respondents that Dr. Olivieri was able to complete the terms of the settlement. The respondents, for the first time, claimed that there was no settlement agreement. They maintained that the counter-offer represented a consensus on certain principles but that a final settlement was subject to further documentation agreed on by all parties, particularly the non-disparagement agreement. They also alleged that Dr. Olivieri had continued to disparage Apotex publicly after the "settlement" had been concluded.

[29] Dr. Olivieri brought a motion to enforce the alleged settlement agreement. The respondents opposed the motion on the basis that either the parties had no meeting of the minds about the meaning of disparagement or that Dr. Olivieri had repeatedly breached the agreement by continuing to disparage Apotex.

[30] By order dated August 4, 2006, Campbell J. dismissed the motion (the "Order").

[31] Dr. Olivieri appeals.

[32] I would allow the appeal. As I explain below, the parties had a mutual intention to create a legally binding agreement and agreed on all the essential terms of the settlement; the fact that there may now be disagreement about whether the settlement has been breached does not mean that no concluded agreement ever existed.

[33] As will be seen, there is some confusion about what was decided below in respect of the respondents' alternative position [page784] that if there were a concluded agreement, Dr. Olivieri had either breached or repudiated it. Consequently, the Order and the reasons of the motion judge will be set out in some detail before the issues are analyzed.

The Order Under Appeal

[34] The Order is very short. There are two paragraphs by way of preamble. The first recites that Dr. Olivieri made a motion for an order enforcing a settlement agreement and requiring the parties to comply with the terms of that agreement. The second lists the evidence considered. The full text of the balance of the Order reads as follows:

1. THIS COURT ORDERS that the motion be and hereby is dismissed.
2. THIS COURT FURTHER ORDERS that the parties may make submissions on costs.

The Decision Below

[35] At paras. 13 and 21 of the reasons, the motion judge states his conclusion that there had been no meeting of the minds between the parties sufficient to give rise to an enforceable agreement. In his view, the agreement was conditional on further elaboration and negotiation of the word "disparage" in para. 4(b) of Part A of the counter-offer and of the word "scientific" in para. 4(b)(iii) of the same.

[36] In relation to "disparage", the motion judge held that elaboration was essential to Apotex. In paras. 17 and 21, he stated:

I conclude that at least Apotex anticipated that what would be said or not said by Dr. Olivieri within the general and broad use of the word 'disparage' would be further detailed in additional documentation that would be an essential part of the settlement agreement. Dictionary definitions of the

word "disparage" contain other words of general meaning such as to "discredit" or to "denigrate" that lack precision, particularly for ongoing public appearances.

.

. . . A more detailed delineation of what would be regarded as 'disparaging conduct' I conclude was regarded by the parties, particularly Apotex, as an essential term of the agreement, one which was not finalized. . . .

[37] In para. 16 of the reasons, the motion judge said this, in respect of para. 4(b)(iii) of Part A:

The pleadings in the action are replete with concerns by both parties but Apotex in particular, regarding public statements made. In the context of the history between the parties and particularly the wording of Item 4(b)(iii), that "parties will only express future views about deferiprone in scientific forum" (emphasis added), anticipates further elaboration as to what is meant by the word "scientific."
[page785]

[38] Further, the motion judge reasoned that additional documentation was required in relation to para. 2 of Part B of the counter-offer. At para. 18 of the reasons, he wrote:

In addition, in the context of the pleadings and allegations, I conclude that Apotex would require the documentation provided for in [para. 2 of Part B] to be specifically part of the settlement package. It has never been provided. This history of the dealings between Dr. Olivieri and the Defendants from at least 1995 shows that the public utterances each about the other were central to their dispute and to the resolution of it.

[39] At para. 22 of the reasons, the motion judge stated that in view of his disposition, "a trial will be required" should the parties not reach a new settlement agreement. He went on in para. 23 to say, "The central issue in the trial will be the meaning attributable to the statements that were and continue to be made by the parties about each other in public forums."

Analysis

[40] This appeal raises two issues:

(1) was there a concluded settlement agreement? and

(2) if there was, did Dr. Olivieri breach or repudiate it?

Was there a concluded settlement agreement?

[41] A settlement agreement is a contract. Thus, it is subject to the general law of contract regarding offer and acceptance. For a concluded contract to exist, the court must find that the parties: (1) had a mutual intention to create a legally binding contract; and (2) reached agreement on all of the essential terms of the settlement: *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.*, [1991] O.J. No. 495, 79 D.L.R. (4th) 97 (C.A.), at pp. 103-04 D.L.R.

[42] There is no question but that the first requirement was met: the counter-offer was drafted during the course of a court-directed mediation involving multi-million dollar lawsuits and in which all parties were represented by experienced legal counsel. It is apparent that the parties intended to enter into a binding legal agreement to resolve all of the outstanding legal proceedings.

[43] In respect of the second requirement, the motion judge found that there was no meeting of the minds in respect of all of the essential terms of the contract. It will be recalled that he held that the counter-offer was conditional on elaboration of the words "disparage" and "scientific" in para. 4(b) of Part A of the counter-offer. In coming to this view, the motion judge relied on the evidence of the respondents. But, the respondents' evidence was [page786] based on discussions they and their counsel had with Mr. Adams during the mediation. Dr. Spino admitted that the respondents and their counsel never discussed the counter-offer with Dr. Olivieri or her counsel during the mediation, or told them that the counter-offer was conditional upon finalizing

documentation. There was no evidence that all parties shared the view that further negotiation, elaboration or agreement was necessary.

[44] A determination as to whether a concluded agreement exists does not depend on an inquiry into the actual state of mind of one of the parties or on the parole evidence of one party's subjective intention. See *Lindsey v. Heron & Co.*, [1921] O.J. No. 75, 64 D.L.R. 92 (S.C. (App. Div.)). Where, as here, the agreement is in writing, it is to be measured by an objective reading of the language chosen by the parties to reflect their agreement. As was stated by Middleton J.A. in *Lindsey* at pp. 98-99 D.L.R., quoting *Corpus Juris*, vol. 13 at 265: [See Note 3 below]

The apparent mutual assent of the parties essential to the formation of a contract, must be gathered from the language employed by them, and the law imputes to a person an intention corresponding to the reasonable meaning of his words and acts. It judges his intention by his outward expressions and excludes all questions in regard to his unexpressed intention. If his words or acts, judged by a reasonable standard, manifest an intention to agree in regard to the matter in question, that agreement is established, and it is immaterial what may be the real but unexpressed state of his mind on the subject.

[45] Accordingly, in my view, it was an error in principle for the motion judge to decide this issue based on the subjective intent of one side to the bargain rather than on an objective reading of the counter-offer.

[46] Viewed objectively, there is nothing in the counter-offer to suggest that it was "an agreement to agree" or conditional in any respect. Nothing in the counter-offer, either directly or indirectly, suggests that its terms are subject to further elaboration, documentation or agreement. Had it been intended that the terms were to be conditional, one would have expected to see language that expressly made one or more terms "subject to" further agreement.

[47] Instead, the terms of the counter-offer are straightforward and unconditional: Part A of the counter-offer contains the public part of the settlement agreement. It provides that: (1) the parties will issue a joint settlement statement that all litigation is dismissed and (2) file consent dismissals; (3) Dr. Olivieri will issue a [page787] statement in the terms set out; (4) both parties will provide statements in which they express mutual regret for language used in the past about the other, agree not to disparage each other in the future, and to express views about deferiprone only in scientific forums; and that [(5)] a press release will contain the foregoing. Part B, the confidential part of the settlement agreement, requires Dr. Olivieri to provide Apotex with the data listed in para. 160 of the statement of defence and counterclaim and that both parties will execute full and final mutual releases. [See Note 4 below]

[48] The counter-offer was not made "subject to" agreement on any of the specified documents or terms: the press release, provision of data and mutual releases were the mechanics required to complete the settlement agreement. As was stated in *Fieguth v. Acklands Ltd.*, [1989] B.C.J. No. 857, 59 D.L.R. (4th) 114 (C.A.), at p. 121 D.L.R., [See Note 5 below] the first question to be asked when deciding whether a settlement was concluded is whether the parties reached an agreement on all essential terms. It is only thereafter that the question of completion of the agreement is considered.

[49] I acknowledge that there can be sufficient uncertainty about the meaning of words or terms in an agreement that it will be held to be unenforceable: see *Bawitko Investments* at p. 104 D.L.R. However, in my view, the language used in the counter-offer does not suffer from that problem. As the motion judge observed, the dictionary meaning of "disparage" is to "discredit" or "denigrate". While there may be disagreement about whether the conduct of one of the parties amounts to disparagement, that does not mean that the agreement is conditional nor does it require elaboration of the meaning of the word. For similar reasons, the word "scientific" needs no elaboration.

[50] The policy of the courts is to encourage the settlement of litigation: *Stonehocker v. King*, [1993] O.J. No. 2653, 43 A.C.W.S. (3d) 735 (Gen. Div.). The courts "should not be too astute to hold" that there is not the requisite degree of certainty in any of an agreement's essential terms: *Canada Square Corp. v. Versafood Services Ltd.* (1982), 34 O.R. (2d) 250, [1981] O.J. No. 3125 (C.A.).

[51] In conclusion, as the motion judge applied the incorrect test when determining whether an enforceable settlement [page788] agreement had been entered into, his conclusion must be set aside. Applying the objective principle of contract formation, I conclude that the parties reached agreement on all of the essential terms of the settlement agreement, as reflected in the counter-offer. Consequently, the appellant is entitled to a declaration that the parties entered into an enforceable settlement agreement on November 5, 2004.

Was the settlement agreement breached?

[52] On the motion below, the respondents' alternative position was that if there were a concluded settlement agreement between the parties, Dr. Olivieri has repudiated or breached it. There is some confusion about whether the motion judge decided this issue.

[53] For the following reasons, it appears to me that he did not:

- the order appealed from makes no mention of this issue. It says only that the motion for enforcement of the settlement agreement was dismissed;
- the motion judge makes only one reference to the matter. In para. 16 of the reasons, he recites the respondents' position on the issue;
- the respondents did not argue, on the motion, for the trial of this issue; and
- there was very little evidence on this issue. The appellant

says that the only evidence was that on one occasion the appellant was misquoted in a newspaper article and that she had written to correct the misquotation.

[54] Accordingly, I do not understand the issue of alleged repudiation or breach of the agreement to have been decided. The record does not permit this court to make such a determination.

[55] These comments are made without prejudice to the respondents' right to take such steps as they deem appropriate to pursue their allegations that Dr. Olivieri has breached or repudiated the settlement agreement.

Disposition

[56] For these reasons, I would allow the appeal, set aside the Order and grant the motion, with costs to the appellant fixed at \$37,000, all inclusive. In setting costs at \$37,000, I have accepted the figure agreed on by the parties and understand that it is the costs of the appeal alone. The appellant is [page789] entitled to her costs of the motion below, as well. If the parties are unable to resolve that matter, they may make brief written submissions to the court within 14 days of the date of the release of these reasons.

Appeal allowed.

Notes

Note 1: The National Post and certain of its employees were also defendants but Dr. Olivieri settled with them.

Note 2: The CBC and certain of its employees were also defendants but Dr. Olivieri settled with them.

Note 3: See also *Eli Lilly & Co. v. Novapharm Ltd.*, [1998] 2 S.C.R. 129, [1998] S.C.J. No. 59, at paras. 54-55.

Note 4: For confidentiality reasons, no mention is made of para. 1 of Part B of the counter-offer.

Note 5: Followed in Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc. [1995] O.J. No. 721, 53 A.C.W.S. (3d) 1183 (Gen. Div.), affd [1995] O.J. No. 3773, 59 A.C.W.S. (3d) 401 (C.A.)

TAB 7

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION (GENERAL)**

Citation: *Killick Fisheries Inc. v. Atlantic Treasure Seafoods Limited et al.*, 2012

NLTD(G) 69

Date: 20120418

Docket: 200906T0027

BETWEEN:

KILLICK FISHERIES INC.

PLAINTIFF

AND:

ATLANTIC TREASURE SEAFOODS LIMITED

FIRST DEFENDANT

AND:

BAY ROBERTS SEAFOODS LIMITED

SECOND DEFENDANT

Before: The Honourable Mr. Justice Garrett A. Handrigan

Place of Hearing:

Grand Bank, Newfoundland and Labrador

Date(s) of Hearing:

April 5, 2012

**Civil Practice and Procedure – Disposition without Trial – Settlement –
Application to Enforce Terms of Settlement – Other Considerations – Costs.**

Killick Enterprises Inc. sued Atlantic Treasure Seafoods Inc. and Bay Roberts Seafoods Limited for money owing under a brokerage agreement between them. The parties agreed to settle the claim but Atlantic Treasure and Bay Roberts Seafoods refused to comply with the terms they agreed to. Killick Enterprises applied under Rule 20A.07(1) of the **Rules of the Supreme Court, 1986** to enforce the settlement.

Summary: The Court allowed the application and ordered the Defendants to pay costs of the application, to be taxed on a party-and-party basis, under Column 3 of the Scale of Costs. It found that the parties arrived at an enforceable settlement contract through their negotiations and ordered the Defendants to comply with it.

Appearances:

Stacy G. MacDonald	Appearing on behalf of the Plaintiff
John M. Babb	Appearing on behalf of the Defendants

Authorities Cited:

CASES CONSIDERED: *McCabe v. Verge* (1999), 182 Nfld. & P.E.I.R. 135 (NLCA).

REGULATIONS CONSIDERED: *Rules of the Supreme Court, 1986*, SNL 1986, c 42, Sch D – Rules 14.24(1), 20A, 20A.07(1).

REASONS FOR JUDGMENT

HANDRIGAN, J.:

INTRODUCTION

[1] Killick Fisheries Inc. filed a statement of claim in this Court on February 19, 2009, claiming \$28,500 from Atlantic Treasure Seafoods Inc. as well as unspecified general damages and other relief. Killick alleges that it advanced sums of money to Atlantic from May 1, 2008 to July 24, 2008 to buy fish products and that Atlantic did not repay the advances in full and a smaller amount of \$1,500, which Killick says it paid for commission on another fish product.

[2] Atlantic Treasure denied it owed Killick any money and held Killick to the strict proof of its claim. Eventually Killick added Bay Roberts Seafoods Limited as a second defendant and Atlantic Treasure and Bay Roberts Seafoods counterclaimed against Killick.

[3] Killick claims that the parties settled the claim in August 2011 but that Atlantic Treasure and Bay Roberts Seafoods reneged on their agreement. Killick applied to this Court on January 30, 2012 under Rule 20A.07(1) of the **Rules of the Supreme Court, 1986**¹ for an order compelling Atlantic Treasure and Bay Roberts Seafoods to comply with the agreement.

THE ISSUE

[4] Killick's application raises two issues:

- Did the parties settle the action?
- If so, should the settlement be enforced?

THE LAW

Rules of Court

[5] Rule 20A.07(1) provides that one party to an offer to settle may apply to the Court "...for judgment in terms of the accepted offer..." if the other party fails to comply with its terms.

Case Law

[6] Green, J.A. dealt with a dispute over a Rule 20A offer to settle in **McCabe v. Verge**², a claim for damages following a motor vehicle accident. Ronald W. McCabe sued Robert Verge and Lynn Verge in damages. The Verges' insurers offered to settle the claim for a fixed sum and forwarded a notice of discontinuance and release for execution. Mr. McCabe's counsel replied with a redrafted release that the Verges' insurer did not accept. Verges' counsel wrote back to Mr. McCabe's counsel saying that the revised release was not acceptable and Mr. McCabe had seven days to execute and return the original release to him or the settlement offer was revoked. Mr. McCabe applied to enforce the settlement.

[7] The trial judge dismissed the application: He found that the parties had not formed a settlement contract. Mr. McCabe appealed. The Court of Appeal allowed the appeal and found that the parties had achieved "...consensus ad idem, leading to a concluded and binding contract, the terms of which are ascertainable from the express language used by the parties and from terms that can be implied to

¹ SNL 1986, c 42, Sch D.

² (1999), 182 Nfld. & P.E.I.R. 135 (NLCA).

give business efficacy to the contract”³. It held that Mr. McCabe “...became entitled to the settlement money”⁴.

[8] Green, J.A. applied the following principles in **McCabe v. Verge** to uphold the settlement contract:

- A settlement agreement does not require formalities to be valid.
- A settlement agreement can be created outside of Rule 20A.
- The duty to provide a discontinuance of the action and a release of the claim is ordinarily implied in a settlement agreement.
- An offer, which would appear to a reasonable bystander to invite its recipient to enter into legal relations, can result in a settlement contract.
- If offer and acceptance of the offer coincide, some vagueness in the offer will not necessarily defeat it.
- A final agreement can be reached even though the parties have not agreed upon the formal documentation they will exchange to perform it.
- If offer and acceptance coincide and the parties intend to create legal relations, the terms the parties agree upon must not be so uncertain as to make the agreement unenforceable.
- The court will give effect to the parties’ intentions by implying terms to the agreement unless any uncertainty or vagueness cannot be resolved by that or other suitable techniques; but the court will not make a new agreement for the parties if they were never ad idem.

[9] I will apply these principles to the issues in this case.

ANALYSIS

Background

[10] Killick Fisheries Inc., a Quebec-based company, claimed it carried out brokerage duties in the seafood industry in 2008 for Atlantic Treasure Seafoods Inc., a Newfoundland-based company. According to Killick it advanced four sums of money totaling \$73,000, to Atlantic by wire transfers between May 1, 2008 and

³ Ibid, paragraph 9.

⁴ Ibid.

July 24, 2008, of which Atlantic repaid only \$46,000, leaving \$27,000 still owing. In addition, Killick claimed that Atlantic owes it another \$1,500USD that it paid on Atlantic's behalf for fish products it sold to a third party.

[11] Killick issued a statement of claim from this Court on February 19, 2009 claiming the outstanding monies from Atlantic Treasure. Killick served its statement of claim and accompanying notice to defendant on Atlantic Treasure by personal service on March 6, 2009. Atlantic Treasure filed its statement of defence to the claim on March 24, 2009 and said, amongst other things, that Killick acted on behalf of Bay Roberts Seafoods Limited and not on Atlantic Treasure's behalf. But Atlantic also denied that Bay Roberts Seafoods owed any money to Killick.

[12] Killick amended its statement of claim to add Bay Roberts Seafoods Limited as a party and filed the amended statement of claim in this Court on March 30, 2009. It served the amended statement of claim on both Atlantic Treasure, which it renamed "First Defendant", and Bay Roberts Seafoods, which it called "Second Defendant", on April 2, 2009. Atlantic Treasure applied to strike the amended statement of claim and to dismiss Killick's action before it filed a defence to the amended statement of claim. According to Atlantic Treasure, Killick could only amend its statement of claim if it had leave from this Court; which it had not obtained.

[13] I dismissed Atlantic Treasure's application with costs. I held that Killick did not require leave to amend its statement of claim and found that the amendment was necessary to determine the real dispute between the parties.

[14] Killick claims that the parties entered into successful negotiations in July & August 2011 to settle the claim. Killick says that the parties' counsel exchanged successive e-mails that captured the terms of the agreement between them. But Killick also says that Atlantic Treasure and Bay Roberts Seafoods refuse to comply with the settlement agreement. Killick applied to this Court under Rule 20A.07(1) on January 30, 2012 for an order compelling Atlantic Treasure and Bay Roberts Seafoods to comply with the agreement.

[15] These are the e-mails that Killick refers to:

Date	From	To	Contents
July 6, 2011 @ 9:01	Plaintiff's	Defendants'	Pleased be advised that our client has rejected the offer of \$7,000 and is countering with his willingness to accept

am	counsel	counsel	\$13,500.
August 5, 2011 @ 3:09 am	Defendants' counsel	Plaintiff's counsel	The undersigned has met with our client and have instructions to offer the amount of \$10,000 for settlement of this matter.
August 17, 2011	Plaintiff's Counsel	Defendants' Counsel	Please be advised that we have discussed your client's latest settlement offer in this matter and can advise that they are in agreement to settle this matter for \$10,000 to be sent to our firm's trust account within five (5) business days from today. Upon receipt of the same we shall send to your office a Notice of Discontinuance for your consent as well as your client's agreement to withdraw the Counter Claim.
August 17, 2011 @ 8:17 am	Defendants' Counsel	Plaintiff's Counsel	Mr. [David] Russell [owner of Atlantic Treasure & Bay Roberts Seafoods] is in Labrador until Wednesday of next week [August 24, 2011] and shall be unable to deal with this until his return.
August 17, 2011 @ 3:50 pm	Plaintiff's Counsel	Defendants' Counsel	Please advise if your client intends to give this matter his prompt attention upon his return from Labrador, as I am not sure how much longer I can keep my guy to the settlement table.
August 18, 2011 @ 4:39 pm	Defendants' Counsel	Plaintiff's Counsel	I would assume so Stacey [MacDonald, Plaintiff's Counsel].

[16] Mr. Russell did not “deal” with the matter when he returned from Labrador. In fact, he instructed Defendants’ counsel to reject the position which Plaintiff’s counsel stated in his e-mail of August 17, 2011 when he confirmed Defendants’ counsel that Killick would settle matters for the \$10,000 that the defendants had offered of August 5, 2011. Defendants’ counsel started to refer to the August 17, 2011 e-mail as a “counter-offer for settlement” and said it contained two conditions that made it a “conditional acceptance”:

1. The \$10,000 was to be paid within five (5) business days of the e-mail; and
2. Bay Roberts Seafoods’ counterclaim against Killick was to be discontinued.

[17] Defendants' counsel claims that the parties never reached a settlement contract because of those conditions. I do not agree. Let me explain.

[18] I have reviewed the e-mail correspondence that the parties' counsel exchanged over the six weeks between July 6, 2011 and August 18, 2011. It is clear to me that the parties reached an agreement, which is in summary: Atlantic Treasure and Bay Roberts Seafoods would pay \$10,000 to settle the claim which Killick Enterprises brought against them for \$28,500. Defendants' counsel offered that amount in the e-mail he sent to Killick's counsel on August 5, 2011 @ 3:09 am. Killick's counsel accepted the offer on August 17, 2011.

[19] It is true that Killick's counsel added that the Defendants should send the money to his trust account within five (5) days and the Defendants should discontinue their counterclaim. But those requirements do not substantially alter the contract that arose when Defendants' counsel offered to pay \$10,000 and Killick's counsel accepted it. As to discontinuing the counterclaim, it will be noted that the parties had fleshed out a full suite of proceedings in the dispute over the \$28,500 that Killick claimed that Atlantic Treasure and Bay Roberts Seafoods owed it, consisting of:

- Statement of Claim filed February 19, 2009.
- Statement of Defence filed March 24, 2009.
- Amended Statement of Claim filed March 30, 2009.
- Amended Statement of Defence and Counterclaim filed August 4, 2009.

[20] All issues between the parties were fully engaged in these proceedings and this was the context for their negotiations in the summer of 2011. Thus, when they agreed on a settlement "of this matter" it is reasonable to conclude they intended to resolve all outstanding issues, including the counterclaim that Bay Roberts Seafoods brought against Killick. As Green, J.A. said in **McCabe v. Verge**, "...in the absence of any indication that either side was contemplating...further negotiation...the only reasonable inference to be drawn by the reasonable bystander was that the parties were making an agreement to resolve, fully and finally, the dispute between them..."⁵. I note as well that when Defendants' counsel offered "...\$10,000.00 for settlement of this matter", he did not distinguish between the claim and counterclaim [My emphasis].

⁵ Ibid, paragraph 16.

[21] Killick's stipulation that the Defendants should transfer the funds to its counsel within five days was not an essential part of their settlement agreement. Neither Killick nor the Defendants regarded it as crucial, as appears by the comments their counsel made about the timeline for settlement in the e-mails they exchanged during negotiations:

- Defendants' counsel offered \$10,000 "for settlement of this matter" on August 5, 2011 and set no time to do it;
- Killick's counsel accepted the offer on August 17, 2011 and directed Defendants' counsel to pay the funds into his trust account within "five (5) business days of today's date";
- Defendants' counsel replied the same day that his client was "...in Labrador until Wednesday of next week [August 24, 2011] and shall be unable to deal with this until his return".
- Killick's counsel responded on the same day for assurance that "...your client intends to give this matter prompt attention upon his return from Labrador".
- To which Defendants' counsel replied the next day, "I would assume so...".

[22] I set out the details of the e-mail correspondence counsel exchanged to settle the action so I could focus on the timeline that Killick's counsel proposed for settlement. He suggested a five-day deadline but did not insist on it when the Defendants could not complete the settlement within that time. He accepted the adjustment that Defendants' counsel proposed ("until his return from Labrador") and simply sought assurance that the Defendants would deal with the matter promptly when Mr. Russell returned.

[23] Overall, it is apparent from the "give-and-take" on time that neither the Plaintiff nor the Defendants were wedded to a fixed deadline as long as both parties acknowledged that settling the claim was a priority for them and committed to doing it in a reasonable time. Unfortunately, while settling was a priority for Killick, it was not for the Defendants who resiled from their proposal and refused to complete the settlement contract that the parties had agreed to.

Resolution

[24] I find that the parties formed a contract to settle all aspects of the claim between Killick and the Defendants in August 2011. The contract required the

Defendants to pay Killick \$10,000 to discontinue its action and for the Defendants to withdraw their counterclaim. The Defendants breached the contract and Killick is entitled to the relief it asks for in this application.

[25] In the result, I order that judgment be entered for Killick Fisheries Inc. against the Defendants, Atlantic Treasure Seafoods Inc. and Bay Roberts Seafoods Limited, who are jointly and severally liable to pay Killick Fisheries Inc. \$10,000 in full and final settlement of all aspects of the claim and counterclaim in these proceedings.

COSTS

[26] I order the Defendants to pay Killick's costs on this application to be taxed on a party-and-party basis, under Column 3 of the Scale of Costs. I note that the Defendants have resisted throughout these proceedings Killick's efforts to prosecute its claim in the ordinary course. For example, when Killick amended its Statement of Claim to add Bay Roberts Seafoods as a defendant, after Atlantic Treasure filed its Defence and it became apparent that Bay Roberts Seafoods was a necessary party to the proceedings, the Defendants challenged Killick's right to add Bay Roberts Seafoods with an application under Rule 14.24(1) to strike out the Amended Statement of Claim. The Defendants argued that Killick required leave of the Court to amend its statement of claim; which it did not. I dismissed that application with costs.

[27] Then, of course, the Defendants offered to settle the matter in August 2011 only to renege on their offer and refuse to pay the \$10,000 they agreed to. More recently, the Defendants have attacked Killick's counsel by arguing that he is in a conflict of interest and should not be representing Killick in these proceedings. Overall, the Defendants acted disingenuously towards Killick and took an obstructionist approach to the proceedings, preferring to focus on procedural issues and not on the merits of the claim. That is why I order costs to be taxed under Column 3.

SUMMARY AND DISPOSITION

[28] Killick Enterprises Inc. sued Atlantic Treasure Seafoods Inc. and Bay Roberts Seafoods Limited for money owing under a brokerage agreement between them. The parties agreed to settle the claim but Atlantic Treasure and Bay Roberts Seafoods refused to comply with the terms they agreed to. Killick Enterprises applied under Rule 20A.07(1) of the Rules of the Supreme Court, 1986 to enforce the settlement.

[29] The Court allowed the application and ordered the Defendants to pay costs of the application, to be taxed on a party-and-party basis, under Column 3 of the Scale of Costs. It found that the parties arrived at an enforceable settlement contract through their negotiations and ordered the Defendants to comply with it.

ORDER

[30] I order that:

1. I order that judgment be entered for Killick Fisheries Inc. against the Defendants, Atlantic Treasure Seafoods Inc. and Bay Roberts Seafoods Limited, who are jointly and severally liable to pay Killick Fisheries Inc. \$10,000 in full and final settlement of all aspects of the claim and counterclaim in these proceedings.
2. I order the Defendants, Atlantic Treasure Seafoods Inc. and Bay Roberts Seafoods Limited, to pay Killick Fisheries Inc.'s costs on this application to be taxed on a party-and-party basis, under Column 3 of the Scale of Costs.

GARRETT A. HANDRIGAN
Justice

TAB 8

1995 CarswellOnt 4182
Ontario Court of Justice (General Division)

Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc.

1995 CarswellOnt 4182, [1995] O.J. No. 721, 53 A.C.W.S. (3d) 1183, 6 W.D.C.P. (2d) 169

Cellular Rental Systems Inc., Plaintiff and Bell Mobility Cellular Inc., Defendant

Bell Mobility Cellular Inc., Plaintiff by Counterclaim and Cellular Rental Systems Inc.,
1010034 Ontario Inc., Andrew Pullan and Eli Pullan, Defendants to the Counterclaim

Chapnik J.

Heard: March 1, 1995
Judgment: March 20, 1995
Docket: 94-CQ-50737

Proceedings: Affirmed [1995] O.J. No. 3773, 1995 CarswellOnt 4172 (Ont. C.A.)

Counsel: *Randy A. Pepper*, for Plaintiff/Defendants by Counterclaim - Applicants
Paul J. Bates, for Defendant/Plaintiff by Counterclaim - Respondent

Subject: Corporate and Commercial

Headnote

Practice

Damages

Trade and commerce

Chapnik J.:

1 The plaintiff, Cellular Rental Systems Inc. ("CRS"), seeks judgment against the defendant, Bell Mobility Cellular Inc. ("Bell-Mobility") in terms of an accepted offer to settle, pursuant to [rule 49.09 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194](#).

2 The issues in this motion are:

- (1) Was there a binding settlement agreement reached between the parties?
- (2) If so, did CRS repudiate the settlement?
- (3) Is CRS entitled to punitive damages if the ruling is in its favour?

Was there a Settlement?

(a) Background

3 Since 1987, CRS has been an approved agent of Bell Mobility for the marketing and sale of Bell Mobility's cellular telephone service and associated products. In that context, CRS and Bell Mobility entered into two written agreements, an approved agency agreement and a rental agreement.

4 In February 1994, Bell Mobility purported to terminate those agreements allegedly due to the performance of CRS as an approved agent and in accordance with Bell Mobility's long-term distribution plan to eliminate independent retailers.

5 CRS then made application to the Director of Investigation and Research pursuant to [section 9 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended \(the "Act"\)](#) to restrain Bell Mobility from violating the provisions of that Act based on an allegation of refusal to deal contrary to [section 75\(1\)](#) thereof. On April 25, 1994, CRS commenced these proceedings against Bell Mobility for damages for breach of the agreements and the *Competition Act* and for an interlocutory injunction compelling Bell Mobility to continue the agreements pending the decision of the Director.

6 In its defence and counterclaim, Bell Mobility added as defendants to the counterclaim Andrew Pullan, the president of CRS; Eli Pullan, his brother; and 1010034 Ontario Inc. ("1010034"), a company controlled by Andrew Pullan. C2 Plus Canada is the business name of 1010034 which company has acquired rights to use what is known as the "C2 Plus cloning technology" in Canada. That technology was described by Montgomery J. reported in [\(1994\), 56 C.P.R. \(3d\) 251 at page 254](#):

This technology allows a cellular network subscriber to operate a secondary cellular telephone using the same telephone number as the primary cellular telephone. All calls made from the secondary cellular phone are billed to the primary cellular telephone line so that Bell Mobility does not lose any funds with respect to the calls themselves. The C2 Plus Technology simply enables cellular subscribers to enjoy service equivalent to what can be done by installing multiple telephone jacks in a residential home. By installing these jacks, all of the telephone calls made on any of the telephones in a residential home are billed to one telephone line to the home. Bell Mobility does not offer such a service to its cellular subscribers although some telephone companies in the United States are now offering this service. With the use of C2 Plus Technology, all calls made from either of two phones on a cellular number are billed to one cellular phone line.

7 In its counterclaim, Bell Mobility claims damages resulting from the alleged use of C2 Plus cloning technology by 1010034 to defraud Bell Mobility by distributing clone cellular telephones without payment of Bell Mobility's usual charges. Criminal proceedings initiated by the Crown, purportedly at the insistence of Bell Mobility, as against Andrew Pullan and Eli Pullan in connection with their use of C2 Plus cloning technology, were withdrawn by the Crown on October 19, 1994.

8 The application by CRS for a mandatory interlocutory injunction was granted by Montgomery J. in the above-noted reported decision rendered June 9, 1994; an appeal from that decision was allowed by the Divisional Court on February 6, 1995, in circumstances which are discussed below.

(b) The Settlement Discussions

9 Discussions between the parties with a view to settling this litigation commenced in August 1994. By mid-December 1994, the negotiations had reached an impasse.

10 On January 5, 1995, Andrew Pullan met with Robert Ferchat, the new president and chief executive officer of Bell Mobility, to discuss settlement of the litigation. As a result, Richard J. Mannion, assistant general counsel and assistant corporate secretary for Bell Mobility, wrote to counsel for CRS on January 9, 1995, proposing the following two alternative offers to settle, the first involving continuation of CRS as an approved agent and the other based upon termination of that status:

Alternative 1 - Continuation as an Approved Agent:

1. The existing Approved Agent Agreement between Bell Mobility and CRS would continue in force until February 1, 1995;
2. Bell Mobility and CRS would enter into the new Approved Agent Agreement that is being presented to all exclusive Group II agents on a non-discriminatory basis ("New Agreements") for a term from February 1, 1995 to December 31, 1997. As an exclusive Approved Agent, CRS would be entitled to participate in Bell Mobility's Product Purchase Program;
3. The First Canadian Place premises of CRS would be recognized as an authorized location;
4. The New Agreement would be subject to renewal in accordance with its terms;

5. The 35-30 Rental Agreement would continue in force in accordance with its terms so long as CRS is an Approved Agent of Bell Mobility;
6. Bell Mobility and CRS would consent to the dismissal of the Ontario Court (General Division) action without costs;
7. CRS would advise the Bureau of Competition that its litigation with Bell Mobility has been resolved on the above basis and CRS would request that all complaints be withdrawn; and
8. Bell Mobility will pay 50% of the legal expenses of CRS up to a maximum of \$50,000.

Alternative 2 - Termination of Approved Agent Status:

1. CRS agrees to cease to be an Approved Agent of Bell Mobility and will cease to represent itself as an Approved Agent at all of its business locations effective March 1, 1995;
2. The 35-30 Rental Agreement would be terminated effective March 1, 1995;
3. Bell Mobility would pay CRS a lump sum amount of \$152,000, which amount includes complete compensation for all residual commission entitlement;
4. Bell Mobility would pay CRS activation commission for each activation during the period January 1 to March 1, 1995, subject to normal chargeback rules;
5. Bell Mobility would pay 50% of the legal expenses of CRS up to a maximum of \$50,000.
6. Bell Mobility and CRS would consent to the dismissal of the Ontario Court (General Division) action without costs;
7. CRS would advise the Bureau of Competition that its litigation with Bell Mobility has been resolved on the above basis and CRS would request that all complaints be withdrawn.

11 The proposal was made subject to the parties finalizing mutually acceptable settlement documentation.

12 By letter dated January 13, 1995, counsel for CRS responded to Mr. Mannion's proposal, indicating CRS's willingness to accept Alternative 1 with the proviso that the defendants by counterclaim remain at liberty to use or exploit the C2 Plus technology or any adaptations thereof; and noting that "if the above revision is unacceptable to Bell, CRS accepts Alternative 2 in your letter."

13 By letter dated January 19, 1995, Mr. Mannion, after rejecting the suggested proviso, concluded that "accordingly the litigation between CRS and Bell Mobility is to be settled on the basis of Alternative 2 set forth in my letter of January 9, 1995." He reiterated that the settlement was subject to finalizing mutually acceptable settlement documentation.

14 Bell Mobility forwarded to CRS draft settlement documentation as follows:

- (1) Mutual Final Release;
- (2) Consent and Agreement relating to the termination of the Approved Agent Agreement and the 35-30 Rental Agreement;
- (3) letter to be sent to the Competition Tribunal with the purpose of resolving the above-noted inquiry;
- (4) Consent and Order regarding the action.

15 In response, Mr. Pepper, on behalf of CRS, wrote to Mr. Mannion on January 23, 1995, stating that he "did not follow" why settlement documentation was required aside from an Order dismissing the litigation and an agreed form of letter to the Competition Tribunal. By correspondence dated January 26, 1995, enclosing a draft form of letter for the Bureau of Competition

Policy, counsel for Bell Mobility denied that a settlement had been reached. After further discussion and, I might add, the decision of the Divisional Court allowing Bell Mobility's appeal, Mr. Mannion faxed this letter to counsel for CRS on February 10, 1995:

My instructions are to advise you that BMC's position is that there has been no settlement between the parties in connection with the above referenced litigation.

As you are aware, the settlement proposals contained in my letter of January 9, 1995, were expressly made subject to finalizing mutually acceptable settlement documentation. The parties have not agreed on mutually acceptable settlement documentation.

Your position that the litigation was settled by the delivery of your letter dated January 13, 1995, is in our view incorrect. Even if you are correct, it is Bell Mobility's position that your letter of January 23, 1995, repudiated Bell Mobility's settlement offer.

(c) The Law

16 The applicant brings this motion pursuant to [rule 49.09 of the Rules of Civil Procedure](#), which provides:

Where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may,

(a) make a motion to a judge for judgment in the terms of the accepted offer, and the judge may grant judgment accordingly.

17 An agreement to settle a claim is a contract. To establish the existence of a contract, the parties' expression of agreement must demonstrate a mutual intention to create a legally binding relationship and contain agreement on all of its essential terms: see *Canada Square Corp. v. VS Services Ltd.* (1981), 34 O.R. (2d) 250 (C.A.); and *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.* (1991), 79 D.L.R. (4th) 97 (Ont. C.A.).

18 The basic principle adopted by the Supreme Court of Canada in *Calvan Consolidated Oil & Gas Co. Ltd. v. Manning*, [1959] S.C.R. 253, was enunciated by Parker J. in *Von Hatzfeldt-Wildenburg v. Alexander*, [1912] 1 Ch. 284, at pages 288-289:

It appears to be well settled by the authorities that if the documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition or term of the bargain, or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In the former case there is no enforceable contract either because the condition is unfulfilled or because the law does not recognize a contract to enter into a contract. In the latter case there is a binding contract and the reference to the more formal document may be ignored.

19 Robins J.A., in the *Bawitko* case, reviewed the applicable distinctions where written documentation is required to formalize a contract at pages 103-104:

As a matter of normal business practice, parties planning to make a formal written document the expression of their agreement, necessarily discuss and negotiate the proposed terms of the agreement before they enter into it. They frequently agree upon all the terms to be incorporated into the intended written document before it is prepared. Their agreement may be expressed orally or by memorandum, by exchange of correspondence or other informal writings. The parties may "contract to make a contract", that is to say, they may bind themselves to execute at a future date a formal written agreement containing specific terms and conditions. When they agree on all the essential provisions to be incorporated in a formal document with the intention that their agreement shall thereupon become binding, they will have fulfilled all the requisites for the formation of a contract. The fact that a formal written document to the same effect is to be thereafter prepared and signed does not alter the binding validity of the original contract.

However, when the original contract is incomplete because essential provisions intended to govern the contractual relationship have not been settled or agreed upon; or the contract is too general or uncertain to be valid in itself and is dependent on the making of a formal contract; or the understanding or intention of the parties, even if there is no uncertainty as to the terms of their agreement, is that their legal obligations are deferred until a formal contract has been approved and executed, the original or preliminary agreement can not constitute an enforceable contract. In other words in such circumstances the "contract to make a contract" is not a contract at all.

See also: *Green v. Ainsmore Consolidated Mines Ltd.*, [1951] 3 D.L.R. 632 (B.C. S.C.); *Marathon Realty Co. v. Toulon Construction Corp.* (1987), 80 N.S.R. (2d) 390 (N.S. T.D.); S.M. Waddams, *The Law of Contract*, 3d ed. (Aurora, Ont.: Canada Law Book, 1993), at pages 34-35, paragraphs 48 and 49.

20 In the context of a dispute regarding proper documents to be signed on settlement of litigation, McEachern C.J.B.C. in *Fieguth v. Acklands Ltd.* (1989), 59 D.L.R. (4th) 114 (B.C. C.A.), concluded at page 121:

The first question is whether the parties have reached an agreement on all essential terms.

.

The next stage is the completion of the agreement. If there are no specific terms in this connection either party is entitled to submit whatever releases or other documentation he thinks appropriate. Ordinary business and professional practice cannot be equated to a game of checkers where a player is conclusively presumed to have made his move the moment he removes his hand from the piece. One can tender whatever documents he thinks appropriate without rescinding the settlement agreement. If such documents are accepted and executed and returned then the contract, which has been executory, becomes executed. If the documents are not accepted then there must be further discussion but neither party is released or discharged unless the other party has demonstrated an unwillingness to be bound by the agreement by insisting upon terms or conditions which have not been agreed upon or are not reasonably implied in these circumstances. (Emphasis added.)

(d) Findings

21 The respondent insisted that any agreement be subject to mutually agreeable documentation, and the parties have not reached agreement on the import or details of that documentation. Did the parties, nevertheless, conclude an agreement on all essential terms?

22 Upon careful review of the contractual background and exchange of correspondence between the parties, I am satisfied beyond doubt that they did.

23 Two alternative methods of settlement were presented to CRS and its unqualified acceptance of one of them as later confirmed by Bell Mobility, demonstrates a mutual intent to create a legally binding agreement. Its terms as set out in Alternative 2 are clear and unambiguous. In my view, the reference to documentation represented a mere expression as to the manner in which the settlement, already agreed to, would be formalized.

24 It is well established that settlement implies a promise to furnish a release unless there is agreement to the contrary. On the other hand, no party is bound to execute a complex or unusual form of release: although implicit in the settlement, the terms of the release must reflect the agreement reached by the parties. This principle accords with common sense and normal business practice.

25 The draft mutual release provided by the respondent contains a provision that specifically preserves Bell Mobility's future rights or remedies in connection with the use or exploitation of the C2 Plus technology or adaptations thereof:

THE UNDERSIGNED PARTIES, CELLULAR RENTAL SYSTEMS INC., 1010034 ONTARIO INC., ANDREW PULLAN AND ELI PULLAN acknowledge and agree that this Mutual Release is limited to matters as of the date of this Mutual Release and shall not operate as a waiver of any rights or remedies that Bell Mobility Cellular may have in

connection with the use or exploitation of C2 Plus technology or any adaptations thereof after the date of this Mutual Release.

26 Yet, the matter of the said technology appears nowhere in Alternative 2 which formed the basis for the concluded settlement.

27 The draft release also calls for signature by all of the named defendants by counterclaim, notwithstanding the fact that the additional named defendants asserted no claim as against Bell Mobility. It appears that some of those defendants may have a potential claim against Bell Mobility for malicious prosecution and interference with business relations arising from the criminal proceedings. In light of the fact that they advanced no claim in this litigation, it would, in my view, be inequitable for them to be compelled to give up that potential claim, particularly since Bell Mobility purports to retain its rights and remedies in respect of the future use of the C2 Plus technology.

28 Bell Mobility seeks to have CRS and the additional defendants by counterclaim sign a release not contemplated by the settlement and very much in its favour. It cannot invalidate the agreement previously reached, by doing so.

29 In the proposal of Bell Mobility which formed the basis of the accepted settlement, no mention was made of either the C2 Plus technology, the counterclaim, or the additional named defendants to the counterclaim. This would clearly indicate an intention to settle only the main action as between CRS and Bell Mobility which reflects the understanding of CRS. Should Bell Mobility wish to proceed with its counterclaim as it appears both from the wording of the settlement as well as the draft release, so be it.

30 On the other hand, if it laboured under a misapprehension as to the intent or terms of the settlement, this would, in the circumstances, constitute a unilateral mistake which cannot, in itself, render the contract void: *Halsbury's Laws of England*, 4th ed. (1974), Vol. 9, at paragraph 448.

31 Even if there were some apparent ambiguity in respect of the settlement terms, the doctrine of *contra proferentem* would apply.

32 Bell Mobility maintains that "any settlement of this matter required complete resolution of all present and potential disputes." At the same time, it purports to retain its future rights and remedies in respect of the use of the C2 Plus technology by the defendants to the counterclaim. I tend to agree with Mr. Pepper in his assessment of the situation as being an attempt by Bell Mobility to "have its cake and eat it too."

33 The presidents of both CRS and Bell Mobility reached an accord between them which their solicitors reduced to writing. They are to be commended. I find that the words "subject to finalizing mutually acceptable settlement documentation," did not in any way negate the enforceability of the concluded agreement. Moreover, Bell Mobility cannot benefit from its own over-zealous drafting of the documentation to gain an advantage after the fact.

34 In my view, the acceptance by CRS of Bell Mobility's offer represented a final and unqualified expression of assent to its terms -- terms which were clearly intended to determine all matters in issue as between CRS and Bell Mobility. That resulted in a legally binding settlement agreement between those two parties to the litigation and is determinative of the main action in this proceeding.

Did CRS Repudiate the Agreement?

35 Bell Mobility alleges that if an agreement was concluded, it was subsequently repudiated by the actions of CRS in refusing to accept the draft documentation or to provide alternatives.

36 The onus is on the party claiming repudiation to show that the disagreement consequent upon the settlement constitutes a repudiation of it. Subsequent disputes should be resolved by application to the court or by common sense within the framework of the settlement to which the parties have agreed and in accordance with the common practices which prevail amongst members of the bar. It will be rare for conduct subsequent to a settlement agreement to amount to repudiation: *Fieguth v. Acklands*, above, at page 123, per McEachern C.J.B.C. Rule 49.09 does not derogate from that basic common law principle.

37 In its correspondence of January 23, 1995, counsel for CRS questioned the necessity for certain documentation. In my opinion, his doing so accords with reasonable commercial and professional expectation. Certainly CRS did not deal with the respondent in an unreasonable or surreptitious manner, nor could its actions be construed as a rejection of the settlement. To use the analogy of McEachern C.J.B.C., business practice cannot be equated to a game of checkers where a conclusive presumption is made upon the instant move of a player.

38 In the context of this motion, CRS agreed to provide Bell Mobility with a release of all claims which are the subject of the main action; and to execute the other draft documents submitted by the respondent as they pertain to the matters in issue between Bell Mobility and CRS. In my view, that provides ample evidence of good faith on its part.

39 I find that CRS was at all times ready, willing and able to carry out the terms of the bargain. There was no breach or repudiation on its part, of either the spirit or the terms of the concluded settlement.

40 The binding agreement stands.

Is CRS Entitled to Punitive Damages?

41 At the appeal before the Divisional Court on February 6, 1995, Mr. Pepper asked the Court to hear this motion or adjourn the appeal pending determination of this motion. Upon strenuous objection by Mr. Bates, the Court proceeded to hear the appeal but adjourned the issue of costs pending the outcome of this motion.

42 CRS alleges that Bell Mobility's conduct in forcing the matter on in the face of a concluded agreement warrants the censure of this Court. In its opinion, the high-handed and callous actions of Bell Mobility were designed to compel the defendants by counterclaim to provide it with a release in respect of any potential claim arising from the criminal charges and to force CRS to accept new terms of an already concluded deal.

43 In my view, the actions of Bell Mobility are not so reprehensible as to be deserving of "full condemnation and punishment", within the test laid down by the Supreme Court of Canada in *Vorvis v. Insurance Corporation of British Columbia* (1989), 58 D.L.R. (4th) 193. This aspect of the applicant's motion is denied.

Conclusion

44 The plaintiff CRS and the defendant, Bell Mobility, concluded a settlement binding upon each of them in respect of all essential issues raised in the main action.

45 As a matter of policy, parties who reach a settlement should, where possible, be held to their bargains. In this case, the agreement was clear and unambiguous. The settlement reached has in no way been repudiated by CRS.

46 Judgment shall therefore issue in the main action as per Alternative 2 in the January 9, 1995, correspondence from Bell Mobility. The defendant may proceed with the counterclaim, if so advised, with Bell Mobility as the plaintiff and the named defendants to the counterclaim as defendants.

47 Costs of this motion are awarded to the applicant in the sum of \$2,500.

TAB 9

1992 CarswellOnt 3695
Ontario Court of Justice (General Division)

Stoewner v. Hanneson

1992 CarswellOnt 3695, [1992] O.J. No. 697, 32 A.C.W.S. (3d) 897, 3 W.D.C.P. (2d) 297

**Michael Stoewner, Plaintiff and Gary Hanneson and Richard Turpin
and Herbertus Vandenbroek and Wayne Seymour, Defendants**

MacDonald J.

Judgment: March 24, 1992
Docket: 2083/88

Counsel: None given

Subject: Civil Practice and Procedure

Related Abridgment Classifications

Civil practice and procedure

[XVI](#) Disposition without trial

[XVI.7](#) Settlement

[XVI.7.c](#) Enforcement of terms

Headnote

Civil practice and procedure

E. Macdonald J., (Orally):

1 This is a motion for judgment between the plaintiff, Michael Stoewner and Gary Hanneson, defendant. I was advised at the opening of this application that it is not necessary to deal with the other named defendants.

2 The motion before me was for judgment for the plaintiff in the amount of \$10,000 in full settlement of the action and costs on a solicitor and client basis.

3 The matter arises from a statement of claim which was issued in the then Supreme Court of Ontario on January 4, 1988. The statement of claim sought, *inter alia*, damages as a result of an assault of the plaintiff which occurred on May 4, 1985 by the defendant Gary Hanneson. Gary Hanneson was subsequently convicted of this assault and spent some three years in jail. I have noted the contents of the medical reports filed in the material before me with respect to the injuries. In summary, the plaintiff had suffered some injuries to his face, nose and teeth and incurred expenses for the repair of his teeth.

4 The essence of the issue to be determined by me is whether or not the parties achieved settlement of the matter on November 3, 1990 for \$10,000 inclusive of interest and costs. Both lawyers representing the parties at the time gave evidence. I was also referred to the affidavits of both lawyers and the exhibits attached to these affidavits.

5 Evidence was given by Mr. Arnold Zweig of Mssrs. Teplitsky, Colson who represented the plaintiff at the time of the alleged settlement. The plaintiff subsequently changed lawyers.

6 Mr. Parker of the firm Beard Winter testified as to his recollection of events surrounding the alleged settlement. Mr. Parker represented Mr. Hanneson. Having heard from both lawyers and having carefully examined the documents referred to me during evidence and argument I find the following.

7 At the conclusion of examinations for discovery on November 30, 1990, and during the day of these examinations the parties with their respective counsel discussed settlement of \$10,000 inclusive of interest and costs. Mr. Parker testified that when the discoveries were completed at approximately 3 o'clock on the afternoon of November 30th, the lawyers returned to their respective offices. Mr. Zweig, when he left the premises of the special examiner, was accompanied by Mr. Stoewner and it was Mr. Parker's understanding that Mr. Zweig and Mr. Stoewner were returning to Mr. Zweig's office to give further consideration to the settlement that was then being discussed.

8 I find that Mr. Stoewner accepted a settlement of \$10,000 in full settlement of claims and costs. This was communicated by telephone to Mr. Parker at 5:00 p.m. November 30th and Mr. Parker then informed his client by telephone that settlement had been accepted. He advised his client to obtain settlement funds. Mr. Parker stated that in his mind the matter was then settled and immediately thereafter he dictated a letter, which by reason of secretarial delays in his office, was not typed until December 4, 1990. This letter was addressed to Mr. Zweig and was Exhibit "A" to Mr. Parker's affidavit. This letter confirms that settlement was achieved and there are a number of other documents which, when read in conjunction with the letter, convince me that on Friday afternoon, November 30th, there was a settlement. I cannot conceive of circumstances where Mr. Parker would have written the letter dated December 4, 1990 if in fact there had not been a settlement. Unfortunately, as is usual, in these matters the lawyers do not have the same recollection of events leading up to a settlement.

9 Mr. Zweig's recollection is that on November 30th when he called Mr. Parker's office at approximately 5 o'clock p.m. he asked Mr. Parker whether or not the settlement was still on. He recollected that the question that he put to Mr. Parker was whether or not the \$10,000 offer could be reinstated. Mr. Zweig recollected that Mr. Parker said "I'll get back to you".

10 Before dealing with other evidence which persuades me that a settlement did take place on November 30th, I want to comment on a number of matters which emerged during the hearing before me. Both lawyers arguing the matter before me and both lawyers who gave evidence appeared to be in agreement that the settlement was one which was "economically" driven. It was suggested that because the settlement was economically driven the parties were prepared to compromise on the merits of the matter. This is not unlike all settlements which in their very fundamental nature are compromises by the parties in respect of the merits of the matter.

11 In this matter I am urged by Mr. Dexter to exercise the undisputed discretion of the Court to refuse to impose a settlement where it is unfair or where it could cause major prejudice to the rights of one of the parties.

12 I am made aware that Mr. Stoewner had commenced against Mr. Hanneson at some subsequent time a fraudulent conveyance action based on an alleged fraudulent conveyance between Mr. Hanneson and his father-in-law in respect of the home in which Mr. Hanneson resided at the time of the alleged settlement. The details of this action are not before me. Nevertheless, it is relevant to this matter in that Mr. Dexter urges me to find that the plaintiff was under a misapprehension of fact relating to the financial circumstances of the defendant on Friday, November 30, 1990 and that even if I find, as I do, that a settlement occurred on November 30, 1990, I should, because of the misapprehension of fact on the part of the plaintiff in relation to the financial circumstances of the defendant, set the settlement aside.

13 Mr. Dexter has cited to me a number of authorities wherein judges have set aside settlements in certain circumstances where there was misapprehension of facts. The case of *Scherer v. Paletta*, [1966] 2 O.R. 524, a decision of the Ontario Court of Appeal was cited by both counsel in their briefs of authorities. This case is a leading authority on the issue of settlement and in addition Mr. Dexter has urged me to consider in support of his position the decisions in the *Roman Catholic Archiepiscopal Corporation of Winnipeg, et al. v. Rosteski, et al.* (1958), 13 D.L.R. (2d) 229 (Man. Q.B.); *Flynn v. Canadian General Insurance Co.* (1985), 2 C.P.C. (2d) 146; and *Charlebois v. Baril*, [1927] 3 D.L.R. 762.

14 I was also urged to consider the decision of Mr. Justice Granger in *Re Cambrian Ford Sales (1975) Ltd. v. Horner* (1988), 66 O.R. (2d) 94. As well the matter of the Court's discretion to interfere with a settlement was reviewed extensively by Mr. Justice Gray in *Lunardi v. Lunardi* (1988), 31 C.P.C. (2d) 27. The principles emerging from these cases dealing with the Court's discretion to refuse to enforce an agreement are clear. The discretion should be rarely exercised and utmost consideration must

be given to the policy of the courts to promote settlement. Both Mr. Dexter and Mr. Felkai agreed before me that there was no issue in this case as to the authority of the respective solicitors. Further, they agreed that oral agreements in respect of settlements can be binding upon the parties. The policy of the courts is to hold parties to their bargains even in cases where second thoughts arise or where unforeseen circumstances occur.

15 In this matter Mr. Zweig testified that on the Saturday following November 30, 1990, while at home he developed concerns about the settlement that was discussed. He stated in his evidence that he recalled thinking that something was not right and he was concerned about the representations made to him by Mr. Parker regarding the severe financial situation of Mr. Hanneson. He discussed it on that day with Mr. Stoewner and suggested that a property search of the home in which Hanneson resided be completed. He stated that this was done on December 4, 1990. Mr. Zweig in his testimony confirmed that he in fact received the letter of Mr. Parker dated December 4, 1990 which was Exhibit "A" of Mr. Parker's affidavit. This letter reads as follows:

This will confirm that we have agreed to settle this matter for \$10,000.00 inclusive of claim, [sic] costs and interest. I have asked my client to obtain the funds and he advises me that his father-in-law is obtaining a new mortgage in order to provide these funds. I shall be in contact with you in due course and would ask that you provide us with a release and we shall provide you with a release as well.

16 On December 5, 1990 Mr. Zweig wrote to Mr. Parker which letter was Exhibit "B" in Mr. Parker's affidavit. Both Mr. Zweig and Mr. Parker acknowledge the exchange between them of this letter. I have considered this letter and its contents convince me that settlement was achieved on November 30th. The first paragraph refers to the fact that Mr. Stoewner had been asked to provide written instructions with respect to a settlement "since he has been wavering back and forth on a number of occasions." There were no previous disclosures to Mr. Parker about the requirement of written instructions. The letter confirms that the amount of \$10,000 was discussed on Friday, November 30th and goes on to state until written instructions were received Mr. Zweig was taking the position that *he did not wish to view the matter as settled*.

17 The last paragraph of the letter asks Mr. Parker to treat his offer on Friday as withdrawn. Overall, I find that this correspondence confirms that the plaintiff was having second thoughts about a settlement that was achieved on November 30th.

18 I also note that Mr. Zweig did not correspond again with Mr. Parker until December 18th, 1990, at which time he advised Mr. Parker that a title search had been conducted at 118 Queensbury Avenue (the residence in which Hanneson resided). This letter discloses that Mr. Hanneson had transferred the residence at 118 Queensbury Avenue to his father-in-law and the letter advises that because Mr. Stoewner was no longer able to believe that Hanneson was without assets, he was willing to take a chance upon a judgment. This letter was Exhibit D to the Affidavit of Mr. Parker. The letter proposed that there be an attempt to settle the matter "once and for all for the sum of \$20,000".

19 Mr. Parker testified that during the week of December 4th, Mr. Hanneson brought to his offices settlement funds of \$10,000. These funds were deposited to the trust account of Messrs. Beard, Winter, and because of the Law Society's regulations with respect to the clearance of trust funds, the cheque was not forwarded to Mr. Zweig's attention until December 21st, 1990. Mr. Zweig caused the cheque to be deposited to the trust account of Messrs. Teplitsky, Colson. It remained there for some four months thereafter.

20 Having considered all of the above, I find that there was an oral offer which was orally accepted and that it forms a binding agreement of the parties. I have looked at the matter of the exercise of my discretion to look behind the bargain struck by the parties. I do not find that this case falls within the line of authorities where judicial discretion was exercised to alter a settlement. The cases cited to me as authority for the proposition that I should interfere if I find a settlement are based on facts substantially different than the facts before me.

21 A bargain was struck, and while Mr. Stoewner may have had second thoughts about it, I cannot interfere with the bargain of the parties on November 30th. Mr. Hanneson appears to have been in unfortunate financial circumstances by reason of protracted proceedings occasioned by the trial respecting the assault and appeal thereafter. I have commented on the extent

of the alleged injuries, and I am not prepared to interfere with the settlement reached by the parties. For these reasons, I have endorsed the record as follows:

For oral reasons dictated there shall be judgment in this matter for \$10,000 in accordance with the settlement reached by the parties on November 30, 1990.

If necessary, I may be spoken to about costs of the motion for judgment heard before me.

End of Document

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TAB 10

CITATION: L-Jalco Holdings Inc. v. Lawrynowicz & Associates, 2018 ONSC 4002

COURT FILE NO.: CV-10-416000

DATE: 20180628

Amended: 20180920

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: L-Jalco Holdings Inc. and 2173432 Ontario Inc., Plaintiffs/Responding Parties

AND:

Lawrynowicz & Associates and Bhupinder Nagra, Defendants/Moving Parties

BEFORE: Carole J. Brown, J.

COUNSEL: *Matthew Hilbing*, for the Plaintiffs/Responding Parties

Tanisha G. Tulloch and Sandra L. Secord, for the Defendants/Moving Parties
Lawrynowicz & Associates and Bhupinder Nagra

Kelly Charlesbois, for the Moving Parties Professional Appraisers et al.

HEARD: May 25, 2018

AMENDED ENDORSEMENT

[1] The plaintiffs commenced four separate actions in negligence, breach of fiduciary duty and contract against their former solicitors and certain appraisers for damages arising from a mortgage transaction. These actions are set forth below and will be referred to as follows:

CV-10-416000, commenced against the plaintiffs lawyers (the “Lawyers Action”, represented at the mediation by Susan Secord);

CV-10-099721, commenced against the plaintiff’s real estate appraisers in connection with appraisals conducted on properties against which security was being provided on the mortgage transaction (represented at the mediation by Kelly A. Charlebois, and referred to as the “Charlebois actions”);

CV-10-099103, commenced against other real estate appraisers in connection with appraisals conducted on properties against which security was being provided on the mortgage transaction (represented at the mediation by Kelly A. Charlebois, and referred to as the “Charlebois actions”);

CV-10-0099722, commenced against JMS Real Estate Appraisers, Christian Perera and Michael Cavanaugh in connection with a further appraisal on a property against which security was being provided on the mortgage transaction, and in which Mr.

Cavanaugh represents himself and neither of the two remaining defendants defended the action (“the Cavanaugh action”).

[2] Following a case conference held June 28, 2016, all parties in all of the actions agreed to a full day mediation of all of the actions before Michael Silver to be held October 14, 2016.

[3] The mediation proceeded with all parties in attendance and represented by counsel, except for Mr. Cavanaugh. The discussions were lengthy and hard-fought on all sides. Near the end of the mediation, Mr. Cavanaugh made it known that there may be an impediment to his paying his \$50,000 as there were concerns about negative tax implications to doing so. There were further negotiations which ensued in this regard. The mediator proposed several alternatives which were ultimately memorialized in the Minutes of Settlement. The Minutes of Settlement were executed that evening after all parties had full opportunity to read them and obtain their counsel’s advice

[4] Following execution of the Minutes of Settlement at the mediation on October 14, 2016, Ms. Secord advised that she would prepare full and final releases for execution by the plaintiffs, a full and final mutual release between the lawyer defendants and the appraisers, draft dismissal orders and consents in the main action and the third party claim in the action involving the lawyer defendants. She further requested of counsel for L-Jalco whether the full and final release should provide for payment of the settlement funds in trust to Ms. Ramsey’s firm and requested confirmation of the direction for payment, to which Ms. Ramsey replied that she would obtain instruction from her client.

[5] Following receipt of advice on October 21, 2016 from Barry Polisuk, counsel for Enzo Mizzi, who had acquired JMS Real Estate Appraisers that, until he had further clarity, he had advised his client not to make a payment “for the benefit of Mr. Cavanaugh”, expressing concern that such payment may constitute a breach of the CRA order to pay and result in his client being required to pay a like amount to the CRA. Following this, the parties, including counsel for all parties in the three actions continued to discuss ways of paying the \$50,000 owing by Mr. Cavanaugh pursuant to the Minutes of Settlement.

[6] These ongoing discussions are set forth below.

[7] On October 21, 2016, Counsel for the plaintiff and defendant in the two actions had a teleconference to discuss whether there was any reason that Mr. Mizzi could not make the \$50,000 payment on behalf of the defendant, JMS Real Estate Appraisers, instead of Mr. Cavanaugh making the \$50,000 payment in the Cavanaugh action.

[8] On October 28, 2016, counsel for the defendants, Lawrynowicz & Associates *et al*, had a teleconference with the mediator and Mr. Polisuk, in which Mr. Polisuk, indicated that he would inquire of his client what he wished to do with respect to the \$50,000 payment and whether it could be made on behalf of JMS Real Estate Appraisers or Mr. Perera in the Cavanaugh action.

[9] Counsel for the defendants, Lawrynowicz & Associates, continued to follow-up after the conference call to determine if the mediator had heard back from Mr. Polisuk. Counsel for the

plaintiff and the defendant in the Charlebois action were kept informed throughout of the status of the discussions.

[10] On November 3, 2016, Ms. Secord, counsel for the defendants, Lawrynowicz & Associates *et al*, received a telephone call from the mediator, advising that he had spoken with Mr. Polisuk and did not see the payment from Mr. Polisuk's client happening. The mediator further advised Ms. Secord that he would contact Ms. Ramsey.

[11] On November 9, 2016, Ms. Secord wrote to Ms. Ramsey and Ms. Charlebois to advise that she would be away from the office for two weeks commencing November 14, 2016, likely without access to email for most of that time. She indicated that if a teleconference were required, it should take place before her departure. She received no response from Ms. Ramsey, counsel for the plaintiff as regards the need to hold a teleconference.

[12] On November 11, 2016, the mediator contacted Ms. Secord to advise that he had spoken with Ms. Ramsey and had asked Ms. Ramsey whether her clients would be prepared to accept \$700,000 in settlement of the litigation following the Negative Tax opinion. The mediator told Ms. Secord that Ms. Ramsey had indicated to him that she would recommend this figure to her client, L-Jalco, but was not hopeful that it would be accepted. She indicated that she was not sure what her clients would do.

[13] Ms. Secord and the mediator agreed to speak again upon Ms. Secord's return to the office in two weeks and after Ms. Ramsey had advised the mediator as to whether L-Jalco would accept \$700,000 in settlement.

[14] No one, at that juncture, had discussed or advised any other parties or the mediator that the defendants would not ultimately exercise the third option, namely payment of the \$50,000 by the defendants in the other two actions.

[15] On November 15, 2016, Ms. Ramsey, on behalf of the plaintiffs, wrote, indicating that the plaintiffs were treating the Minutes of Settlement as at an end, as no payment and no election had been made within 30 days. This was after Ms. Secord's correspondence of November 11, indicating that she would be away from the office for two weeks and inquiring as to whether there was any need to hold a teleconference prior to her departure, thus at a time when it was known by all parties that Ms. Secord was away from the office.

[16] There is no evidence to indicate that, until that date, anyone had taken the position that the election and payment were to be made within 30 days. Nor was anyone involved in the mediation operating or conducting themselves as such.

[17] Ms. Secord found the plaintiffs' letter waiting for her when she returned to the office on November 28. She contacted the mediator. The mediator advised that he had not been copied on that letter, and that he would contact Ms. Ramsey, counsel for the plaintiffs.

[18] Ms. Secord and the mediator spoke further on November 28. The mediator indicated that he had been advised by Ms. Ramsey that the plaintiffs were having “settlement remorse”, were complaining about her conduct as well as that of the mediator at the mediation and that her clients had advised her not to speak further with the mediator. Indeed, since that time, Ms. Ramsey was fired and new counsel was retained. The president of L-Jalco, in his affidavit filed on this motion, further indicated that he felt that the four actions had a settlement value far in excess of \$750,000 and that it could be worth more than twice that if the case went to trial.

[19] On November 29, 2016, counsel for the plaintiff and counsel for the defendant in the two separate actions had a further teleconference in which Ms. Ramsey for the plaintiffs stated that she was limited in what she could say and that her instructions were to set the actions down for trial without conducting further examinations for discovery. In that conversation, she did not dispute or deny that she was supposed to get instruction from her clients as to whether they were prepared to settle the matter in the amount of \$700,000. She further avoided providing an answer as to whether her clients were prepared to complete the settlement for \$750,000.

[20] On December 6, 2017, the plaintiffs served trial records in the actions.

[21] On January 3, 2017, counsel for the defendants were served with a notice of change of lawyer.

[22] On January 6, 2016, counsel for the defendant in the two actions advised the new counsel, Matthew Hilbing, that their clients were electing the third option, namely payment of an all-inclusive sum of \$750,000 to L-Jalco.

[23] On January 10, 2017, Mr. Hilbing wrote and took the position that pursuant to what he referred to as the “Conditional Minutes of Settlement”, payment was to have been made to his client within 30 days, which was not done, such that the Minutes of Settlement were at an end. His clients were no longer willing to settle for \$750,000. However, he indicated that his clients would be open to further settlement discussions once he was able to review the file.

[24] On February 28, 2017, all counsel held a teleconference in which it was agreed that all parties would reserve the rights to whatever position they may ultimately take regarding the Minutes of Settlement in order to permit Mr. Hilbing to review his file and provide an opinion to his clients. A further teleconference was to be held in April 2017.

[25] Further teleconferences were held on June 23, August 2, August 30 and September 20, 2017. There was no resolution of the outstanding issues. Accordingly, counsel for the defendants commenced this motion to enforce settlement pursuant to the Minutes of Settlement executed October 14, 2016.

Positions of the Parties

Position of the Moving Party Defendants

[26] It is the position of the moving party defendants that the Minutes of Settlement were clear and unambiguous and set forth the various steps for effecting settlement on the basis of, first, Mr. Cavanaugh not receiving a negative tax opinion and paying his \$50,000 (paragraph 1), or in the event that he did receive a negative tax opinion indicating that he should not pay the \$50,000, alternatives for settlement (paragraphs 2, 3, 4).

[27] It is the position of the moving party defendants that the Minutes of Settlement at paragraph 1 clearly set forth that if each of the parties was to pay the amounts negotiated, this would be done within 30 days.

[28] In the event that the negative tax opinion was received by Mr. Cavanaugh, three alternative possibilities were set forth, none of which had a time limit of 30 days, given that various alternatives would have to be explored and discussions among the parties would have to be undertaken. First, L-Jalco could treat the Minutes of Settlement as at an end. This was not done as the parties continued to discuss alternatives. Second, L-Jalco could decide to settle with the two defendants and proceed further with the action against Mr. Cavanaugh for the \$50,000 (paragraph 3). While counsel for the defendants inquired of counsel for the plaintiffs as to whether they would accept \$700,000, no response was ever received from counsel for the plaintiffs. Third, counsel for the defendant could elect to pay the additional \$50,000 that would have otherwise been payable by Mr. Cavanaugh (paragraph 4). This third option was ultimately communicated to the counsel for the plaintiffs in November 2016 and again in January 2017, when new counsel was retained.

Position of the Responding Party Plaintiffs

[29] It is the position of the plaintiffs that the Minutes of Settlement clearly contemplated provision of the \$750,000 in settlement of all actions within 30 days as set forth at paragraph 1 of the Minutes. The plaintiffs maintain that there was no provision for an extension of time for payment in the event that a negative tax opinion was provided by October 21, 2016 from Mr. Cavanaugh's tax lawyer.

[30] It is of interest that the plaintiffs' factum clearly states that the plaintiff's principal was not "overly pleased with the \$750,000 figure they had negotiated so hard for". It further states that the plaintiffs were frustrated with the mediation process especially after November 3, 2016. As well, in their factum, the plaintiffs state that they were not pleased with the way their case had been presented at the mediation and felt pressured to accept less than the case was worth.

[31] It is the position of the plaintiffs that there will be prejudice to them if the Minutes of Settlement are enforced, including, their costs incurred since the mediation, their opportunity to claim 12% interest on the outstanding amounts claimed and, most particularly, that they will lose the opportunity to obtain a judgment for an amount substantially higher than the \$750,000 amount negotiated at the mediation.

The Issue

[32] The issues for determination by this Court are whether the Minutes of Settlement executed October 14, 2017 are enforceable and should be enforced.

The Law

[33] Pursuant to Rule 49.09 of the *Rules of Civil Procedure*, where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may make a motion to a judge for judgment in the terms of the accepted offer, and the judge may grant judgment accordingly.

[34] A settlement agreement is enforceable as a contract, and the rules of contractual interpretation apply: *Dofasco Inc. v National Steel Car Limited*, 2012 ONSC 6434. A settlement agreement among parties should be enforced unless the court is satisfied that, in all of the circumstances, there is a real risk of a clear injustice: *Hilco Industrial Acquisition Canada ULC v Engreen Maitland Inc.*, [2016] O. J. No. 3097.

[35] As to the existence of a settlement, the following factors are to be considered: (i) mutual intention to create a legally binding relationship; and (ii) an agreement on all of the essential terms of the settlement: *Tondera v Vukadinovic* [2015] O.J. No. 5158.

[36] Where there is a mutual intention to create a legally binding relationship, the parties agree on all essential terms and make reference to finalizing mutually acceptable settlement documents, the contract is binding: *Fehrman v Goodlife Fitness Centres Inc.*, [2017] O.J. No. 3731.

[37] A written agreement to settle is to be measured by an objective reading of the language used by the parties to reflect their agreement. Courts should not be “too quick to find an ambiguity or lack of agreement in the terms of a settlement agreement”: *Fehrman v Goodlife Fitness Centres Inc.*, *supra*.

[38] Following determination by the court of the existence of a settlement, the court must determine whether to exercise its discretion to enforce the settlement. The factors to be considered by the Court are as follows:

1. Whether the offer was clear and unequivocal;
2. Whether or not a mistake was made;
3. Whether the settlement was reasonable;
4. The degree of prejudice to either party if settlement is not given effect; and
5. The effect of the settlement on third parties if the settlement is not enforced.

See: *Marcel Equipment Ltd. v Equipements Beniot D’Amour et Fils Inc.*, [1995] O. J. No. 673.

[39] The discretion to refuse to enforce the settlement should be “rarely exercised”:

In litigation matters, where properly retained solicitors enter into settlements and where there are no known limitations of authority, these settlements ought to be binding upon the parties. It is the policy of the court and it is public policy to encourage the settlement of actions. Where solicitors have entered into settlement agreements on behalf of their clients, it would be contrary to both court and public policy to foster secondary litigation to overturn those settlements.

See: Homewood v Ahmed, [2003] O. J. No. 4677 para 57

[40] The court, in deciding whether the settlement should be enforced, will consider whether the parties' pre-settlement positions remained intact, whether there would be prejudice to the party seeking to enforce the settlement if the settlement were not enforced, the extent of the prejudice to the party seeking to resist the settlement if the settlement were enforced, and whether third parties would be affected if the settlement were not enforced: *Hilco Industrial Acquisition Canada ULC v Engreen Maitland Inc.*, *supra*.

Analysis

[41] In determining this case, I am mindful of the case law regarding enforcement of Minutes of Settlement relied on by all counsel, including the case law as set forth above.

[42] In this case, all parties were present at the mediation held before mediator, Michael Silver, on October 14, 2017. All parties, with the exception of Michael Cavanaugh (CV-10-099722) had legal representation, namely legal counsel present at the mediation which lasted over eight hours. As counsel for the parties at the motion indicated, the issues in the mediation were fully discussed and all parties' positions were vigorously defended. The Minutes were "hard fought". At the end of the day, the parties had arrived at an agreement, memorialized in the Minutes of Settlement executed by the parties that evening. All parties and their counsel had the opportunity to fully review and discuss among themselves the terms of the Minutes of Settlement.

[43] There is no dispute that, a few hours prior to the final agreement being executed, Mr. Cavanaugh expressed concern as regards his payment in settlement of this matter, and a potential tax issue. As a result, the Negative Tax Option clause was written into the Minutes of Settlement, along with the options arising therefrom should Mr. Cavanaugh obtain a negative tax opinion.

[44] As regards the possibility that Mr Cavanaugh may obtain a Negative Tax opinion, the Minutes of Settlement set forth 3 potential possibilities flowing therefrom.

[45] Paragraph 2 sets forth the first potential possibility in the event that the negative tax option were obtained by Mr. Cavanaugh, namely that L-Jalco was entitled to treat the Minutes of Settlement as at an end. On October 21, 2017, when the negative tax opinion was received, L-Jalco did not treat the Minutes of Settlement as at an end. Instead, discussions continued among the parties, counsel and mediator as regards the other two options.

[46] Paragraph 3 of the Minutes of Settlement set forth the second possibility namely that in the event of receipt of a negative tax opinion, L-Jalco may elect to proceed with settlement of the other two defendant actions and proceed to trial with the Cavanaugh action. The option for L-Jalco was discussed among counsel and the mediator after the negative tax opinion was received, and Ms. Ramsey on behalf of the plaintiffs was to obtain instruction from her clients in this regard.

[47] Paragraph 4 of the Minutes of Settlement provided that the other defendants in Court File Nos CV-10-416000, CV-10-099103 and CV-10-099721 may elect to pay the \$50,000 that would have otherwise been payable by Mr. Cavanaugh. It was this option that was ultimately pursued.

[48] Prior to this, and after receipt of the negative tax opinion, all counsel and the mediator were in discussion as to, first, whether there was any way to have the other defendants or LawPro pay the \$50,000 which was to have come from Mr. Cavanaugh. When this was ultimately determined not to be an option, there was an attempt to determine whether the plaintiffs would settle for \$700,000, pursuant to paragraph 3 of the Minutes. As no answer was forthcoming, the other defendants ultimately elected to pay the \$750,000, which was communicated to the plaintiffs on November 28, 2016 and January 6, 2017.

[49] While paragraph 1 of the Minutes of Settlement contemplates payment of the full amount by the defendants in Court File Nos. CV-10-416000, CV-10-099103 and CV-10-0099722 within 30 days, the alternative options set forth do not stipulate a time within which payment is to be made and there is no evidence to suggest that any such time limit for the alternatives had been discussed prior to the Minutes being executed. In such a case, with no evidence of or discussions regarding a time limit for the elections and payment, I am of the view that payment would be made within a reasonable period of time. In this case, an option was selected and communicated to the plaintiffs within one month, namely on November 28, when defendants' counsel inquired as to whether the plaintiffs were prepared to except \$750,000 and, thereafter, within three months, on January 6, 2016, when it was communicated to new counsel, Matthew Hilbing, advising that the defendants were prepared to pay the total, all-inclusive sum of \$750,000. These time periods, within one month of the Minutes being executed and subsequently again within 2 ½ months, in my view, in all of the circumstances involved, are reasonable and commercially viable periods of time. I note that between November and January, the plaintiffs fired their counsel and ultimately retained new counsel.

[50] While it is the position of the plaintiffs in this matter that the Minutes of Settlement clearly set forth the timeline applicable, namely 30 days, or by November 13, 2016, I am not of the view that the 30 day provision in paragraph 1 is applicable to the options set forth at paragraphs 3 and 4 of the Minutes of Settlement.

[51] I do not find the Minutes of Settlement ambiguous, but rather find them clear and clearly drafted. There were no mistakes in the drafting and none were argued on this motion. I am of the view that the settlement was reasonable from all points of view and took into consideration an issue that arose at the end of the day, namely potential negative tax implications for Mr. Cavanaugh should he pay the \$50,000. This action arises from events that occurred in 2010 and,

at this juncture, there would clearly be prejudice to either side if the settlement were not given effect or enforced.

[52] I am satisfied that there was a mutual intention to create a legally binding relationship and agreement on all of the essential terms of the settlement. This was done over an eight hour long and hard-fought mediation, with all parties, except Mr. Cavanaugh, represented by able counsel, with an experienced mediator.

[53] There is no evidence that any of the parties contemplated a timeline or a time limit as regards options 3 and 4. Indeed, following receipt of the negative tax opinion, all parties continued to discuss options and no parties made reference to any impending deadline. Upon receipt of correspondence from counsel for the defendants, Ms. Secord, that she would be away for two weeks commencing November 14, 2016 and inquiring as to whether anything should be discussed prior to that time in a teleconference among all counsel, the plaintiffs' counsel did not make reference to any impending deadline.

[54] I am not satisfied that there will be any prejudice occasioned on the part of the plaintiffs. I do not accept their submissions as regards being precluded from proving their case in court and proving that the case is worth considerably more than the \$750,000 negotiated on settlement. It would appear from all of the evidence before me, including the statements made by and on behalf of the plaintiffs, that they have suffered from "settlement remorse".

[55] I am satisfied, based on all of the motion materials before me and the submissions of all counsel that the Minutes of Settlement are enforceable and are to be enforced, such that the defendants in Court File No CV-10-416000 will pay to the plaintiff \$600,000 and the defendants in Court File No CV-10-099103 and CV-10-099721 shall pay \$150,000 to the plaintiff. The defendant and third parties will execute full and final mutual releases in a form to be agreed upon by counsel acting reasonably within 45 days of this Order. The plaintiffs shall execute full and final releases in the actions in the standard LawPro form within 45 days of this Order and the actions, including cross-claims and third-party claims will be dismissed with prejudice and without costs. The fees of the mediator have already been paid such that no Order is required.

Costs

[56] The parties provided their bills of costs. I am satisfied, in all of the circumstances, that the defendants Lawrynowicz & Associates and Bhupinder Nagra are entitled to their costs of this action in the amount of \$34,707.17, and the defendants, Professional Appraisal Group, Dan Gilliland, Bryan A. Jack, JMS Real Estate Appraisers, Alex Rudenberg and Murray Jones are entitled to their costs of this action in the amount of \$13,656.05.

Carole J. Brown, J.

Date: June 28, 2018

Amended: September 20, 2018

TAB 11

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

Citation: *Ozon v. Lutex et al.*, 2005 NLTD 147

Date: 20050902

Docket: 200004T0289

BETWEEN:

JUDY T. OZON

FIRST PLAINTIFF

AND:

**LORI-LYNN OZON, an infant by
her guardian At Litem, Judy T. Ozon**

SECOND PLAINTIFF

AND:

LUTEX LEASING LIMITED

FIRST DEFENDANT

AND:

OCEANEX (1997) INC.

SECOND DEFENDANT

AND:

JASON P. SHARPE

THIRD DEFENDANT

Before: The Honourable Justice Richard D. LeBlanc

Place of Hearing: Corner Brook, Newfoundland and Labrador

Held:

APPLICATION TO ENFORCE SETTLEMENT AGREEMENT

The First Plaintiff and Defendants' counsel reached an agreement with respect to an all-inclusive amount for damages arising from the First Plaintiff's claim. Settlement agreement was contractually sound. Subsequent decision by First Plaintiff to renege on agreement was not permitted. Enforcement of the settlement agreement ordered as well as costs to the Defendants.

Appearances:

Gerard Martin, Q.C.	for the First Plaintiff and for the Second Plaintiff (not appearing)
Gerry Fleming	for the Defendants

Authorities Cited:

CASES CONSIDERED: **McCabe v. Verge** (1999) 182 Nfld. & P.E.I.R. 135 (NLCA).

RULES CONSIDERED: **Rules of the Supreme Court 1986**, Rule 20.A

REASONS FOR JUDGMENT (ORALLY)

LeBlanc J.:

BACKGROUND

[1] The Plaintiffs issued a Statement of Claim against the Defendants on July 13, 2000 for the recovery of damages for personal injuries allegedly sustained in a motor vehicle accident on July 20, 1998. A Statement of Defence was filed on August 6, 2001 after the Statement of Claim was served on July 17, 2001.

[2] On July 6, 2004, the Plaintiffs' lawyer made an offer to settle the claims of the First and Second Plaintiffs for all-inclusive amounts of \$28,000 and \$15,000 respectively.

[3] The Defendant's lawyer agreed to settle the Second Plaintiff's claim for \$15,000 as proposed and made a counter-proposal to settle the First Plaintiff's claim for \$23,000 all-inclusive.

[4] The Plaintiffs' lawyer confirmed settlement of the Second Plaintiff's claim for \$15,000 and made a further proposal in writing to settle the First Plaintiff's claim for \$25,000.

[5] By way of a telephone call on August 4th, 2004, both lawyers agreed to settle the First Plaintiff's claim for \$24,000. The Defendants' lawyer agreed to forward the settlement funds and necessary documentation as a result of this. After one subsequent inquiry from the Plaintiffs' lawyer as to when he would receive the settlement funds, on August 18, 2004 those funds and settlement documents were forwarded to the Plaintiffs' lawyer.

[6] On September 27, 2004, the Plaintiffs' lawyer telephoned the Defendants' lawyer to advise him that the First Plaintiff was no longer prepared to settle her claim for \$24,000. On October 26, 2004, he returned the \$24,000 to the Defendants' lawyer. The settlement of the Second Plaintiff's claim however proceeded.

[7] As a result of the First Plaintiff's refusal to accept and complete the settlement that had been agreed to, the Defendants have applied pursuant to Rule 20A.07(1)(b) of the Rules of the Supreme Court, 1986 for an order to enforce the terms of the settlement agreement, or alternatively, for an order dismissing the First Plaintiff's claim.

[8] As was pointed out to the parties at the hearing, I am not prepared to find that Rule 20.A applies in this case as there was no offer to settle in Form 20.A(A) served in this case. However, the application was argued and dealt with on contract principles and pursuant to the caselaw, particularly the principles referred to in **McCabe v. Verge** (1999) 182 Nfld. & P.E.I.R. 135 (NLCA).

[9] In that case, at paragraph 11, the following comments relevant to this application were made by Green J.A. (as he then was):

A settlement agreement does not require any formalities to be

valid: **Picco v. Picco** (1987), 66 Nfld. & P.E.I.R. 117; 204 A.P.R. 117; 12 R.F.L. (3d) 345 (Nfld. U.F.C.). Accordingly, a contract of settlement is capable of being formed by means of a telephone conversation if the requisite elements of offer, coincident acceptance, consideration, intention to create legal relations and certainty of terms are present. A settlement agreement can be created outside of the mechanisms provided by rule 20A. Thus, while an acceptance of an offer to settle might not be in compliance with rule 20A.05 if it is not, as in this case, made in writing and in or substantially in the form provided by the rules, and may not therefore trigger the availability of the application-for-judgment remedy under rule 20A.07, it may still have the effect of creating a contract of settlement and lead to enforcement according to ordinary contractual principles.

[10] It is of note to state that the Plaintiff filed nothing in response to the present application. At the hearing, the First Plaintiff's counsel requested an opportunity to call the First Plaintiff to give viva voce testimony as to her reasons for refusing to complete the settlement agreement. While I was prepared to proceed on the basis that the First Plaintiff had changed her mind with respect to the settlement agreement, I decided it was not appropriate to hear her testimony as to the reasons for this based upon her failure to file an affidavit in response to the Application and the likely relevance of that evidence in any event. I accepted the facts placed before the court by way of the Application and affidavit filed on behalf of the Defendants. No issue was taken by the First Plaintiff or her counsel as to the accuracy of those facts.

ANALYSIS

[11] Having had an opportunity to review the affidavit and the cases submitted and considering the argument of the parties, it is clear to me that in the circumstances there was an offer. There was also an acceptance of that offer by the First Plaintiff's counsel and there was consideration. There was clearly an intention by the parties to enter into contractual relations and in the circumstances there is no basis upon which the agreement reached should not be enforced or should be set aside. The ability of lawyers on behalf of their clients to negotiate with one another in order to attempt to reach a final resolution of a claim without a court hearing is a matter that is obviously in the best interests not only of the individual clients but also in the interests of the system of justice. Where

contractual terms are agreed to and perfected, the court should uphold the enforceability of such agreements.

[12] While it may well be that the First Plaintiff had a subsequent change of heart in this case as to the settlement reached, the fact is this came too late. Once the Defendants performed their end of the contract, i.e., provided the settlement funds, together with the necessary releases that went along with it, to the Plaintiffs' counsel, there was no ability on the part of the First Plaintiff to renege on her earlier acceptance. This is not a case where there is any suggestion of duress, mistake, mutual or otherwise, no suggestion here even of unconscionability. The court is aware from what is filed that an initial offer was made on behalf of the Plaintiff to resolve the First Plaintiff's claim for \$28,000. The claim was eventually settled for \$24,000. I see no major difference there. Both parties had counsel and there is no suggestion here of any inequality of bargaining positions between the parties. I see no unfairness with reference to the resolution that was reached. As well, there is no suggestion made by the First Plaintiff or anyone else that there has been any negligence in the manner in which the matter was proceeded with by counsel. In the circumstances there is nothing here upon which I could even remotely find that there is some basis to set aside the agreement that had been reached following the settlement discussions between the parties' counsel.

[13] As a result, I order that the settlement agreement shall be enforced. Ms. Ozon is ordered to provide to the Defendants' counsel an executed Release, together with the Notice of Discontinuance upon payment of the amount of \$24,000 in full and final settlement of her claim relative to the matter that is before this Court.

[14] With respect to costs, this is not a case where there was an offer to settle made within the meaning of Rule 20A. As a result, there is no requirement that I order costs on a solicitor-client basis or even otherwise. While I certainly have some difficulty with the manner in which the First Plaintiff has proceeded to respond to this application, I have decided that it is appropriate here to order that costs of this application be paid to the Defendants on a party and party basis only.

[15] As agreed to by the parties, I have no difficulty with the costs, taxed or agreed upon, to be deducted by the Defendants' counsel from the settlement funds paid to the First Plaintiff.

Richard D. LeBlanc
JUSTICE

TAB 12

DATE: 20190610

SUPERIOR COURT OF JUSTICE

HEARD: May 7, 2019

REASONS FOR DECISION

[2] 31 Kingsbury Inc. owns a property in Kitchener, Ontario. Through a related company it commenced the construction of a five-storey medical office and retail building on the property. Gordon Schembri's evidence is that he is the directing mind of both companies.

[3] By agreement dated December 21, 2015, the parties agreed that Delta would supply and install two elevators in the medical building for a price of \$313,000.00 plus taxes (the “Sales Agreement”).

[4] The Sales Agreement provides for the following payment schedule:

Payment 1	Drawings Complete	\$15,500.00
Payment 2	Rails and Bracket Shipped	\$40,500.00
Payment 2	Rails Installed	\$15,500.00
Payment 3	Machine Shipped	\$62,000.00
Payment 3	Machine Installed	\$6,200.00
Payment 4	Running Car Shipped	\$77,500.00
Payment 4	Running Car Installed	\$31,000.00
Payment 5	Entrances Installed	\$12,500.00
Payment 6	Cab & Remaining Materials Shipped	\$31,000.00
Payment 6	Wiring and Remaining Installation Completed	\$12,500.00
Payment 7	Adjusted	\$8,800.00
Total		\$313,000.00

[5] Delta issued the following invoices and Kingsbury made the following payments:

Date	Invoice No.	Description	Invoice Amount (with tax after holdback)	Payment	Holdback
03/31/2016	9133990	For drawings complete and inserts available.	\$15,763.50	\$15,763.50	\$1,550.00

03/20/2107	9156475	For machine shipped and installed	\$69,359.40	\$69,359.40	\$6,820.00
04/27/2017	9157904	For rails & brackets shipped and rails installed	\$56,952.00	\$56,952.00	\$5,600.00
06/24/2017	9162314	For running car shipped, running car installed and entrance installed	\$123,057.00	\$123,057.00	\$12,100.00
Sub-Total				\$265,131.90	\$26,070.00
09/15/2017	9165159	For cab & remaining materials shipped and wiring remaining installation complete	\$44,239.00		
10/18/2017	9166597	For job complete	\$8,949.60		
10/18/2017	9166598	For amount due for holdback	\$35,369.00		
Sub-Total			\$88,581.00		

[6] Brian Elliott, a licensed elevator mechanic for Delta, states that the Sales Agreement required that the installation of the elevator begin on June 15, 2016, when the construction of the building was to have reached a watertight status. The elevator was to have been completed by July 31, 2016. The building did not receive watertight status until July 31, 2017. Elliott states that the installation of the elevators was completed by September 15, 2017 once the elevators were adjusted to operate within the building.

[7] Delta states that the word “adjusted” means that once the installation of an elevator is complete, a series of adjustments are made to establish the parameters by which the elevator will operate within the building itself. Elliott states that the adjustments occurred and were completed in September, 2017 with weights placed in the elevator cab simulating the estimated weight of the flooring at the time testing was done.

[8] Kingsbury commenced this action on November 2, 2018. It filed a Statement of Claim on November 14, 2018. It sought a mandatory order compelling Delta to complete all work and testing necessary to ensure that the elevators were operational. It also sought damages of \$1 million for breach of contract and negligence. Amongst other things, Kingsbury alleges that Delta refused to schedule inspections by the TSSA until it is fully paid under the Sales Agreement.

[9] Kingsbury was apparently unaware that Delta was not permitted by s. 25(1) of O. Reg. 209/01 under the *Technical Standards and Safety Act, 2000*, S.O. 2000, c. 16, to schedule the initial inspection of the elevators by the TSSA until it had conducted a preliminary examination and certified that, amongst other things, that the installation complied with the applicable regulatory requirements.

[10] Kingsbury allowed Delta to conduct the required preliminary inspection on December 3-5, 2018. Delta provided this service at no cost to Kingsbury. Delta advised Kingsbury that it had to fix tripping hazards at various floors where the hallway floor had not been laid, install insulation at the corrugated steel at the top of the hoist way, and install door closers on the control space doors. Delta could not schedule a TSSA inspection until this work had been completed. At the same time, Delta conducted a full load test which required that 3,000 pounds of weights be placed on the elevator. Delta left the weights on site in the expectation that the TSSA inspection would occur within a week. On December 18, 2018, Kingsbury refused to allow Delta to retrieve the weights.

[11] Shortly after it commenced this action, Kingsbury delivered a Notice of Motion, which was ultimately heard on February 11, 2019, for an order to compel Delta to schedule the TSSA inspection of the elevators forthwith so that elevators could be put in service.

[12] In the interim, the parties attempted to settle the motion as Kingsbury was anxious to have its elevators available for public use and Delta was anxious to be fully paid under the Sales Agreement.

Settlement Discussions

[13] Counsel for Delta sent the following letter dated December 14, 2018 to counsel for Kingsbury. The letter complains about Kingsbury's failure to pay the amounts owed under the Sales Agreement and offers to arrange for the requested TSSA inspection on certain terms. The letter states:

This is further to your letter of December 13th, 2018.

Delta Elevator Co Ltd ("Delta") completed its work pursuant to the contract between our clients in September 2017, when it finished the installation of the elevators. There was significant delay by your client in completing construction of the building thereafter (which, apparently, is still on-going). Delta Elevator attempted to collect the outstanding invoices and at no time was given any explanation for the non-payment.

On October 29, 2018, over a year after the completion of the work, you notified us that your client would not make payment of the outstanding accounts until the “elevators is in working order and the TSSA has issued the required approval”.

On December 3, 2018, Delta returned to 31 Kingsbury to test and assess the elevators in the light of the delay, after your client initially refused to allow Delta to do so. Delta offered to have your client’s representative attend the assessment, subject to the provisions of the B44 Code. Your client could have had its elevator representative attend the assessment but either failed or refused to participate in the assessment of the elevator.

The elevators were operated on an automatic setting and went to the various floors; they performed in an optimal manner. Your client has previously suggested that Delta had failed to perform its duties under the contract in 2017. Delta’s ability to operate the elevators on December 3, 2018, confirms that the installation was complete in September 2017.

Your client has claimed that it has had no opportunity to confirm that the elevators are in operating order, despite having received our correspondence of December 7, 2018. Delta offered in the past to meet your client at the building and let its representative assess the elevators. Delta is prepared to give your client’s representative the opportunity to do so prior to the TSSA inspection.

With respect to public use of the elevators, the TSSA inspection cannot be scheduled because your client has not completed its work pursuant to the contract. Our letter of December 7, 2018, describes the remaining general contractor’s work which has yet to be completed. This includes repairing all tripping hazards at the various floors where the flooring has not been laid, installing insulation at the corrugated steel at the top of the hoistway, and installing door closers on the control space doors. Delta must attend the premises and confirm the work has been completed before the TSSA inspection may be scheduled.

Our client is entitled to be paid according to the milestones in the contract prior to a TSSA inspection being completed. Payment cannot be withheld pending the TSSA inspection, particularly given the delay that was caused by your client. Delta is also entitled to the holdback given the contract was completed in September 2017. It is the completion of the contract that triggers payment of the holdback, and not the additional documentation that your client claims must be delivered.

Without prejudice to this position, our client is prepared to arrange the TSSA inspection on the following terms:

- (a) Your client completes its outstanding work pursuant to the contract and allows Delta access to inspect the site and confirm the work has been completed;
- (b) The sum of \$88,558.10 (the “trust funds”) shall be paid into Teplitsky Colson’s trust account prior to the TSSA inspection subject to the following terms:
 - i. the sum of \$53,189.10 shall be paid from the trust funds to Delta within three days of the issuance of a license for both elevators by the TSSA;
 - ii. the sum of \$35,369.00 representing the holdback shall paid to Delta with forty-eight days of the issuance of a license for both elevators by the TSSA, unless a court order requires, or the parties subsequently agree, that the funds should be held for a longer period of time; and
- (c) Delta shall honour its warranty and maintenance obligations during the twelve months following the TSSA License being issued. To date, no deficiencies are known by Delta. Delta will investigate any

deficiencies alleged by 31 Kingsbury Inc. and Delta's EDM-A mechanics will rectify any deficiencies on a timely basis that they find to be valid.

Whether or not this offer is accepted, Delta will attend the building and provide a demonstration of the operation of the elevators if your client wishes Delta to do so. Your client's representative is invited to attend the demonstration and to assess the operation of the elevators at that time.

This letter will be referred to at any motion that your client may bring. Please note, I am out of the country from December 28th, 2018 until January 16th, 2019 and not available for a motion during that period of time.

[14] By letter dated December 20, 2018, counsel for Kingsbury refuted the assertion that monies were owed under the Sales Agreement as it states that Delta did not complete its work at no fault of Kingsbury. The letter further states:

Notwithstanding the above, our client continues to be open to a resolution of this matter. In an effort to resolve this matter, and to mitigate the significant damages and irreparable harm that our client is facing, our client is prepared to resolve this matter on the following basis:

1. Our client will place \$88,558.10 (the "Funds") into the trust account of Teplitsky, Colson LLP, immediately upon acceptance of this Offer;
2. Upon our confirmation that Funds have been deposited ..., Delta will schedule a TSSA inspection of the Elevators ... for the first date available ... so that the Elevators can be inspected and approved;
3. The parties will agree upon an independent third party consultant to attend at 31 Kingsbury to test the performance of the Elevators ...;
4. The Third Party Consultant shall attend as soon as practically possible following the TSSA inspection and approval to test the performance of the Elevators at 31 Kingsbury;
5. The parties agree to accept and be bound by the findings of the Third Party Consultant. In this regard:
 - a. If the Third Party Consultant determines that the elevators were constructed in accordance with the agreement then we will:
 - i. Immediately release \$52,189.10 of the Funds (being the total balance for Invoice Nos. 9165159 and 9166597) from our trust account to Delta; and
 - ii. Release the remaining Funds in the total amount of \$35,369.00 (being the holdback set out in Invoice No. 9166598) on the 45th day after Delta provides to our client:
 1. The required Statutory Declarations and Form 5's requesting holdback release; and
 2. The equipment and/or software required to have third party elevator contractor service and maintain the elevators at 31 Kingsbury (if any);
 - b. If the Third Party Consultant finds that the elevators at 31 Kingsbury are not operating in accordance with the agreement, Delta will immediately take any steps required to rectify the issues and satisfy the Third Party Consultant with respect to compliance. Once the Third

Party Consultant approves Delta's work, the Funds will be released as set out in paragraphs 5(a)(i) and (ii). If Delta does not immediately rectify such issues then our client can retain a company to do so and deduct the cost from the Funds;

6. If the elevators are found to be operating in accordance with the Agreement, then the costs of the Third Party Consultant shall be borne by our client. If the elevators are found not to be in compliance with the Agreement, and further steps need be taken by Delta to ensure compliance, then the cost of the Third Party Consultant shall be borne by Delta.

Please treat the above as a formal Offer to settle the pending motion. Acceptance of the said Offer can only be made in writing.

[15] On January 14, 2019, counsel for Kingsbury sent the following letter with a further proposal:

Further to our telephone discussion of this afternoon, I confirm that you are seeking instructions from your client as to whether or not they are prepared to resolve this matter on the following terms:

1. 31 Kingsbury Inc. completes its outstanding work pursuant to the contract and allows Delta access to inspect the site and confirm the work has been completed;
2. Delta will attend at 31 Kingsbury tomorrow to satisfy itself that the elevators are ready for TSSA Inspection;
3. The sum of \$88,558.10 (the "Trust Funds") shall be paid into Teplitsky, Colson LLP's trust account prior to the TSSA inspection and subject to the following terms:
 - a. The sum of \$53,189.10 shall be paid from the Trust Funds to Delta within 3 days of the issuance of a licence for both elevators by the TSSA;
 - b. The sum of \$35,369.00 representing the holdback, shall be paid to Delta within 48 days of the issuance of a licence for both elevators by the TSSA and following 31 Kingsbury's receipt of the required Statutory Declarations and Form 5s requesting holdback release, unless a Court order requires, or the parties subsequently agree, that the funds should be held for a longer period of time; and
4. Delta shall honour its warranty and maintenance obligations during the 12 months following the TSSA licence being issued. To-date, no deficiencies are known by Delta. Delta will investigate any deficiencies alleged by 31 Kingsbury Inc. and Delta's EDM-A mechanics will rectify any deficiencies on a timely basis that they find to be valid.

I confirm that our client is couriering the Trust Funds to our office and that Delta will be sending representatives to 31 Kingsbury for the purposes of determining whether or not the elevators are ready for inspection tomorrow. I understand from our client that the elevators are ready for an inspection and the inspection can take place at any time.

As discussed, our client wants the elevators to be inspected as soon as possible and by no later than Friday, January 18, 2019. Accordingly, we look forward to hearing from you as soon as possible.

[16] On January 16, 2019, counsel for Delta responded:

This is further to your letter yesterday.

With respect to arranging the TSSA Inspection, we confirm that the inspection will be arranged based on the terms set out in our letter dated December 14, 2018. However, 31 Kingsbury must agree to (a), the immediate return of the weights that Delta had left on site (b), that Delta may remove the said weights at its sole discretion and (c), the motion is dismissed subject to the issue of costs.

Delta can send a mechanic on Thursday, January 17, 2019 to confirm that 31 Kingsbury has completed its outstanding work and that the TSSA Inspection can be scheduled. This is the earliest that Delta has someone available to do the visit. The TSSA Inspection can then be scheduled and it will likely occur next week over a two-day period. There will be one day of inspection for each elevator. This is the normal time required to arrange a TSSA Inspection after Delta confirms that the builder/contractor has completed its work.

We note that your letter includes the words “following 31 Kingsbury’s receipt of the required Statutory Declarations and Forms 5s requesting holdback release”. Without agreeing to this added term, please provide the forms that you are referring to so we can show them to your clients.

Your letter of January 14, 2019, refers to the “resolution of this matter” which is broader than resolving the TSSA Inspection. Our client demands its legal costs on the motion on a partial indemnity basis. It will seek this at the return of the motion currently scheduled for February 11, 2019.

[17] On January 16, 2019, counsel for Kingsbury responded:

I am writing in response to your letter dated January 16, 2019.

I confirm that our client is prepared to proceed with a resolution of the matter on the terms as set out in your letter of December 14, 2018, on the strict condition that a representative of Delta attend to ensure that the elevators are ready for inspection on Thursday, January 17, 2019 and that the TSSA Inspection is scheduled immediately.

Please advise as soon as possible as to the time that Delta representatives will attend at 31 Kingsbury tomorrow and when TSSA will attend so that our client can have representatives available.

Additionally, with respect to the release of the holdback, our client requires that Delta provide the appreciate Form 5s and Statutory Declarations. In this regard, the same Form 5s and Statutory Declarations that Delta has used with respect to their completion of services for the elevators at our client’s properties in the past are sufficient. I do not believe that this should be an issue for your client to provide.

As set out above, our client requires that the TSSA Inspection be completed and the elevators operations as soon as possible. In this regard, it is our client’s preference that the said inspection takes place on Monday and/or Tuesday of next week as its damages are increasing significantly on a daily basis. Please advise of the earliest date possible that TSSA can attend for inspection.

With respect to the costs of the motion, it is our client's position that it ought to be entitled to its legal costs. In any event, if that issue cannot be resolved we can address same at the return of the motion on February 11, 2019. It should not stall the elevators being tested and the damages being incurred being mitigated.

Lastly, as a part of this resolution, I confirm that our client is prepared to allow Delta to remove its weights from 31 Kingsbury following successful TSSA Inspection and the elevators becoming operational.

Please confirm as soon as possible that your client will proceed as set out above.

[18] Elliott, a licensed elevator mechanic for Delta, states that in reliance upon the above letter, it arranged for the TSSA inspection.

[19] The TSSA inspection occurred on January 21, 2019 and January 22, 2019 over a period of more than seven hours.

[20] On January 22, 2019, counsel for Delta advised counsel for Kingsbury that both elevators had been approved and licensed for public use by the TSSA. Delta sked that a "cab signoff" be signed by Kingsbury and that \$53,189.10 be paid to Delta by January 25, 2019. The cab signoff is a one page form entitled "Elevator Acceptance" that asks Kingsbury to confirm that:

We have inspected the Elevator installed at 31 Kingsbury Drive, Kitchener, ON ... and can see no obvious flaws in the design or finish at this time. Please sign below to acknowledge that you have received the following items for this Installation ... Style #4001, Style #4006 Key, Style #FEOK1 Key, Cab Pads/Bags.

[21] On January 23, 2019, counsel for Kingsbury advised that it would not pay \$53,189.10 from its trust account unless:

- (1) Delta agreed to attend at the Life Safety Inspection on January 24, 2019 and at that time, turn and leave the elevators on in a completed working manner;
- (2) Delta confirms that it would not turn off the elevators without the written permission of Kingsbury's directing mind, Gordon Schembri, except in compliance with any legal obligation under any law, statute, regulation or any direction or order from any regulator or governmental authority.

[22] On January 24, 2019 counsel for Delta advised that:

- (1) Delta would attend the Life Safety Inspection and would turn on the elevators;
- (2) Delta would not shut down the elevator for a capricious reason or for an issue unrelated to some technical or legal issue for doing so.

Motion for Mandatory Order to Compel TSSA Inspection

[23] On February 11, 2019 the motion was heard by Justice Koehnen. His Endorsement states:

The substance of this motion has been resolved in that the elevators at issue have been inspected and are running.

[Delta] seeks its costs of this motion. [Delta] submits the motion was unnecessary because the elevators had been delivered some time ago but [Kingsbury] had failed to pay. The elevators had initially not been put into operation because of the construction delays and then because of [Kingsbury's] failure to pay the balance owing for them. When [Kingsbury] brought this motion, [Delta] offered to do all that was needed provided it was paid on certain terms. [Delta] had in fact put measures in place to render the elevators operational well before [Kingsbury] brought this motion. For example, it delivered tool weights to the property on December 5, 2018. [Kingsbury] then seized the tool weights and refused to return them to [Delta]. [Kingsbury] has not offered a coherent explanation for doing so.

[Kingsbury] submits costs of this motion should be dealt with in May when a motion is scheduled to hear whether [Delta] can be paid on an alleged settlement. My difficulty is that [Kingsbury] has not given me any coherent reasons for its refusal to pay the balance owing on the elevators other than a vague allegation that elevators purchased from [Delta] for another property on a prior occasion have issues.

Without a great deal more, this does not serve as a basis for a mandatory injunction to compel [Delta] to perform its part of the bargain when [Kingsbury] has not performed its own part of the bargain.

[Delta] is entitled to costs on a substantial indemnity basis fixed at \$9,366.01 including disbursements and HST. Substantial indemnity costs are appropriate here. [Kingsbury] complicated matters by seizing [Delta's] tool weights without any right after [Delta] made efforts to complete its work. That is conduct that warrants denunciation. Parties are not entitled to seize what is clearly private property of another to seek leverage in litigation.

If all matters surrounding the claims between the parties are not resolved on the May motion this is a matter on which case management would be of help. Costs of today are included in the figure of \$9,366.01 that I have awarded [Delta].

[24] On February 14, 2019 Delta brought this motion for an order enforcing the settlement of Kingsbury's motion.

ISSUES

[25] Kingsbury submits that Delta's motion to enforce a settlement agreement should be dismissed for three reasons:

- (1) A settlement agreement was not reached;
- (2) In any event, the settlement agreement should not be enforced;
- (3) In any event, granting Judgment on the settlement agreement would be akin to granting partial summary judgment.

ANALYSIS

[26] Rule 49.09(a) of the *Rules of Civil Procedure* provides that where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may make a motion to a judge for judgment in the terms of the accepted offer, and the judge may grant judgment accordingly.

[27] A two-step analysis is required in order to determine whether judgment should be granted on the terms of a settlement agreement. The first step is to consider whether an agreement to settle has been reached. The second step is to consider whether, on all the evidence, the agreement should be enforced: *Hashemi-Sabet Estate v. Oak Ridges Pharmasave Inc.*, 2018 ONCA 839, para. 27.

ISSUE #1: DID THE PARTIES AGREE TO SETTLE THE ACTION?

[28] The first step is to consider whether an agreement to settle has been reached. This determination turns on whether the parties intended to create a legally binding agreement and whether there was agreement on all essential terms. To make this determination, the motion should be treated as a Rule 20 summary judgment motion: *Hashemi-Sabet Estate v. Oak Ridges Pharmasave Inc.*, para. 27; *Olivieri v. Sherman*, 2009 ONCA 772, para. 27; *Capital Gains Income Streams Corp. v. Merrill Lynch Canada Inc.* (2007), 87 O.R. (3d) 464 (Ont. Div. Ct.) para. 9.

[29] In deciding whether the parties entered a settlement agreement, the court shall consider the evidence submitted by the parties and may exercise the powers granted under Rule 20.04(2.1) to weigh evidence, evaluate credibility and draw any reasonable inference from the evidence.

Was there an intention to create a legally binding relation?

[30] The correspondence exchanged by the parties, particularly on or before January 16, 2019, provides ample objective that they intended to create a legally binding settlement of the motion to compel Delta to arrange an inspection of the elevators by the TSSA:

- Delta's letter dated December 14, 2018;
- Kingsbury's letter dated December 20, 2018;

- Kingsbury's letter dated January 14, 2019 speaks, respectively, to terms of an "offer" to settle the motion and the latter offers terms to "resolve this matter";
- Schembri's affidavit sworn December 21, 2018 characterizes the December 14, 2018 letter from Mr. Gastle and the December 20, 2018 from Mr. Ventrella as with prejudice offers to settle Kingsbury's motion to compel an inspection;
- Counsel for Delta's email dated January 17, 2019 to counsel for Kingsbury reflects the belief that the parties have settled the motion. He states:

Please also confirm whether the motion is to be dismissed with only an argument on costs proceeding on February 11th, 2019. We are required to provide materials by January 23rd, 2019 and we need to know what, if any issues we are responding to now that you have accepted our offer of December 14th, 2018. [Emphasis added]

- In responding to the above email on January 17, 2019, counsel for Kingsbury, recognized that the parties had settled the motion to compel Delta to arrange a TSSA inspection as his email dated January 17, 2019 as he states "with respect to the motion, the only issue that remains is costs. If the parties cannot come to an agreement, we can address it with the Court". [Emphasis added]
- Counsel for Kingsbury recognized a settlement, in its letter dated January 28, 2019, with the statement that:

It is our client's position that the strict terms of the agreement entered into by parties to resolve the issues on the pending motion were not satisfied by Delta and accordingly, it will not release the funds which remain in the trust account of Teplitsky, Colson LLP. [Emphasis added]

Was there agreement on all essential terms?

[31] The parties exchanged several letters and emails that contain various terms following the Delta's email dated December 14, 2018 which outlined the terms for settlement of Kingsbury's motion. Unfortunately, they did not prepare and sign a document that contains all of the terms of settlement and, as a result, the assessment of whether the parties agreed on all essential terms is more difficult.

[32] By letter dated January 16, 2019, Kingsbury accepted, with a few additional terms, Delta's proposal dated December 14, 2018 and January 16, 2019, for the settlement of Kingsbury's motion to compel the TSSA inspection. Any additional terms proposed by Kingsbury by correspondence dated January 16, 2019 were addressed by a further correspondence from Delta dated January 16, 2019.

[33] The terms of the settlement agreement proposed by Delta, accepted by Kingsbury, in some cases with modification and, in turn, accepted by Delta, are as follows:

- Delta shall arrange the TSSA inspection;
 - See Delta's letter dated December 14, 2018;
 - By letter dated January 16, 2019 Kingsbury accepted the above terms and stated that a representative from Delta had to attend to ensure that the elevators were ready for inspection on January 17, 2019 and that the TSSA inspection had to be scheduled immediately;
 - Delta's inspection occurred on January 17, 2019;
 - TSSA inspection occurred on January 21-22, 2019;
- Kingsbury shall complete the outstanding work and allow Delta to inspect and confirm that the work has been completed;
 - See Delta's letter dated December 14, 2018;
 - By letter dated January 16, 2019, Kingsbury accepted the above terms;
- Kingsbury shall pay \$88,558.10 to Teplitsky, Colson in trust prior to the TSSA inspection;
 - See Delta's letter dated December 14, 2018;
 - By letter dated January 16, 2019, Kingsbury accepted the above terms;
- The sum of \$53,189.10 shall be paid from the trust funds within three days of the issuance of a licence by the TSSA for both elevators;
 - See Delta's letter dated December 14, 2018;
 - By letter dated January 16, 2019, Kingsbury accepted the above terms;
- The sum of \$35,369.00 shall be paid to Delta within 48 days of the issuance of the TSSA licence unless a court orders, or the parties agree, that the funds should be held for a longer period of time;
 - See Delta's letter dated December 14, 2018;

- By letter dated January 16, 2019 Kingsbury accepted the above terms with the proviso that such payment shall be made following Kingsbury's receipt of a Statutory Declaration and Form 5 requesting a holdback release;
- By email dated January 23, 2019, Delta delivered a signed Statutory Declaration of Progress Payment Distribution by Contractor and Form 5 under the *Construction Act*, R.S.O. 1990, c. C.30.
- Delta shall honour its warranty and maintenance obligations during the 12 months following the issuance of the TSSA licence. In that period, Delta will investigate and rectify any deficiencies reported by Kingsbury that are deemed by Delta to be valid;
 - See Delta's letter dated December 14, 2018;
 - By letter dated January 16, 2019 Kingsbury accepted the above terms and advised that the trust funds were being couriered to Teplitsky, Colson;
- Kingsbury must permit Delta to immediately remove the weights that it had left at the construction site;
 - See Delta's letter dated January 16, 2019;
 - By letter dated January 16, 2019, Kingsbury stated that Delta could remove the weights following a successful TSSA inspection and once the elevators became operational;
- The motion to compel Delta to schedule a TSSA inspection shall be dismissed subject to Delta seeking partial indemnity costs at the return of the motion scheduled for February 11, 2019;
 - See Delta's letter dated January 16, 2019;
 - By letter dated January 16, 2019, Kingsbury stated that the issue of costs, whether payable to Delta or Kingsbury, would be determined by the court on February 11, 2019.

[34] I am satisfied that the parties intended to create a legally binding settlement and that they reached agreement on the essential terms of the settlement of the motion to compel Delta to arrange for the TSSA inspection of the elevators on the terms described in Delta's letter dated December 14, 2018 with the modification that: 1) a representative from Delta would attend the construction site by January 17, 2019 to ensure that the elevators were ready for inspection; 2) Kingsbury would pay Delta \$35,369.00 following its receipt of a Statutory Declaration and Form 5 from Delta; and 3) the parties could seek their costs of the abandoned motion.

ISSUE #2: SHOULD THE SETTLEMENT AGREEMENT BE ENFORCED?

[35] If a settlement is found to exist, then the second step is to determine whether the settlement should be enforced in light of all of the relevant factors disclosed by the evidence: *Olivieri*, para. 28. In this second step, a Rule 20 approach is not applied, but rather a broader approach, taking into account evidence not relevant to a Rule 20 inquiry: *Capital Gains Income Streams Corp.* para. 10.

[36] Whether a court should refuse to enforce a settlement agreement is informed by the competing objectives of promoting settlement and avoiding the enforcement of a settlement that would result in a clear risk of an injustice: *Brzozowski v. O'Leary*, 2004 CanLII 4805 (Ont. S.C.), para. 44 ; *Srajeldin v. Ramsumeer*, 2015 ONSC 6697, 343 O.A.C. 122, para. 33 (Div. Ct.). In *Donaghy v. Scotia Capital Inc./Scotia Capitaux Inc.*, 2004 CanLII 7702 (Ont. S.C.), para. 15, Justice Karakatsanis, as she then was, stated:

The principle of finality is an important principle. Settlements entered into with the assistance of counsel should be upheld except in the clearest of cases and in exceptional cases.

[37] A settlement will not be enforced where the party seeking to enforce the settlement has repudiated it: *Olivieri*, paras. 34-35.

[38] In assessing injustice, the court may also consider whether the parties' pre-settlement positions remain intact as well as the degree to which the party seeking to resist the settlement would be prejudiced if judgment is granted in relation to the prejudice that the party seeking to enforce the settlement would suffer if the settlement is not enforced: *Milios v. Zagaz* (1998), 38 O.R. (3d) 218 (C.A.), para. 21.

[39] It is manifestly unjust that Kingsbury has obtained the benefit of the settlement but Delta has not. Kingsbury received what it sought by the settlement agreement – namely, Delta arranged for the TSSA inspection. On the other hand, Delta has not been paid as Kingsbury promised.

[40] Kingsbury submits that the settlement agreement should not be enforced because Delta repudiated the settlement agreement. It submits that Delta refused to “turn over” the elevators to Kingsbury after the completion of TSSA inspections on January 22, 2019 because Delta demanded that Kingsbury sign an Elevator Acceptance Form which, as described earlier, asks Kingsbury to acknowledge that there are no obvious flaws in the design or finish of the elevator. Schembri refused to sign the form. Delta nevertheless transferred the elevators to Kingsbury on January 24, 2019 after the City of Kitchener had completed its “Life Safety Commissioning Report and Inspection”. Repudiation occurs by the words or conduct of one party to a contract that show an intention not to be bound by the contract: *Remedy Drug Store Co. Inc. v. Farnham*, 2015 ONCA 576, para. 42. I find that the Delta's request for a cab signoff does not amount to a repudiation of the settlement agreement. Further, given that it has completed its part of the bargain, it would be highly prejudicial to Delta not to be granted judgment based on the terms of settlement.

ISSUE #3: WOULD GRANTING JUDGMENT BASED ON THE SETTLEMENT BE AKIN TO GRANTING PARTIAL SUMMARY JUDGMENT?

[41] Kingsbury submits that granting judgment based on the settlement agreement would be “akin to granting partial summary judgment” because Kingsbury alleges that the Delta has not completed its work in respect of the elevators and that Kingsbury has suffered almost \$500,000 in damages as a result. It suggests that there could be inconsistent findings at trial with respect to the scope of the Sales Agreement, whether Delta completed its work in accordance with the Sales Agreement, whether or not final invoices were rendered prematurely, when the elevators could have or should have been licenced by the TSSA and turned over to Kingsbury, which party was responsible for the delay in having the elevators available for Kingsbury’s use, and the extent of damages suffered.

[42] This motion does not make findings in respect of any of the issues raised by the Statement of Claim. The focus of this motion is limited to an issue that is not raised by the Statement of Claim – namely, whether the parties agreed to settle the motion to compel Delta to arrange for the inspection of its elevators by the TSSA. I find that this decision does not amount to partial summary judgment.

CONCLUSIONS

[43] I find that the parties settled this action on January 16, 2019. I grant judgment in accordance with the settlement terms described above. Specifically, judgment in accordance with the settlement agreement between parties which I find contains the terms described in Delta’s letter dated December 14, 2018 with the modification that: 1) a representative from Delta would attend the construction site by January 17, 2019 to ensure that the elevators were ready for inspection; 2) Kingsbury would pay Delta \$35,369.00 following its receipt of a Statutory Declaration and Form 5 from Delta; 3) the parties could seek their costs of the abandoned motion.

[44] The parties have agreed that costs of \$12,500.00 should be paid by whichever party lost this motion. Accordingly, I order that Kingsbury pay costs of \$12,500.00 to Delta forthwith.

Mr. Justice M.D. Faieta

CITATION: 31 Kingsbury Inc. v. Delta Elevator Company Limited, 2019 ONSC 3619
COURT FILE NO.: CV-18-00608160
DATE: 20190610

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

31 KINGSBURY INC.

Plaintiff

– and –

DELTA ELEVATOR COMPANY LIMITED

Defendant

REASONS FOR DECISION

Mr. Justice M. D. Faieta

Released: June 10, 2019

TAB 13

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: HOMEWOOD v. AHMED, CHOW, et al

BEFORE: BELLEGHEM J.

COUNSEL: P.D. Marshall, for the Plaintiffs

M.K. McKelvey, for Joseph Brant Memorial Hospital

B.D. Moldaver, for London Health Sciences, formerly known as London University Hospital

C. Patterson, for Dr. D. Ahmed, Dr. P. Pflugelder & Dr. D. Martin

ENDORSEMENT

[1] The Plaintiffs move for an order, by way of Judgment, pursuant to an accepted offer of settlement.

[2] The motion is brought under Rule 49.09 which reads as follows:

49.09 Where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may,

(a) make a motion to a judge for judgment in the terms of the accepted offer, and the judge may grant judgment accordingly; or

(b) continue the proceeding as if there had been no accepted offer to settle.

[3] The Plaintiff, through his solicitor, offered to settle the action by way of providing signed releases in exchange for the Defendants agreeing to go out of the action without costs. The Defendants accepted the offer. The Plaintiff, subsequent to instructing his solicitor, had a change of circumstances, which led to a change in instructions to his counsel, and now seeks to abort the settlement.

[4] The action was originally brought by the Plaintiffs against the Defendants for malpractice, alleging misdiagnosis in treatment received by the Plaintiff Julia Anne Homewood between 1989 and 1995. The action was dismissed on consent against a number of Defendants. Ms. Homewood died in June of 2000. Discoveries in the action were nearing completion in the Fall of 2001. In the months leading up to the Fall of 2001, Plaintiff's counsel had been requesting a sizable retainer from the Plaintiff, in order to retain experts necessary to advance the Plaintiff's case. The notes of the Plaintiff's solicitor indicate that, as early as July 5, 2000, the issue of the money required was raised with the Plaintiff who, according to the notes, indicated that there was "no problem".

[5] The Plaintiff's solicitor's notes show that on January 12th, 2001, Plaintiff's counsel advised the Plaintiff he would need \$16,000.00 by the end of January 2001, and another \$16,000.00 a year later, presumably January 2002. The Plaintiff agreed to provide the funding.

[6] A follow-up message for funds was left, as the Plaintiff had not put his solicitor in funds, and no reply was received from the Plaintiff. The Plaintiff's solicitor's note indicated on April 5 as follows:

"...to date we have no funds in trust, a large amount of unpaid disbursements and are looking at having to pay a number of experts for their reports if we proceed."

[7] The solicitor's notes indicate that the Plaintiff said he would put the solicitor in funds by "end of week", from April 5, 2001.

[8] May 1st, 2001, a further message was left. No reply was received. Plaintiff's counsel then wrote the Plaintiff May 16th, 2001 requesting the \$32,000.00 retainer.

[9] A month later, when the Plaintiff had not responded, counsel wrote again indicating he could not have the experts do the work without the funds.

[10] A note of June 22 shows that the Plaintiff advised his counsel that he wanted "to continue" and would contact counsel the following "Monday or Tuesday" to give them a cheque.

[11] The cheque was not received. Further messages were left in August to have the Plaintiff attend the office to discuss the situation. Eventually the Plaintiff kept an appointment with his solicitor on September 4, 2001.

[12] The solicitor's notes of the September 4th meeting indicate that the Plaintiff had originally expected to receive funding from the deceased's Plaintiff's cousin, who, according to the solicitor's notes, had now "rengged" (sic). The notes also refer to the Plaintiff's "home equity" which, according to the notes, and the solicitor's cross-examination, the Plaintiff was "not willing to gamble". The notes also indicate, verified by the solicitor in cross-examination, that the Plaintiff wanted it "to be all over" because it was "too much money" and "too much of a gamble".

[13] The solicitor was cross-examined. He fleshed out the interview as best he could. According to the solicitor, "he told me that he just wanted to have it all over, he didn't have the funds, it was just too much money". The solicitor then went on in his cross-examination and said, "I explained that we would have to offer to the Defendants the opportunity to dismiss the action on a without costs basis. If they were agreeable, then there would be no costs to him in that regard and that we would waive our fees and some of the disbursements owed". When asked if the Plaintiff understood that by agreeing to "shut the action down ... (and) ... putting forward an offer to go away without costs, that he would lose all rights to proceed with the action against the Defendants", the solicitor replied "yes, I believe so".

[14] According to the solicitor the meeting lasted about a half an hour. The solicitor believed, "absolutely", that he "had clear instructions from Mr. Homewood to offer a consent dismissal on a without costs basis to the Defendants".

[15] He described the Plaintiff as appearing to be thinking clearly and rationally, and that he was making "an informed decision about whether to proceed".

[16] The Plaintiff filed an affidavit on the motion before me which challenges the content of the September 4th meeting.

[17] In his affidavit, the Plaintiff confirms that the solicitor had asked for a \$32,000.00 retainer. He confirms that he “could not afford \$32,000.00”. He confirms that he “asked a friend who had been supportive and who had the means to loan (him) the money”. He also confirms that this friend “later changed his mind”.

[18] He described his condition at the meeting as “very upset and depressed that I could not continue with the case”. (emphasis added).

[19] He deposed that “sometime later in my meeting with Mr. Gardner, in a fit of exasperation, I off-handedly told Mr. Gardner to ‘forget it’”.

[20] He also deposed that “at the time, I did not intend to convey instructions to settle the case. I was just upset and frustrated”.

[21] Subsequent to the September 4th meeting with his counsel, the Plaintiff, took a three week holiday.

[22] When he returned in early October he had received copies of draft releases his counsel had sent for him to sign. He said that “after receiving the draft releases, I was very emotionally upset. I realized that I could not sign my wife’s rights away. I did not sign the releases”.

[23] In the meantime, the solicitor’s file contains a note from the solicitor that he had “just received verbal instructions from Alan Homewood to shut this matter down. I’ll be getting a signed direction from him very shortly”. This memo, along with the handwritten notes, is dated the same date as the meeting.

[24] The notes and memo, in my view, are virtually “contemporaneous records” of the meeting. I have no reason to doubt the authenticity of the notes, nor the solicitor’s comprehension of what took place during his meeting with his client.

[25] There is no rational basis to question the accuracy of his recounting of the discussion, nor the veracity of his comprehensive explanation of the meeting, which he gave during his cross-examination.

[26] The affidavit of the Plaintiff contains very little more than what I have already set out in these reasons, as to what transpired at the meeting. I infer nothing from the fact that he was not cross-examined.

[27] The solicitor was unable to reach his client for the next two weeks to sign a direction to discontinue the action, so he wrote him on September 18th confirming that the client had “directed and authorized our office to discontinue all actions” referable to the present law suit”. The same day the Plaintiff’s counsel wrote the Defendants setting out the offer to settle in the following words:

“I have received instructions from Mr. Homewood as to whether each of you would be amenable to dismissing this action on a without costs basis. Mr. Homewood has advised me that, due to the death of his wife, he does not wish to continue with the proceeding.”

[28] Defence counsel responded within a week. The offer was accepted.

[29] The offer is unequivocal. The acceptance is unequivocal.

[30] On September 24th, Plaintiff’s counsel sent the releases to his client for signature. The solicitor’s notes indicate that on October 1st he left a message for the Plaintiff to make an appointment to come in to sign the releases. A note of the same date indicates that the Plaintiff returned the call indicating that he “wants to proceed”.

[31] A meeting was then arranged between the Plaintiff and his counsel for October 16, 2001. The solicitor’s notes of that meeting indicate that the client had “changed his mind”, that he wanted to “continue”, because he had money from a “Florida friend”. The solicitor’s notes indicate that the client said he “can’t sleep”, and that “Julie wants him to go on to do what’s right”.

[32] The notes also indicate that the lawyer reminded him that an offer had already been made, which had been accepted, and that counsel could not represent him if the matter was to go ahead.

[33] Once again, the Plaintiff's version of the October 16th meeting with his lawyer is a little at variance with the lawyer's version of the meeting.

[34] According to the Plaintiff, he had trouble getting his counsel on the phone, and that when they spoke, he told the lawyer that he "had no intention of settling this matter, especially on a no-cost basis when I have already put approximately \$10,000.00 and seven years into this litigation".

[35] He confirms that counsel told him that his case "had already been settled and advised me to let it go" and that he "couldn't do anything to help". Counsel advised him that the only thing he could do was to end his retainer and hire a new a lawyer. The Plaintiff said that "I simply could not let the law suit go", and he has since hired another lawyer.

[36] He also deposed that at the time the events set out above took place, that discoveries were almost complete, and that the case was "well on the road to trial on the merits". He added that "I don't believe that the Defendants honestly believed that I had decided to walk away from the litigation without a trial or any compensation whatsoever".

[37] In his factum, Plaintiff's new counsel admits "that a settlement was concluded on September 18, 2001", but argued that "this is a case of mistake" and that the Court should not exercise its discretion to enforce the settlement.

[38] Plaintiff's counsel relies on the Ontario Court of Appeal decisions of *Milios v. Zagaz* (1998), 38 O.R. (3d) 218 and *Smith v. Robinson* (1992), 7 O.R. (3d) 550 (Gen.Div.).

[39] A necessary incident of determining a motion such as the one before me, is to make a threshold finding of fact essential to application of the law

[40] In *Milios*, the plaintiff and defendant had exchanged offers. The plaintiff's wife told the plaintiff's solicitor, while the plaintiff was in Greece, that the plaintiff wanted to go ahead with the settlement, meaning the plaintiff's offer. The solicitor mistakenly thought the reference was

to the defendant's offer, and accordingly communicated acceptance of the defendant's offer to the defendant.

[41] The issue there, (while not raising any question of limitation of authority), involved a clear communication to defence counsel of "instructions" which the plaintiff's counsel had not, in fact, received. It is a clear, and underlying fundamental fact in that case that the solicitor believed he had one set of instructions, when it was common ground that he was given a different set of instructions.

[42] Here, the question of whether the Court should exercise its discretion not to enforce the settlement, turns on a determination of whether "mistake", (as was common ground in *Milios*), occurred, or whether it did not, (or whether the Plaintiff has been met the onus of proving mistake).

[43] I am satisfied on the evidence, which I have set out in detail above, that it is more likely than not that the lawyer's version of the September 4th meeting, rather than the Plaintiff's version, is the correct one. The lawyer's notes of the meeting are contemporaneous. The notes are clear. The lawyer is unequivocal in his cross-examination.

[44] By contrast, the Plaintiff's affidavit evidence does not have the same convincing clarity. Nor is it as objectively consistent with the undisputed history, respecting the ongoing request for funds, as is the solicitor's version.

[45] This is not a summary motion for judgment. However, in these circumstances I see no reason why the plaintiff should not be required to "put his best foot forward". The consequences of failure to do so are the same. Assuming, therefore, that he has done so, there is simply no "triable issue", at least vis-à-vis the defendants.

[46] I accept the solicitor's explanation, as reflected in his notes and his cross-examination, that the Plaintiff had "changed his mind", because of his change in circumstances, and that, in fact, he had instructed the solicitor in the September 4, 2001 meeting, to "shut down" the case, and see if he could obtain a dismissal without costs from the Defendants.

[47] No doubt the Plaintiff continued to ruminate about the case, on his three week holiday, subsequent to the meeting. No doubt he was buoyed by the financial assistance which he found, subsequent to the meeting.

[48] However, I am satisfied that it is more likely than not that he gave clear instructions to his counsel to try to settle the case without having to pay the Defendants' costs, and that his counsel acted on those instructions.

[49] Accordingly, I find as follows:

- (i) The Plaintiff has the onus of satisfying the Court, on a balance of probabilities, of the underlying essential facts, upon which it would be just to apply its discretion, i.e. in the case at bar, that the "settlement" was arrived at by "mistake";
- (ii) The Plaintiff has not satisfied that onus;
- (iii) To the contrary, I am satisfied that it is more likely than not that there indeed was no "mistake"; The Plaintiff and his solicitor were of one mind following the September 4th meeting; The Plaintiff instructed his solicitor to obtain a dismissal of the action without costs, if he could do so;
- (iv) Subsequent to the meeting, the Plaintiff reconsidered the matter, and obtained funding;
- (v) Upon reconsideration of the matter, buoyed up by financial assistance, he changed his mind, and communicated this to his counsel on the October 16th meeting;
- (vi) In the interim, and before the lawyer had received countermanding instructions from his client, the lawyer, in the exercise of the authority granted him by his client retainer, offered the settlement which he was authorized to make, and the settlement was accepted.

[50] The solicitor received, and acted upon, unequivocal instructions. "Mistake" has not been proven.

[51] The issue of "prejudice", which would otherwise require consideration, to support the exercise of a discretion to refuse to enforce a settlement arrived at by "mistake", therefore, does not arise.

[52] Nor does the present case raise an issue of “ limitation of authority”

[53] The Court, In *Scherer v. Paletta* (1996), 2 O.R. 524, made it clear that:

“A solicitor whose retainer is established in the particular proceedings may bind his client by a compromise of these proceedings unless his client has limited his authority and the opposing side has knowledge of the limitation, subject always to the discretionary power of the court, if its intervention by the making of an order is required, to inquire into the circumstances and grant or withhold its intervention if it sees fit...”

[54] However, the Court goes on to point out that if:

“...the parties are of full age and capacity, the Court, in practice, where there is no dispute as to the fact that a retainer exists, and no dispute as to the terms agreed upon between the solicitors, does not embark upon any inquiry as to the limitation of authority imposed by the client upon the solicitor.”

[55] The Plaintiff merely “changed his mind”, because of “the change in his circumstances”, after the settlement had been concluded in accordance with his instructions.

[56] Nor is this a case where “exceptional circumstances” are evident.

[57] Finally, I agree with defense counsel, that even though there may exist a “residual discretion” to refuse to enforce a settlement, that such action on the part of the Court should be rarely exercised, for the reasons set out by Wilkins J. in *Marcel Equipment Ltd. v. Equipments Benoit D’Amours et Fils Inc.*, [1995] O.J. No. 673:

“In litigation matters, where properly retained solicitors enter into settlements and where there are no known limitations of authority, these settlements ought to be binding upon the parties. It is the policy of the court and it is public policy to encourage the settlement of actions. Where solicitors have entered into settlement agreements on behalf of their clients, it would be contrary to both court and public policy to foster secondary litigation to overturn those settlements. This would create chaos in the settlement process.”

[58] For the foregoing reasons, an Order will issue dismissing the action without costs.

[59] Under the circumstances, the Defendants are entitled to their costs of the motion, “if demanded”, on a partial indemnity basis. I fix costs at \$3,000.00, inclusive of all counsel.

Bellegheem J.

DATE: September 11, 2003

COURT FILE NO.: C16805/96

DATE: 20030911

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: HOMEWOOD v. AHMED, CHOW,
et al

BEFORE: Belleghem J.

COUNSEL: P.D. Marshall, for the Plaintiffs

M.K. McKelvey, for Joseph Brant
Memorial Hospital

B.D. Moldaver, for London Health
Sciences

C. Patterson, for Dr. D. Ahmed, Dr.
P. Pflugelder & Dr. D. Martin

ENDORSEMENT

BELLEGHM J.

DATE: September 11, 2003

TAB 14

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

Northwest Angle 33 First Nation

Applicant

- and -

Razar Contracting Services Ltd. *et al.*

Pro-Gen (Thunder Bay) Inc.

Canada Revenue Agency

A.D. Hanslip Ltd.

Delco Automation Inc.

Long Beach Construction Ltd.

Kako Investments Ltd.

Crane Steel Structures Ltd.

Ainsworth Inc.

Agassiz Drilling (2000) Ltd.

Bells Contracting 2018 Ltd.

Bestway Rental and Sales

Dominion Divers (2003) Ltd.

Iconix Waterworks LP.

2343432 Ontario Inc. O/A Mike Neniska

Contracting

Mr. Gravel Inc.

Stonhard Division, RPM Canada

Breaking Ground Drilling and Blasting Inc.

Respondents

G. Banfai and D. Hashem, for the Applicant

P. Halamandris, for the Respondent, Razar Contracting Services Ltd.

N. Wainwright, for Pro-Gen (Thunder Bay) Inc.

J. Blackett and F. D'Alessandro, for Canada Revenue Agency

R. Lepere, for A.D. Hanslip Ltd.

A. Imbessi, for Delco Automation Inc.

R. Walichnowski, for Long Beach

Construction

D. Beynon, for Solid Silver Construction

Ltd.

K. Schade, for Kako Investments Ltd.

A. Heal, for Crane Steel Structures Ltd.

S. Daly, for Agassiz Drilling (2000) Ltd.

C. Roy, for Mr. Gravel Inc.

M. Smiley, for Breaking Ground Drilling and Blasting Inc.

HEARD: In Thunder Bay by Zoom

January 23, 2023

Mr. Justice J.S. Fregeau

ENDORSEMENT

INTRODUCTION

[1] The applicant (“NWA 33” or the “First Nation”) seeks an interpleader order pursuant to r. 43.02(1) of the *Rules of Civil Procedure* ordering the First Nation to pay the amount of \$1,204,516.55 (the “Fund”) into Court.

[2] The First Nation further seeks an order pursuant to r. 43.04(1) establishing a procedure for the orderly distribution of the Fund among the respondents in accordance with their entitlements, as may be found by the Court.

[3] The Fund is held by the First Nation in relation to a construction project that is ongoing on lands reserved to the First Nation. The respondent, Razar Contracting Services Ltd. (“Razar”), was the original general contractor on the construction project. The First Nation seeks to pay the Fund into Court and for a claims process to be established to ensure the orderly and equitable distribution of the Fund.

[4] The request for an interpleader order is opposed by the respondents Pro-Gen (Thunder Bay) Inc. (“Pro-Gen”) and Canada Revenue Agency (“CRA”), two creditors of the Razar. Pro-Gen and CRA have asserted priority claims to the Fund and seek orders directing payment of their claims from the Fund prior to it being paid into Court.

[5] As a result of the positions taken by Pro-Gen and CRA, the First Nation also seeks an order determining its obligation to disburse from the Fund, prior to the Funds being paid into Court, the sums of:

1. \$207,637.68 to Pro-Gen in response to the Pro-Gen Notice of Garnishment naming Razar as debtor and the First Nation as garnishee; and
2. \$247,180.35, plus penalties and interest to the date of payment, claimed as owing by Razar to CRA in relation to unremitted payroll source deductions, in response to a Requirement to Pay (“RTP”) issued by CRA.

[6] The remaining respondents, comprised of various suppliers and subcontractors of Razar, all of whom claim amounts they submit remain unpaid and owing to them by Razar, oppose the priority claims of Pro-Gen and CRA. These respondents endorse the request for the payment of the Fund into Court and support an order for a reasonable claims process to be established by the Court with respect to the distribution of the Fund.

BACKGROUND

[7] On February 5, 2020, the First Nation contracted with Razar for the construction of the Angle Inlet Water System (the “Contract”) to provide safe drinking water to the residents of NWA 33 (the “Project”). Pursuant to the Contract, the First Nation was required to retain a 10% “statutory holdback” and a 2% “maintenance holdback” from progress payments owing to Razar.

[8] On May 18, 2022, the First Nation exercised its right under the contract and took the balance of the Contract work out of Razar’s hands due to uncorrected defaults by Razar. Pursuant to the terms of the Contract, if any part of the work is taken out of Razar’s hands, Razar’s right to any further payment under the contract is extinguished.

[9] As of May 18, 2022, the accrued 10% statutory holdback was \$1,003,768.80 and the accrued maintenance holdback was \$200,752.75. The Fund consists of a total of these two amounts, being \$1,204,516.55. The Project is ongoing and has not been deemed substantially complete.

[10] Starting in mid-2021, the Project Engineer, JR Cousins Consultants Ltd., began receiving written notices from various of Razar's suppliers and subcontractors who had not been paid by Razar. As of the hearing of this application, the amounts claimed in these notices were in the sum of \$1,913,038.14.

[11] Pro-Gen was a subcontractor on the Project. Pro-Gen commenced a claim against Razar in relation to amounts owing for work performed on the project and obtained a default judgment on July 26, 2022 (the "Judgment"). On September 8, 2022, Pro-Gen obtained a Notice of Garnishment in the amount of \$207,637.68 in relation to the Judgment and served it on the First Nation.

[12] On October 17, 2022, the First Nation was served with the CRA RTP, pursuant to which CRA demands payment of \$281,473.77 from any amounts the First Nation would otherwise pay Razar.

[13] The amounts claimed by Pro-Gen and CRA are in addition to the \$1,913,038.14 claimed by Razar's other suppliers and subcontractors.

[14] Razar has not commenced legal proceedings against the First Nation. Razar appeared at the hearing of this application but did not file any material or take any position on the issues, other than commenting on the terms of the draft order submitted by the First Nation.

THE ISSUES

1. Is an Order to interplead the Fund available in the circumstances?
2. Are the trust provisions of the *Construction Act*, R.S.O. 1990, c. C. 30 applicable to the Project, given that the Project was on a First Nation?
3. If the trust provisions of the *Construction Act* apply, is the Fund a trust fund pursuant to Part II of the *Construction Act*?
4. If not, is the Fund otherwise impressed with a trust for the benefit of Razar's unpaid subcontractors and suppliers?
5. Is Pro-Gen entitled to payment from the fund in priority to the other claimants pursuant to the Notice of Garnishment?
6. Is CRA entitled to payment from the fund in priority to the other claimants pursuant to the RTP?

THE POSITIONS OF THE PARTIES

Northwest Angle 33 First Nation

[15] The First Nation disclaims any beneficial interest in the Fund. The First Nation takes no position respecting the right of Pro-Gen and/or CRA to receive payment from the Fund in priority to any payment to other claimants.

[16] The First Nation seeks to interplead the Fund to allow for its orderly distribution among the respondents and any other subcontractors and suppliers of Razar who may come forward, in accordance with their entitlements as found by the Court.

[17] The First Nation submits that this fact situation falls squarely within the provisions of r. 43.02(1)(a) and (b) and that the remedy of interpleader, together with an order establishing a process to determine the rights of the claimants in a summary manner, is appropriate in all the circumstances.

Pro-Gen

[18] Pro-Gen submits that the *Construction Act* does not apply to construction projects on lands reserved for First Nations. Pro-Gen further submits that the trust provisions found in s. 8 of the *Construction Act* are inconsistent with s. 89(1) of the *Indian Act*, R.S.C. 1985, c. I-5, as am., and are therefore not applicable to the Fund.

[19] Pro-Gen submits that section 8 of the *Construction Act* does not apply to First Nations. Where an improvement is on lands reserved for First Nations, the imposition of the trust is the equivalent of seizing “the personal property of an Indian or a band situated on a reserve”, which is inconsistent with and prohibited by s. 89(1) of the *Indian Act*, according to Pro-Gen.

[20] Pro-Gen contends that the Fund created by the Contract is not a trust fund, but rather a contractual holdback created for the benefit of subcontractors and suppliers. It allows the First Nation, in their discretion, to pay subcontractors and suppliers directly. Unless and until paid out, the contractual holdback remains the property of the First Nation, according to Pro-Gen.

[21] However, given that NWA 33 has disclaimed any beneficial interest in the Fund on this application, Pro-Gen submits that the Fund must be money or a debt payable to Razar pursuant to the contract and therefore subject to Pro-Gen's Notice of Garnishment in priority to the claims of the other respondents.

Canada Revenue Agency

[22] CRA requests that the Court determine, on this Application and in a summary manner, that CRA has priority to the Fund over any other party and that funds in the amount of \$247,180.35, plus interest and penalties to the date of payment, be paid directly to CRA prior to the Fund being interpleaded.

[23] CRA submits that it issued an RTP to the First Nation on October 17, 2022, in the amount of \$272,034.64, being the source withholding tax debt owed by Razar to CRA. The RTP directed the First Nation that any money otherwise payable to Razar, up to the amount set out in the RTP, must be paid to CRA. As of the date of the hearing of the application, the debt owed by Razar to CRA has been reduced to the lower figure set out above.

[24] CRA submits that source withholding amounts are deemed to be held in trust for His Majesty pursuant to s. 227(4) of the *Income Tax Act (Canada)* ("ITA"). CRA further submits

that s. 227(4.1) of the *ITA* provides that where a source withholding amount is not paid to the Crown, property of the taxpayer equal to the source withholding amount payable is subject to the trust under s. 227(4.1), forms no part of the property of the taxpayer and is beneficially owned by and payable to His Majesty in priority to all security interests.

[25] CRA contends that these provisions of the *ITA* confer a priority to CRA in respect of all property and assets of a tax debtor. CRA suggests that this priority includes the Fund. CRA submits that no creditor or claimant in this application can assert a claim that is equal to or greater than CRA's claim pursuant to the RTP. CRA submits that when it issued the RTP on October 17, 2022, it retained a priority over all other creditors with a claim against Razar.

[26] CRA submits that there is no authority supporting the submission that a trust created pursuant to s. 8 of the *Construction Act*, or any other provincial construction lien legislation, prevails over the deemed trust created by the *ITA* in respect of source withholding amounts.

[27] In any event, the doctrine of paramountcy dictates that the *ITA*, being federal legislation, prevails in the event of conflict with provincial legislation (the *Construction Act*) according to CRA.

[28] CRA submits that it is entitled to an order requiring payment of an amount out of the Fund equal to the balance of the unremitted and outstanding source deduction debt owing by Razar to CRA prior to the Fund being interpleaded and in priority to all other creditors and claimants in this application.

A.D. Hanslip Ltd.

[29] A.D. Hanslip (“Hanslip”) is a subcontractor on the project and submits that it is owed \$268,523.51 by Razar for work performed pursuant to a subcontract.

[30] Hanslip agrees with the position of the First Nation and submits that it is appropriate for the Fund to be interpleaded and for an orderly claims process to be determined by the Court to regulate the distribution of the Fund amongst claimants.

[31] Hanslip disputes the priority claims of Pro-Gen and CRA. Hanslip submits that the positions of both Pro-Gen and CRA are premised on the Fund being either the property of Razar or a debt payable to Razar. Hanslip submits that for the priority claims of Pro-Gen and CRA to succeed they must establish that this is in fact the case. Hanslip contends that the facts do not support that conclusion.

[32] Hanslip submits that pursuant to the terms of the Contract, the Fund is comprised of “statutory holdbacks” and “maintenance holdbacks” retained from progress payments and to be paid to Razar “not later than 60 days after the date the [P]roject has been deemed substantially complete”.

[33] Hanslip submits that it is not in issue that the Project has not yet been deemed substantially complete. Hanslip contends that no portion of the Fund is therefore, according to the terms of the Contract, payable to Razar.

[34] Hanslip further submits that it is not in issue that the Project has been taken out of Razar’s hands. Hanslip submits that, pursuant to the terms of the Contract, if the work is taken out of Razar’s hands, Razar’s right to any further payment that is due under the contract,

including any portion of the Fund, “is extinguished”. As such, the Fund is not property of Razar or a debt payable to Razar by the First Nation and the First Nation therefore has no obligation to remit payment to Pro-Gen pursuant to the Notice of Garnishment, according to Hanslip.

[35] Hanslip submits that for CRA to be entitled to payment from the Fund in priority to the other respondents on the basis of a deemed trust pursuant to the provisions of the *ITA*, CRA must establish that the Fund is the property of Razar. Hanslip submits that until it has been determined that the Fund, or a portion of it, is the property of Razar or payable to Razar, CRA has no claim to the Fund and the First Nation has no obligation to remit payment to CRA from the Fund pursuant to the RTP.

[36] Hanslip contends that it and the other respondents are not asserting priority over CRA to the property of Razar. Hanslip submits that all claimants are beneficiaries of the Fund and that the total claims exceed the balance of the Fund such that it is highly unlikely that Razar will realize anything from the Fund. Hanslip does not dispute that CRA’s deemed trust attaches to Razar’s property. Hanslip’s position is that it has not been established that the Fund, or any portion of it, is Razar’s property and that until that determination is made, CRA’s claim (and Pro-Gen’s) is premature.

[37] In the alternative, Hanslip submits that the Fund constitutes a trust fund, pursuant to s. 8(1) of the *Construction Act*, for the benefit of subcontractors and suppliers who are owed money by Razar. As such, the Fund is neither the property of Razar nor a debt payable to Razar and is therefore not subject to the priority claims of Pro-Gen and CRA.

[38] Hanslip submits that the trust remedy in the *Construction Act* is a separate and distinct remedy applicable to the Project and the Fund independent of a right to lien, which is conceded to be unavailable in this case because the Project is on federal lands reserved for the First Nation. Hanslip submits that Ontario jurisprudence has established that s. 8(1) of the *Construction Act* applies to construction projects on federal lands held for First Nations.

[39] Hanslip disputes Pro-Gen's assertion that s. 8(1) of the *Construction Act* is inconsistent with s. 89(1) of the *Indian Act*. Hanslip notes that the First Nation has disclaimed any interest in the Fund and that, but for the claims of the Respondents in this application, the Fund is otherwise payable to Razar. Hanslip submits that the Fund is therefore not "the real or personal property of an Indian or a band situate on a reserve" within the meaning of s. 89(1) of the *Indian Act*.

[40] Hanslip also disputes CRA's assertion that the doctrine of paramountcy applies, such that CRA's claim to the fund pursuant to the *ITA* prevails over the provisions of the *Construction Act*, which deem the Fund to be a trust fund. Hanslip contends that CRA's deemed trust applies only to the property of Razar and that the Fund is not the property of Razar, such that there is no conflict between the *ITA* and *Construction Act* in these circumstances.

[41] Hanslip submits that the priority claims of Pro-Gen and CRA should be dismissed and that the First Nation's request to interplead the Fund should be granted and a claims process established.

Delco Automation Inc.

[42] Delco Automation Inc. (“Delco”) supports the First Nation’s request to interplead the Fund. Delco adopts and endorses the position of Hanslip and other respondents in opposing the priority claims of Pro-Gen and CRA.

[43] Delco opposes Pro-Gen’s assertion that the *Construction Act* has no application to the Project. Delco submits that the *Construction Act* is a provincial statute of general application which applies to the Project except to the extent that it is inconsistent with the *Indian Act*. As a result, as acknowledged by all parties, the lien remedy in the *Construction Act* is not available to unpaid subcontractors and suppliers to the Project given the federal nature of the First Nations lands.

[44] However, Delco joins with Hanslip in submitting that Ontario jurisprudence confirms that the trust provisions of the *Construction Act* apply to construction projects on First Nations lands. Delco submits that the case law relied upon by Pro-Gen does not support the general proposition advanced by Pro-Gen that the *Construction Act* does not apply to projects on land reserved for First Nations. These authorities simply confirm that the lien remedy cannot be exercised in respect of reserve lands, according to Delco.

[45] Delco submits that the Fund is comprised of funds the First Nation is required to have retained as a contractual holdback from progress payments owing to Razar. As the First Nation has disclaimed any interest in the Fund, Delco submits that the Fund is comprised of amounts owing to Razar and which constitute a trust fund pursuant to Part II of the *Construction Act* for the benefit of Razar’s unpaid subcontractors and suppliers.

[46] Granting the First Nation's request to interplead the Fund and to establish a procedure allowing entitled beneficiaries to share in the Fund would be a fair and expeditious manner of proceeding, according to Delco.

Long Beach Construction

[47] Long Beach Construction ("Long Beach") is a subcontractor to Razar and submits that it is owed approximately \$437,000.00 on the Project. Long Beach takes no position with respect to the First Nation's interpleader application. Long Beach opposes the positions of Pro-Gen and CRA as to their entitlement to be paid from the Fund in priority to other respondents.

[48] Long Beach endorses the position of Hanslip opposing Pro-Gen's and CRA's priority claims to the Fund. Long Beach submits that the positions of Pro-Gen and CRA fail to recognize that the First Nation, pursuant to the express terms of the Contract, retains the Fund for the benefit of parties other than Razar.

[49] If it is ultimately determined that Razar is entitled to a portion of the Fund, it is only that portion of the Fund which is properly subject to Pro-Gen's Notice of Garnishment and CRA's RTP, according to Long Beach. Simply put, Long Beach submits that Pro-Gen's and CRA's entitlement to the Fund is only as strong as Razar's and unless and until it is determined that a portion of the Fund is Razar's property, the claims of Pro-Gen and CRA are premature.

Solid Silver Construction Ltd.

[50] Solid Silver Construction Ltd. (“Solid Silver”) agrees with the First Nation that an order to interplead the Fund is appropriate and would lead to an equitable and effective resolution of this matter.

[51] Solid Silver adopts the position of Hanslip in relation to the priority claims of Pro-Gen and CRA. Solid Silver submits that the First Nation and Razar deliberately chose to use language in the Contract that mirrored the trust provisions of the *Construction Act*, specifically the requirement of a holdback from monies otherwise payable to Razar for progress payments for the benefit of subcontractors and suppliers.

[52] Solid Silver contends that the Fund is impressed with trust obligations pursuant to the Contract such that the Fund is trust property which cannot be subject to either Pro-Gen’s Notice of Garnishment or CRA’s RTP, unless and until a determination is made as to Razar’s entitlement to the Fund, if any, in light of the claims of unpaid subcontractors and suppliers.

Kako Investments

[53] Kako Investments (“Kako”) submits that it is owed approximately \$30,000.00 by Razar for the supply of products to the Project. Kako agrees with the First Nation that the Fund should be interpleaded. Kako also adopts the position of Hanslip in opposition to the priority claims of Pro-Gen and CRA.

Crane Steel Structures Ltd.

[54] Crane Steel Structures Ltd. (“Crane Steel”) agrees that the Fund should be interpleaded as requested by the First Nation. Crane Steel adopts and endorses the positions taken by other respondents in opposing the priority claims of Pro-Gen and CRA.

[55] Crane Steel submits that the Fund consists of unpaid trust funds within the meaning of s. 8 of the *Construction Act*, held for the benefit of unpaid subcontractors and suppliers to the Project. In the alternative, Crane Steel submits that the terms of the Contract create a contractual holdback from progress payments owing to Razar.

[56] In either case, the Fund is a trust fund and not the property of Razar and therefore not, at this time, subject to Pro-Gen’s Notice of Garnishment or CRA’s RTP, according to Crane Steel.

DISCUSSION

[57] Rule 43.02(1) provides:

Application or Motion under Subrule 43.02 (1)

43.02 (1) A person may seek an interpleader order (Form 43A) in respect of property if,

- (a) two or more other persons have made adverse claims in respect of the property; and
- (b) the first-named person,

- (i) claims no beneficial interest in the property, other than a lien for costs, fees or expenses, and
 - (ii) is willing to deposit the property with the court or dispose of it as the court directs. O. Reg. 42/05, s. 3.

[58] Rule 43.04(1) provides:

Disposition

Powers of Court

- 43.04** (1) On the hearing of an application or motion for an interpleader order, the court may,
- (a) order that the applicant or moving party deposit the property with an officer of the court, sell it as the court directs or, in the case of money, pay it into court to await the outcome of a specified proceeding;
 - (b) declare that, on compliance with an order under clause (a), the liability of the applicant or moving party in respect of the property or its proceeds is extinguished; and
 - (c) order that the costs of the applicant or moving party be paid out of the property or its proceeds. O. Reg. 42/05, s. 3.

[59] Sections 88 and 89(1) of the *Indian Act* provide:

General provincial laws applicable to Indians

88 Subject to the terms of any treaty and any other Act of Parliament, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that those laws are inconsistent with this Act or the *First Nations Fiscal Management Act*, or with any order, rule, regulation or law of a band made under those Acts, and except to the extent that those provincial laws make provision for any matter for which provision is made by or under those Acts.

Restriction on mortgage, seizure, etc., of property on reserve

89 (1) Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band.

[60] Sections 8(1) and (2) of the *Construction Act* provide:

Contractor's and subcontractor's trust

Amounts received a trust

8 (1) All amounts,

- (a) owing to a contractor or subcontractor, whether or not due or payable; or
- (b) received by a contractor or subcontractor,

on account of the contract or subcontract price of an improvement constitute a trust fund for the benefit of the subcontractors and other persons who have supplied services or materials to the improvement who are owed amounts by the contractor or subcontractor. R.S.O. 1990, c. C.30, s. 8 (1); 2017, c. 24, s. 66.

Obligations as trustee

(2) The contractor or subcontractor is the trustee of the trust fund created by subsection (1) and the contractor or subcontractor shall not appropriate or convert any part of the fund to the contractor's or subcontractor's own use or to any use inconsistent with the trust until all subcontractors and other persons who supply services or materials to the improvement are paid all amounts related to the improvement owed to them by the contractor or subcontractor. R.S.O. 1990, c. C.30, s. 8 (2); 2017, c. 24, s. 66.

[61] Sections 227(4) and (4.1) of the *ITA* provide:

Trust for moneys deducted

(4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of trust

(4.1) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

[62] The relevant terms of the Contract between the First Nation and Razar are as follows:

TP4 TIME OF PAYMENT

.4 Subject to TP1 and TP4.5 the Band Council shall, not later than 30 days after the receipt by the Engineer of a progress claim referred to in TP4.2, pay the Contractor

.1 an amount that is equal to the value that is indicated in the progress report referred to in TP4.3.2 if a labour and material payment bond has been furnished by the Contractor, minus:

.1 an amount that is equal to 10% of the amount referred to in TP4.3.2, which will be retained as a statutory holdback to be paid to the Contractor not later than 60 days after the date that the project has been deemed substantially complete, in described herein; and

.2 an amount that is equal to 2% of the amount referred to in TP4.3.2, which will be retained as a maintenance holdback to be paid to the Contractor not later than 30 days after the end of the warranty period described in GC32.1.2.

GC 38 TAKING THE WORK OUT OF THE CONTRACTOR'S HANDS

.1 The Band Council may, at its sole discretion, by giving a notice in writing to the Contractor in accordance with GC11, take all or any part of the work out of the Contractor's hands, and may employ such means as it sees fit to have the work completed if the Contractor

.1 has not, within six days of the Band Council or the Engineer giving notice to the Contractor in writing in accordance with GC11, remedied any delay in the commencement or any default in the diligent performance of the work to the satisfaction of the Engineer;

.2 has defaulted in the completion of any part of the work within the time fixed for its completion by the contract;

-
- .3 has become insolvent;
 - .4 has committed an act of bankruptcy;
 - .5 has abandoned the work;
 - .6 has made an assignment of the contract without the consent required by GC3.1; or
 - .7 has otherwise failed to observe or perform any of the provisions of the contract.
- .2 If the whole or any part of the work is taken out of the Contractor's hands pursuant to GC38.1,
- .1 the Contractor's right to any further payment that is due or accruing due under the contract is, subject only to GC38.4, extinguished, and
 - .2 the Contractor is liable to pay the Band Council, upon demand, an amount that is equal to the amount of all loss and damage incurred or sustained by the Band Council in respect of the Contractor's failure to complete the work.

GC 42 CLAIMS AGAINST AND OBLIGATIONS OF THE CONTRACTOR OR SUBCONTRACTOR

- .5 To the extent that the circumstances of the work being performed for the Band Council permit, the Contractor shall comply with all laws in force in the Province or Territory where the work is being performed relating to payment period, mandatory holdbacks, and creation and enforcement of mechanics' liens, builders' liens or similar legislation or in the Province of Quebec, the law relating to privileges.

[63] On May 18, 2022, NWA 33 exercised its right under section GC 38.1 of the Contract and took the balance of the work on the Project out of Razar's hands. As a result, pursuant to section GC 38.2 of the Contract, Razar's right to any further payment due or accruing due under the Contract was extinguished. Razar has not demanded any further payment from the First Nation subsequent to the work being taken out of its hands, including any claim to the Fund the First Nation now seeks to interplead.

[64] As of May 18, 2022, the date the work was taken out of Razar’s hands, the total of the “statutory holdback” and the “maintenance holdback” required to be retained by the First Nation pursuant to section TP4.4.1 of the Contract was \$1,204,516.55. The Project has not been deemed substantially complete and the First Nation disclaims any beneficial interest in the Fund.

[65] I accept the submissions of the respondents opposing the priority claims of Pro-Gen and CRA that the legal characterization of the Fund is determinative of their right to priority. If the Fund is the property of Razar or a debt payable to Razar, Pro-Gen’s and CRA’s claims to priority prevail. If the Fund is not the property of Razar or a debt payable to Razar, their claims to priority fail at this stage in the proceedings.

[66] In my view, the legal characterization of the Fund must be determined by the intent of the parties to the Contract as evidenced by the plain meaning of the words used in the relevant sections of the Contract, considered in the context of the Contract as a whole.

[67] The First Nation and Razar agreed, as set out in section TP4.4 of the Contract, that the progress payment obligations of the First Nation to Razar would be subject to a 10% “statutory holdback” and a 2% “maintenance holdback”. The First Nation and Razar further agreed, as set out in section TP4.4.1, that a condition precedent to the First Nation’s obligation to pay the Fund to Razar, and to Razar’s right to demand payment from the Fund, was that the Project be deemed substantially complete, which has not yet occurred.

[68] In my view, it is clear from the express terms of the Contract that the First Nation and Razar intended the Fund to be retained by the First Nation and to remain available as a holdback to unpaid subcontractors and suppliers of Razar pending substantial completion of the Project.

[69] The First Nation and Razar also agreed, as set out in section GC 38.2, that if work on the Project is taken out of Razar's hands, Razar's right to any further payment from the Fund is extinguished. The First Nation exercised its rights under the Contract and the work was taken out of Razar's hands on May 18, 2022.

[70] As a result, Razar's right to *any payment* from the Fund was extinguished on that date. In my view, the parties clearly intended that Razar would have no claim to the Fund in the event the Project was taken out of Razar's hands prior to substantial completion.

[71] I find that it is reasonable to infer that the parties intended, should Razar's right to any payment from the Fund be extinguished pursuant to section GC 38.2, that the Fund, being a holdback from progress payments pending substantial completion, be available for unpaid subcontractors and suppliers of Razar. To suggest that the Fund is, in these circumstances, either the property of Razar or a debt owing to Razar, is contrary to the clear intention of the parties, in my opinion.

[72] I find that pursuant to the terms of the Contract and specifically the First Nation's exercise of their contractual rights pursuant to section GC 38, the Fund is neither the property of Razar nor a debt payable to Razar.

[73] In the event I am incorrect in my conclusion that the parties intended the Fund to be a contractual holdback and not the property of Razar or a debt payable to Razar pending substantial completion, I also conclude that the Fund is a trust fund for the benefit of the unpaid subcontractors and suppliers of Razar, pursuant to section 8(1) of the *Construction Act*.

[74] I reject the submission of Pro-Gen that the trust provisions of the *Construction Act* do not apply to the Fund because the Project is on federal lands reserved for First Nations. Wright J. considered this issue in *Skukowski v. James Conci Holdings Inc.*, 1998 CarswellOnt 4119 (Ont. Gen. Div.). Wright J. held that section 8 of the *Construction Act* was provincial legislation of general application and therefore applicable on First Nations pursuant to section 88 of the *Indian Act*. He further held that a trust claim can be advanced in relation to an improvement on federal land, including land reserved for First Nations. In my view, *Skukowski* remains good law.

[75] I also reject Pro-Gen's submission that the application of the lien provisions of the *Construction Act* are inconsistent with section 89(1) of the *Indian Act* and therefore inapplicable to the Fund. Pro-Gen argues that the imposition of a trust on the Fund pursuant to section 8 of the *Construction Act* amounts to a seizure of the personal property of an "Indian or band" and is therefore prohibited by section 89(1) of the *Indian Act*.

[76] However, on this Application the First Nation has expressly disclaimed any interest in the Fund. Further, the intention of the parties to the Contract is that the Fund be held by the First Nation as a holdback for the benefit of the unpaid subcontractors and suppliers of Razar's, not that ownership of the Fund somehow revert to the First Nation. In any event, in the circumstances of this case, I fail to see how the Fund can be characterized as the personal property of the First Nation within the meaning of section 89(1) of the *Indian Act* and therefore exempt from the application of section 8 of the *Construction Act*.

[77] Rule 60.08(1) provides that a creditor under an order for the payment of money may enforce the order by garnishment of debts payable to the debtor by other persons. For Pro-Gen

to be entitled to priority pursuant to the Notice of Garnishment, it must establish that the Fund is a debt payable to Razar by the First Nation.

[78] For the reasons stated above, the Fund is neither the property of Razar nor a debt payable to Razar by the First Nation. The First Nation therefore is not required to remit payment to Pro-Gen pursuant to Pro-Gen's Notice of Garnishment.

[79] It is not in dispute that Razar is indebted to CRA on account of unremitted source deductions. CRA submits that the deemed trust provisions of section 227 of the *ITA* confer a priority to CRA in respect of all property and assets of Razar as a tax debtor. This submission is consistent with *First Vancouver Finance v. M.N.R.*, 2002 SCC 49 cited by CRA and is not disputed by any of the respondents.

[80] CRA further submits, citing *Royal Bank of Canada v. Saskatchewan Power Corp et al*, 1990 DTC 6330, that its claim to priority on account of unremitted source deductions takes priority over the secured creditors of Razar. Once again, that submission is not in dispute.

[81] However, CRA's claim to the Fund in priority to all other claimants is premised, as is Pro-Gen's, on the Fund being property of Razar or a debt payable to Razar. CRA is only entitled to the Fund if the Fund, or a portion of it, is found to be payable to Razar. Absent a determination of Razar's entitlement to the Fund, if any, CRA's (and Pro-Gen's) entitlement to the Fund cannot be determined.

[82] The British Columbia Supreme Court's decision in *PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc.* 2009 BCSC 95 ("Norex") dealt with this very issue.

[83] The contract provided that Norex would undertake construction services for PCL. Norex hired subcontractors to carry out the work under the contract. Before the work was completed, Norex defaulted on its obligations and PCL terminated the contract.

[84] Before the contract was terminated, PCL paid Norex about \$1,100,000. PCL held back 10% of this amount pursuant to British Columbia's *Builder's Lien Act*, S.B.C. 1997, c. 45. Two of Norex's subcontractors filed liens seeking payment from this holdback amount.

[85] As in this case, Norex owed CRA for unpaid tax liabilities. CRA's position was that the holdback is subject to a deemed trust pursuant to the *ITA*. Since the amount of the deemed trust exceeded the holdback, CRA submitted that it was owed the entire holdback. One of the central issues before the court was how the holdback provisions of British Columbia's *Builder's Lien Act* interact with the deemed trust provisions in ss. 227(4) and (4.1) of the *ITA*.

[86] The court determined that a holdback does not create an ordinary trust. Instead, the holdback creates a fund to which the contractor, for whom it is held in trust, "may eventually become entitled" (*Norex* at para 62). The CRA's deemed trust could not result in CRA having a greater beneficial ownership than the contractor. The deemed trust *only gives the CRA a beneficial right to the property of the contractor which the contractor actually holds*. If the contractor has no claim to any portion of the holdback, neither does the CRA (*Norex* at para. 79).

[87] The ratio of *Norex* has also been adopted in Ontario: see *Thompson v. Carleton University*, 2019 ONSC 4336 at para 7, 50.

[88] In my view, the legal principles in *Norex* apply to the present case. Razar owes CRA for tax liabilities. CRA seeks payment from Razar out of the Fund. It has not yet been established that any part of the fund is Razar's property. Therefore, CRA's claim cannot succeed at this time.

[89] As set out above, as a result of the First Nation exercising its rights pursuant to section GC 38 of the Contract, Razar's claim to the Fund has been extinguished. The Fund is therefore not the property of Razar and the First Nation has no obligation to honour the RTP from the Fund in priority to other claimants prior to the Fund being paid into Court pursuant to an interpleader order.

[90] I accept the submission of Long Beach that granting Pro-Gen and CRA priority to the Fund prior to the Fund being paid into Court runs the risk of Pro-Gen and/or CRA potentially receiving funds to which they do not have a legal right. I further accept the submission of Long Beach that accepting Pro-Gen's and CRA's priority claims would negate any purpose or function of the holdback provisions of the Contract, which clearly cannot have been the intention of the First Nation and Razar when the Contract was entered into.

[91] For the reasons set out above, the priority claims to the Fund advanced by Pro-Gen and CRA, pursuant to their Notice of Garnishment and RTP respectively, are dismissed.

[92] An interpleader order shall issue permitting and requiring the First Nation to deposit the Fund, being the amount of \$1,204,526.55, with the Accountant of this Court.

[93] The First Nation has filed a draft order for the court's consideration. The respondents, but for Razar, are content with the terms of the draft order filed.

[94] Razar takes issue with para. 14 of the draft order, specifically the right of the First Nation to retain the balance of the Fund, if any, remaining after the determination of the rights of the respondents to the Fund. Razar submits that this is inconsistent with r. 43.02(1) and with the position of the First Nation on this application. I agree. That provision in para. 14 of the draft order shall be deleted.

[95] The First Nation shall file an amended draft order for my consideration, consistent with these reasons and my decision as to the priority claims of Pro-Gen and CRA. For greater certainty:

1. Paragraphs 4 and 5 shall be deleted;
2. Paragraph 9 shall be amended such that the date set out therein is 4 weeks subsequent to the date of release of this decision;
3. Paragraph 14 shall be amended as indicated above; and
4. Providing for the costs of the application as set out below.

[96] The First Nation is entitled to their reasonable costs, on a partial indemnity basis, in respect of this application. Pursuant to r. 43.04(1)(c), I order that the First Nation's costs, as fixed by this court, shall constitute a first charge upon the Fund.

[97] The First Nation shall file Costs Submissions, not to exceed three pages, exclusive of its Bill of Costs and Costs Outline, within 14 days of the release of this decision. The First Nation's Costs Submissions shall be served on all respondents who made submissions on this application.

[98] These respondents shall file responding submissions, preferably through a single representative respondent, as to the costs claimed by the First Nation, within 10 days following receipt of the First Nation's Costs submissions.

[99] The costs of the respondents, if any should be claimed, are reserved to be addressed at the summary hearing.

"Original signed by"
The Honourable Mr. Justice J.S. Fregeau

Released: February 21, 2023

CITATION: Northwest Angle 33 First Nation v. Razar Contracting Services Ltd. et al., 2023 ONSC 1233
COURT FILE NO.: CV-22-0462-00
DATE: February 21, 2023

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

Northwest Angle 33 First Nation

Applicant

- and -

Razar Contracting Services Ltd. et al.

Respondents

ENDORSEMENT

Fregeau J.

Released: February 21, 2023

/dg

TAB 15

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***PCL Constructors Westcoast Inc. v.
Norex Civil Contractors Inc.,***
2009 BCSC 95

Date: 20090202
Docket: S083736
Registry: Vancouver

Between:

PCL Constructors Westcoast Inc.

Petitioner

And:

**Norex Civil Contractors Inc.,
G. & R. Singh & Son Trucking Ltd.,
Raydon Rentals Ltd. (D.B.A. The Cat Rental Store) and
Her Majesty The Queen in Right of Canada
(Canada Revenue Agency)**

Respondents

Docket: S072815
Registry: Vancouver

Between:

Condura Forming Ltd.

Plaintiff

And:

Menkis Construction Ltd.

Defendant

And:

Condura Forming Ltd. and Roberto Farinha

Defendants by Counterclaim

Docket: S082685
Registry: Vancouver

Between:

Binar Investments Inc.

Petitioner

And:

**Norex Civil Contractors Inc.,
G. & R. Singh & Son Trucking Ltd.,
United Lock-Block Ltd.,
Action Holdings Ltd., and
Her Majesty The Queen In Right Of Canada
(Canada Revenue Agency)**

Respondents

Before: The Honourable Madam Justice E.A. Arnold-Bailey

Reasons for Judgment

In Action No. S083736:

Counsel for PCL Constructors Westcoast Inc.

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Counsel for G. & R. Singh & Son Trucking
Ltd.:

Adnan Habib

Counsel for Raydon Rentals Ltd. (D.B.A. The
Cat Rental Store):

Dennis Yee

Counsel for Her Majesty The Queen in Right
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Amanda Lord

In Action No. S072815:

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Anna D. Sekunova

Counsel for National Concrete Accessories
(A Division of Premetalco Inc.), a lien holder:

Adnan Habib

Counsel for Her Majesty The Queen in Right
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Amanda Lord

In Action No. S082685:

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Adnan Habib

Counsel for United Lock-Block Ltd.:

Leah Sandhu

Counsel for Action Holdings Ltd.:

Eamonn Morris

Counsel for Her Majesty The Queen in Right
of Canada (Canada Revenue Agency):

Amanda Lord

Date and Place of Hearing:

September 11 and 12, 2008
Vancouver, B.C.

Introduction

[1] The Court was advised that these applications are the first of a series to be brought to determine whether the Canada Revenue Agency (“CRA”) is entitled to priority, pursuant to ss. 227(4) and (4.1) and/or s. 224(1.2) of the ***Income Tax Act***, R.S.C. 1985, c.1 [***ITA***], to various funds that certain general contractors held back from two sub-contractors, Condura Forming Ltd. (“Condura”) and Norex Civil Contractors Inc. (“Norex”), who defaulted on a number of contracts and also owed the CRA monies.

[2] The funds at issue represent the 10% holdbacks made under s. 4 of the ***Builders’ Lien Act***, S.B.C. 1997, c. 45 [***BLA***]. The position of the general contractors who held back the monies is that the funds are not due and owing to Condura and Norex by virtue of right of setoff. As no money is or ever was owed by them to Condura or Norex, the CRA is unable to claim any interest in the holdback funds. Several sub-subcontractors who in turn were working for Norex and/or Condura and filed liens in relation to their work are also resisting the CRA being granted priority over their claims to the holdback monies.

[3] The facts underlying these applications are not disputed.

The Applications

1. ***PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc. et al.***
(S083736)

Nature of the Application

[4] The notice of motion in this action was filed on behalf of the CRA, which seeks that the funds paid into court in this proceeding by the petitioner, PCL

Constructors Westcoast Inc. (“PCL”), plus any accrued interest, be paid to the Receiver General for Canada pursuant to the Requirement to Pay (“RTP”) served on the petitioner by the CRA under s. 224(1.2) of the *ITA*; or alternatively, that the funds paid into court in this proceeding by the petitioner, plus any accrued interest, be paid to the Receiver General for Canada pursuant to a deemed trust arising by virtue of ss. 227(4) and (4.1) of the *ITA*; and costs.

Factual Background

[5] PCL and Norex entered into a contract under which Norex was to provide construction services and PCL was to pay Norex \$1,093,000.00 plus GST, later adjusted to \$1,134,593.72 plus GST. The contract specified that monthly payments would be for 90% of the value of the work completed, with 10% being held back and becoming due when the project was completed. PCL made payments to Norex between August 11, 2006, and February 2, 2007, totalling \$1,017,291.71. Norex defaulted on its obligations under the contract and PCL terminated the contract on October 17, 2007. PCL hired another sub-contractor to complete the work left undone by Norex, paying it a total of \$290,674.21 plus GST. The first invoice from the new sub-contractor was received on December 6, 2007. PCL claims that the amounts paid to Norex exceed the value of the work it did under the contract and that Norex owes it more than \$100,000.00.

[6] Over the course of its work for PCL, multiple Notices of Assessment were issued to Norex by the CRA. These assessments included amounts deducted by Norex from employee paycheques for federal and provincial income tax and the

employee portion of the ***Employment Insurance Act***, S.C. 1996, c. 23 [***EI***] and ***Canada Pension Plan Act***, R.S.C. 1985, c. C-8 [***CPP***] remittances, as well as Norex's corresponding portion of the ***EI*** and ***CPP*** contributions, and penalties and interest. The assessments were issued as follows:

<u>Date of Assessment</u>	<u>Payroll Deductions</u>	<u>Total Assessment</u>
July 12, 2007	\$590,749.66	\$822,753.71
September 12, 2007	\$554,749.39	\$835,623.81
October 17, 2007	\$624,525.29	\$937,461.12
February 12, 2008	\$653,433.94	\$1,019,537.86

[7] On November 26, 2007, the CRA served PCL with an RTP, pursuant to s. 224(1.2) of the ***ITA***, to garnish any amount owing from PCL to Norex up to \$908,315.88.

[8] Norex hired sub-subcontractors to assist it in completing work under its contract with PCL. Two of those sub-subcontractors, Raydon Rentals Ltd. ("Raydon") and G. & R. Singh & Son Trucking Ltd. ("G&R"), filed claims of lien in relation to their work. G&R filed liens against two pieces of property in relation to the same debt of \$22,388.42, the first on November 5, 2007, and the second on May 13, 2008. The first of these liens was discharged by a trust agreement made between PCL and G&R. Raydon filed its lien on December 12, 2007, in the amount of \$5,616.93. On May 29, 2008, PCL paid \$28,005.35 into court pursuant to s. 23 of the ***BLA*** in order to discharge the two outstanding liens. In this proceeding, the CRA claims a right to the monies paid into court by PCL to satisfy the liens of G&R and Raydon.

Position of the CRA

[9] The CRA submits that under ss. 227(4) and (4.1) of the **ITA**, a deemed trust in the property of an employer arises in favour of Her Majesty for any payroll deductions withheld by an employer at the time the deduction is made, and despite any other security interest in or other priority to the employer's assets provided by law. This deemed trust is similar in principle to a floating charge over the assets of a tax debtor in the amount of the default: **First Vancouver Finance v. Canada (M.N.R.)**, 2002 SCC 49 at paras. 40-41. The deemed trust in favour of Her Majesty in the property of Norex is said to have been \$590,749.66 on July 12, 2007, rising to \$653,433.94 by February 12, 2008, these amounts being the cumulative total of the payroll deductions Norex withheld from its employees and did not remit to the CRA.

[10] In the alternative, the CRA submits that it is entitled to any monies owed to Norex by PCL up to a total of \$908,315.88 by virtue of the CRA's delivery to PCL of the RTP of November 26, 2007. Under s. 224(1.2) of the **ITA**, the RTP gives Her Majesty a beneficial interest in any monies owed to a tax debtor by a third party, up to the amount of the RTP. This ownership interest has priority over subsequently arising debts, including liens: **TransGas Ltd. v. Mid-Plains Contractors Ltd.** (1993), 101 D.L.R. (4th) 238 (Sask. C.A.), aff'd [1994] 3 S.C.R. 753.

[11] The CRA claims that as of February 2, 2007, PCL's holdback under the contract with Norex totalled \$101,729.17 and that this money was either beneficially owned by Norex, or owed to Norex under the contract. Beneficial ownership is said to come via s. 5(2) of the **BLA**, which provides that the money is held in trust by PCL

in favour of Norex, and charged with any liens filed by sub-subcontractors hired by Norex.

[12] The debt is said to come via the contract, under which the 10% holdback was a debt in favour of Norex for which PCL was liable. Although PCL might have used this debt to setoff obligations of Norex arising from Norex's default, there is no evidence of any such obligation arising prior to December 6, 2007, when the new contractor submitted its first invoice. Even if a setoff claim could be said to have arisen prior to the issuing of the RTP, which the CRA does not concede, it would have remained merely a "potential" debt, and as such would not have priority over the RTP: ***Wa-Bowden Real Estate Reports v. Canada***, [1997] G.S.T.C. 49 (T.C.C.), aff'd [1998] G.S.T.C. 46 (F.C.A.). Furthermore, even if the claim to setoff could be established with certainty, it would still be subject to any deemed trust arising in favour of Her Majesty: ***Ledcor Construction Limited v. 54033 BC Ltd.*** (5 June 2006), Vancouver L041814 (S.C.); ***Canada (M.N.R.) v. Caisse Populaire du Bon Conseil***, 2006 FCA 366 at para. 4, leave to appeal to S.C.C. granted, 31787 (29 February 2008).

[13] Whether the holdback funds were beneficially owned by Norex under the ***BLA*** or a debt owing to Norex under the contract, because it remained due to Norex until at least the time the RTP was delivered to PCL, the CRA claims it became subject to the deemed trust in favour of Her Majesty, arising in the property of Norex because of the unremitted payroll deductions and/or the operation of the RTP.

[14] The CRA submits that the funds paid into court in this proceeding, having been deposited to discharge the sub-subcontractors' liens, must have formed part of the holdback fund that PCL was required to maintain under the **BLA**. As such, the CRA claims that Her Majesty is the beneficial owner of the funds for the reasons given above.

[15] With respect to the claims of the lien-holders, G&R and Raydon, the CRA submits that it is settled law that the deemed trust claims of the CRA have priority over lien claims under the **BLA**, relying on **Ledcor Construction** and **Ledcor Design-Build (B.C.) Inc. v. Smithers Constructors Inc.**, 2000 BCSC 1120.

Position of the Petitioner

[16] For its part, PCL submits that at no time, whether at the time the RTP was served or earlier, has it owed Norex any money that Norex was not paid. In fact, at the time PCL terminated its contract with Norex on October 17, 2007, Norex had been overpaid, and owed PCL money.

[17] With regards to the deemed trust, which the CRA claims arises in Norex's property because of the unremitted payroll deductions, PCL submits that because such a trust could only attach to the property belonging to Norex at the time it arose, and because Norex had no right to the holdback funds at any time, the trust could not have attached to those funds: **First Vancouver Finance** at paras. 40-43.

[18] With regards to the RTP, PCL submits that as it is not and was not "liable to make a payment" to Norex within the meaning of s. 224(1.2) of the **ITA**, the section

does not apply and PCL is not liable to the CRA for any amount. PCL asserts that the **BLA**, which authorizes the holdback in the first place, makes PCL a guarantor of the claims of any sub-subcontractors hired by Norex, and that PCL's liability to them is a direct one, not an indirect one via money PCL owes to Norex. As PCL's liability to Norex's sub-subcontractors is direct, there are no payments from PCL to Norex which the CRA could "intercept" via the RTP: ***Alberta (Treasury Branches) v. M.N.R.***, [1996] 1 S.C.R. 963 at para. 5. Put another way, PCL submits that Norex has no statutory entitlement to the holdback funds; its only entitlement to payment from PCL arises as a result of the contract between them. As Norex could not, at any point, have claimed any more money under the contract other than what it received, it has no right to any money in the hands of PCL, including the holdback funds.

Position of the Sub-subcontractors / Lien-holders

[19] Submissions have been made on behalf of the lien-holders in all three of these matters. As they are essentially the same, I will summarize the position here and not repeat it below.

[20] The lien-holders join with the general contractors in asserting that because nothing is owed to the sub-contractors, there is no debt or property available for the CRA to claim a beneficial interest in. They argue that their lien claims under the **BLA** entitle them to be paid out of the holdback, and that the CRA has no legal basis for interfering with this entitlement: ***Kamloops Indian Band v. 314162 B.C. Ltd. et al***, 2000 BCSC 1187.

2. *Condura Forming Ltd. v. Menkis Construction Ltd. and Condura Forming Ltd. and Roberto Farinha (Defendants by Counterclaim) (S072815)*

Nature of the Application

[21] The first notice of motion in this action was filed on behalf of Menkis Construction Ltd. (“Menkis”), and seeks directions from the court with regards to holdback funds in the amount of \$77,772.11, representing 10% of the amounts paid by Menkis to Condura pursuant to the contract between them.

[22] The second notice of motion was filed on behalf of the CRA. It seeks that the holdback funds being held by the defendant Menkis be paid to the Receiver General for Canada pursuant to the RTP served on Menkis by the CRA. As with the first application described above, the CRA claims that Her Majesty is entitled to receive the holdback funds due to the operation of ss. 227(4) and (4.1) and/or s. 224(1.2) of the ***ITA***.

Factual Background

[23] Menkis and Condura entered into a contract on June 7, 2006, for Condura to provide construction services and under which Menkis was to pay Condura \$1,487,666.00. Condura defaulted on its obligations and Menkis terminated the contract on January 31, 2007. Prior to the termination of the contract, Menkis paid Condura \$766,822.11 plus GST, and paid \$162,710.21 including GST to sub-subcontractors hired by Condura. Menkis withheld \$77,772.11 from those payments as required under s. 4 of the ***BLA*** and continues to hold those funds. Menkis later paid other contractors \$1,565,240.09 to complete the work that otherwise would

have been performed under the Condura contract and to correct deficiencies in the work performed by Condura.

[24] In February, March, and April 2007, Condura and various sub-subcontractors filed liens in relation to their work under Condura's contract with Menkis. Only one of the sub-subcontractors, National Concrete Associates ("National"), started an action to enforce its lien claim of \$19,688.81 within the required time frame set out in the ***BLA***, and as such, is the only outstanding lien claim to the holdback funds.

[25] The CRA conducted an audit of Condura and found that it had unremitted payroll deductions of \$86,401.17 for 2006 and \$17,946.51 for the month of January 2007. On March 29, 2007, the CRA issued an RTP to Menkis for \$117,483.30, that being the total of the unremitted deductions along with penalties and interest. The RTP bore the names of both Menkis and its principal, Leon Menkis. A second RTP was served on Menkis on April 2, 2008, which Menkis returned to the CRA advising that "no monies were due and owing to Condura".

[26] In April 2007, Condura began an action to enforce a claim under the contract against Menkis. Menkis has filed a statement of defence and counterclaim alleging that Condura was overpaid, or if they were not, a setoff is claimed for the cost of completing and correcting Condura's work.

Position of the CRA

[27] The CRA makes essentially the same submissions as it does in the first application. It asserts that a deemed trust in Condura's property in the amount of

the unremitted payroll deductions, \$80,656.67, arises in favour of Her Majesty by virtue of ss. 227(4) and (4.1) of the **ITA**.

[28] In the alternative, the CRA submits that Her Majesty obtained beneficial ownership of the holdback funds when the RTP was delivered to Menkis on March 29, 2007. In addition to the arguments developed above, the CRA submits that the holdback funds are subject to the RTP because they are “payable” to Condura, payment simply being suspended temporarily by the **BLA: *Dias v. MacLean et al.*** (1993), 123 N.S.R. (2d) 231 (S.C.).

Position of Menkis

[29] Menkis argues that s. 227(4.1) does not apply in the circumstances at bar. First, because Condura has no greater right to the holdback funds than it has to any other monies advanced under the contract, and because it has no rights under the contract because of its default, Condura has no right to the holdback funds. It follows that the holdback funds are not the “property of the [tax debtor]” as referred to in s. 227(4.1). Second, the holdback funds cannot be characterized as “property held by any secured creditor of the [tax debtor]” because Menkis is not a secured creditor of Condura. As the holdback funds are not caught by the wording of s. 227(4.1), the section does not apply.

[30] Menkis further argues that because it is not liable to Condura for any monies in respect of the contract, there is no debt that the RTP could garnish: ***Alberta (Treasury Branches)***. On the contrary, Menkis submits that it became entitled to a setoff from the holdback funds because of overpayment to Condura, and on account

of costs incurred to complete work left undone or poorly done by Condura. This setoff arose at the moment of Condura's default. An RTP does not attach to funds affected by a setoff claim: ***Wa-Bowden***. Menkis asserts that setoff is always available to a party to a contract unless the contract explicitly prohibits it: ***Swagger Construction Ltd. v. University of British Columbia***, 2000 BCSC 1839 at paras. 20, 25; ***Kinetic Construction Ltd. v. Tuscany Village Holdings Ltd.***, 2008 BCSC 67 (now affirmed in the result but modified in part by 2008 BCCA 417).

[31] Lastly, Menkis argues that because the RTPs purported to attach to funds owed jointly by Menkis and its principal Leon Menkis, and because any debt owed to Condura is not owed jointly by Menkis and its principal, but by Menkis only, the RTP is defective and unenforceable: ***Ledcor Design-Build***.

CRA's Response to the Claim of Setoff

[32] In response to Menkis' asserted setoff claim the CRA makes several submissions. It says that an automatic right to setoff does not arise simply from the existence of mutual debts: ***Gannon v. M.N.R.***, [1988] 1 C.T.C. 2422 (T.C.C.). Nor can a setoff based on a claim for damages, which is merely potential and not realized, take priority over an issued RTP: ***Wa-Bowden***. The CRA interprets ***Swagger*** to state that setoff is merely a defence to a claim for judgment, and argues that the issue of setoff is therefore irrelevant to the question of the CRA's claim to the holdback funds.

[33] The CRA further argues that once the deemed trust in Condura's property arose in favour of Her Majesty upon Condura's making payroll deductions from its

employees, that property was no longer available to Menkis to claim setoff from: **Re: Allianz Insurance Co. of Canada**, 2004 BCSC 566; **Caisse Populaire**.

[34] Finally, the CRA makes two submissions based on the language of s. 224(1.2) of the **ITA**. First, as the section states that it applies regardless of “any law”, this must include the law of setoff. Second, as the definition of a “security interest” includes a right of setoff, Menkis is merely a secured creditor of Condura, and the CRA’s claims have priority by virtue of the section: **Caisse Populaire** at para. 4.

3. Binar Investments Inc. v. Norex Civil Contractors Inc. et al. (S082685)

Nature of the Application

[35] In this petition, a notice of motion was filed on behalf of the CRA seeking that the holdback funds in the amount of \$21,973.29, paid into court by the petitioner Binar Investments Inc. (“Binar”) and arising from its contract with Norex, be paid to the Receiver General for Canada pursuant to an RTP served on the petitioner by the CRA under s. 317(3) of the **Excise Tax Act**, R.S.C. 1985, c. E-15 [**ETA**]. A second notice of motion was filed on behalf of a lien holder, United Lock-Block Ltd. (“Lock-Block”), seeking payment of \$12,846.76 from the \$21,973.29 paid into court.

Factual Background

[36] Binar and Norex entered into a contract on September 28, 2006, for Norex to provide construction services. The contract was initially valued at \$222,540.60, rising to \$254,800.59, not including GST, as a result of change orders. Norex

defaulted on its obligations under the contract and did no work after May 2007.

Before that time, Binar paid Norex \$219,732.85, including GST. Binar asserts that Norex was overpaid and that Norex owes it \$21,821.67. Binar later paid other sub-contractors in excess of \$72,177.44 to complete the work under the Norex contract.

[37] On September 10, 2007, a claim of lien was filed by Action Holdings Ltd. dba Custom Blacktop Co. (“Action”), a sub-subcontractor engaged by Norex, against title to the lands relating to the contract between Binar and Norex. That lien was removed upon Binar’s posting cash security in trust in accordance with a trust agreement.

[38] Two additional claims of lien were filed against the lands relating to the contract between Binar and Norex on November 1, 2007, and January 14, 2008, by sub-subcontractors G&R and Lock-Block for \$3,967.64 and \$12,846.76, respectively.

[39] On December 10, 2007, an RTP was served on Binar by the CRA pertaining to Norex’s GST debt, to a maximum of \$69,820.83.

[40] Binar paid \$21,973.29 into court on April 24, 2008, in order to discharge the outstanding liens under s. 23 of the **BLA**.

Position of the CRA

[41] The CRA submits that the wording of s. 317(3) of the **ETA** is virtually identical to that of s. 224(1.2) of the **ITA**, and argues that the case law relating to the latter is

equally applicable: ***Montreal Trust Co. of Canada v. Powell Lane Investments Ltd.*** (1994), 22 C.L.R. (2d) 12 (B.C.S.C.).

[42] The CRA then relies on the arguments discussed above to assert that its claim via the RTP takes priority over the claims of the lien-holders. First, because the holdback is a form of payment owing to Norex, it is therefore subject to garnishment via a RTP. Second, for the reasons discussed above, the CRA argues that any setoff claims that may be made by Binar either do not have priority over the RTP or are simply not relevant to the CRA's claim.

[43] The CRA further submits that once the RTP was delivered to Binar, the holdback funds, being the property of Norex, became the property of Her Majesty: ***South Rock Ltd. v. Canada Revenue Agency***, 2007 ABCA 115. As such they were no longer available for distribution to the lien-holders.

Position of Binar

[44] Binar has made no submissions on this application.

The Law

The Nature of the Statutory Holdback

[45] Section 4 of the **BLA** requires that the person who is primarily liable on a contract under which a lien may arise (in the applications before the court, this person is the general contractor, and I therefore refer to this person as the "Contractor") under the **BLA** retain a holdback equal to 10% of the greater of the value of the work provided under the contract and the amount actually paid under

the contract. That holdback is charged with liens in favour of every person engaged by the person from whom the holdback is retained (which I refer to as the “Sub-subcontractors” and the “Sub-contractor”, respectively). If the Sub-contractor defaults on the contract, s. 6 forbids the Contractor from applying the holdback fund against any claims it may have against the Sub-contractor until the possibility of any lien arising under the Sub-contractor is exhausted. Under s. 9, the Sub-contractor is entitled to receive the holdback fund upon completion of the project or expiration of the holdback period specified in s. 8. Section 23 allows the Contractor to discharge the liens by paying the holdback into court, in which case any liens held by the Sub-subcontractors attach to the funds paid into court. Finally, s. 34 limits the liability of the Contractor to the greater of the money owed to the Sub-contractor and the amount of the holdback.

[46] This limitation of the Contractor’s liability and the protection of the Sub-subcontractors are the underlying purposes of the holdback provisions. As stated in Jonathan Vogt, ed., *BC Builders Liens Practice Manual*, looseleaf (Vancouver: Continuing Legal Education Society of BC, 1999) at s. 7.1:

The holdback is not intended to allow an owner or contractor to hold onto funds at the end of the job and claim a setoff for delays, alleged deficiencies in the work, and other costs the owner may have incurred during the performance of the work.

As stated in s. 1.6, the holdback sections of the BLA are intended as a limitation of liability for owners, contractors, subcontractors, and sub-subcontractors to the amounts properly withheld under the Act as against claims of lien that may exceed the amount of the holdback.

See also David Coulson, *Guide to Builders’ Liens in British Columbia*, looseleaf (Toronto: Thomson Carswell, 2006) at 79.

[47] Section 5(1) of the **BLA** sets out some of the practical aspects of the holdback fund, namely that it is to be kept at a savings institution and be administered by the Contractor together with the Sub-contractor. Section 5(2) establishes the nature of that account:

(2) Subject to sections 9 and 34, all amounts deposited into a holdback account

(a) are charged with payment of all liens arising under the contractor from whom the holdback was retained,

(b) subject to paragraph (a), are held in trust for the contractor referred to in paragraph (a), and

(c) must not be paid out of the account without the agreement of all the persons who administer the account.

[48] When a trust is created under the **BLA**, the general law of trusts applies only to the extent that it is not inconsistent with the provisions of the **BLA**: *BC Builders Liens Practice Manual* at s. 8.2; and see generally **British Columbia v. Henfrey Samson Belair Ltd.**, [1989] 2 S.C.R. 24 at 35. What the legislature has created in s. 5 is not a simple trust in favour of the Sub-contractor. Rather, it is more properly characterized as a fund designed to limit the liability of the Contractor to various Sub-subcontractors and in which the Sub-contractor has a beneficial interest. However, the Sub-contractor's entitlement to the fund is conditional in that it cannot lay claim to it unless the conditions in s. 9 are met and money is owed under the contract: **TransGas, Ledcor Construction**.

Setoff

[49] The law of equitable setoff was discussed in **Holt v. Telford**, [1987] 2 S.C.R. 193. The judgment sets out a number of points regarding the nature of both legal and equitable setoff, but relevant to this case, the Court held that equitable setoff applies when the mutual obligations in question arise out of the same contract, and setoff is available whether the claimed setoff is liquidated or not: **Holt** at 207. The reason for this is simple: when there is a close relationship between dealings giving rise to mutual claims, equity will not permit one of them to be insisted upon without taking the other into account: **Holt** at 213.

[50] In the ordinary course of business, the Sub-contractor's right to be paid is subject to the Contractor's right to setoff. As Mr. Justice Hood stated in **Swagger**,

[9]... in modern times the parties to a construction contract, and subject to its terms, have always had the right to defend, by way of set-off, against the claims of the other; usually a claim for contract monies on the one hand, and a claim for damages for breach of that Contract, for poor workmanship or for delay, on the other.

Hood J. went on to hold that setoff could properly be claimed out of monies that had been held back by the Contractor pursuant to statutory requirements, although in that case there were no other parties claiming an interest in the holdback.

[51] In the cases of **Allianz Insurance** and **Wa-Bowden**, claims to equitable setoff failed because the party claiming the setoff had not established that the alleged mutual obligations arose from dealings so closely related that it would be unjust not to take them into account: see **Allianz Insurance** at para. 29; **Wa-Bowden** at para. 19. I do not take these cases to stand for the proposition urged

upon the court by the CRA, namely that if the amount of the claimed setoff cannot yet be established with certainty then it must fail. That reading of these cases is plausible only if certain paragraphs are taken out of context, and would be incongruous with the Supreme Court of Canada's ruling in **Holt**.

[52] Neither do I understand **Swagger** to stand for the proposition that setoff is merely a defence to a contractual claim, as the CRA urges. Although it effectively operated that way in **Swagger**, and will operate that way in most cases where it is asserted, it is not a defence in the sense that it only arises after work has been completed under the contract in question. As the discussion above makes clear, setoff arises as work is done under the contract such that, conceptually at least, the net amount due under the contract at any given moment is subject to setoff.

The Holdback vis-à-vis Setoff

[53] Equitable setoff is not a complicated legal device – it is a simple mechanism for ensuring that parties to a contract only pay or get paid what is due or owing under the contract. It would be unfair if a Sub-contractor who completes work for a Contractor, but who in the process causes damage to the Contractor equal to the value of the work done, had to first be paid before the Contractor could sue for damages. When setoff is claimed, therefore, it means that the amount owed under the contract, if any, is unclear and that claim must be determined before the Sub-contractor becomes entitled to the holdback fund.

[54] This was the reasoning of our Court of Appeal in **United Metal Fabricators Ltd. v. Voth Bros. Construction (1974) Ltd.** (1987), 42 D.L.R. (4th) 193 (B.C.C.A.).

In that case, the plaintiff Sub-contractor (to use our terms) sued the defendant Contractor for amounts owing under a series of contracts and, under the version of the **BLA** in force at the time, said to be held “in trust” for the Sub-contractor. The Contractor asserted a right of setoff. Mr. Justice Taggart held that the trust only applied to monies due for “work done under the contract”, meaning work properly done, so the funds said to be held in trust are the net amount due under the contract after claims to setoff are settled.

[55] The recent Court of Appeal ruling in ***Kinetic Construction*** is to the same effect. There, the plaintiff Sub-contractor sued for the holdback fund and the defendant Contractor resisted, claiming a setoff for associated damages. Mr. Justice Hall held at para. 10 that even though the Sub-contractor had a beneficial interest in the holdback under s. 5(2) of the **BLA**, its claim to the fund was nonetheless subject to the Contractor’s claim to a setoff, and therefore the claim to setoff had to be resolved before the funds could be ordered to be paid to the Sub-contractor.

[56] Of course, as previously discussed, in a situation where the Sub-contractor defaults on the contract, as is the case in the applications at bar, s. 6 of the **BLA** prohibits the Contractor from applying the holdback fund against any claimed setoff until the possibility of liens against the fund has been exhausted. The chain of priority in these circumstances is therefore clear: a Contractor is required to maintain a 10% holdback fund; Sub-subcontractors have priority to this fund through the **BLA** lien scheme; once their claims are satisfied, the holdback is payable to the Sub-contractor, subject to any claims to setoff from the Contractor.

The Deemed Trust Provisions

[57] Under s. 153 of the *ITA*, employers are required to make various deductions from employees, including payroll deductions for income tax, and to remit these deductions to the Receiver General. Under ss. 227(4) and (4.1) of the *ITA*, a deemed trust in the amount of the deductions arises in the property of the employer at the time the deductions are made: ***First Vancouver Finance*** at para. 29. The beneficial owner of the deemed trust is Her Majesty, whose claim to the property takes priority to the claims of any secured creditors. The sections read as follows:

227 (4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

(4.1) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from

the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

[58] The *ITA* defines “security interest” in s. 224(1.3) as:

any interest in property that secures payment or performance of an obligation and includes an interest created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for;

[59] A “secured creditor” is defined in the same section as:

a person who has a security interest in the property of another person or who acts for or on behalf of that person with respect to the security interest and includes a trustee appointed under a trust deed relating to a security interest, a receiver or receiver-manager appointed by a secured creditor or by a court on the application of a secured creditor, a sequestrator or any other person performing a similar function;

[60] Finally, “property” is defined in s. 248 as:

property of any kind whatever whether real or personal or corporeal or incorporeal and, without restricting the generality of the foregoing, includes

(a) a right of any kind whatever, a share or a chose in action,

[61] In *First Vancouver Finance*, the Supreme Court of Canada considered the nature of Her Majesty’s beneficial interest in the property of a tax debtor arising under s. 227(4.1). Mr. Justice Iacobucci explained that, in order to facilitate the collection of taxes, Parliament created a trust that is absolute in the sense that it is not subject to pre-existing security interests in the tax debtor’s property:

[28] ... the intent of Parliament when drafting ss. 227(4) and 227(4.1) was to grant priority to the deemed trust in respect of property that is also subject to a security interest regardless of when the security interest arose in relation to the time the source deductions were made or when the deemed trust takes effect.

...

[33] ... the intent of the section is to allow the trust to operate in a continuous manner, attaching to any property which comes into the hands of the debtor as long as the debtor continues to be in default, and extending back in time to the moment of the initial deduction.

The Holdback vis-à-vis the Deemed Trust

[62] The discussion above on the nature of the holdback under the **BLA** and the deemed trust under the **ITA** serves to clarify their relationship to one another. Her Majesty has a strong claim to the property of the tax debtor, irrespective of when it was acquired or what security interests it was subsequently charged with. However, the holdback fund established by the **BLA**, though it is said to be held “in trust”, does not thereby create an ordinary trust in which the beneficiary has an unrestricted beneficial interest. It creates a fund to which the Sub-contractor, for whom it is held “in trust”, may eventually become entitled. The entitlement arises when, generally speaking, the project is finished or discontinued, the subsequent holdback period in s. 8 has expired, and any claimed setoff has been resolved. In the circumstance in which the Sub-contractor has defaulted, there is the added condition that all possible lien claims must be exhausted before the Contractor is entitled to setoff against the fund. In my view, it follows that the holdback is property as that term is defined in the **ITA** in that it is “a right of any kind”, a right to receive the fund in the circumstances described.

[63] However, it does not logically follow that because Her Majesty takes beneficial ownership of the Sub-contractor's right to the fund that this right automatically becomes more than it was in the Sub-contractor's hands. I agree with the CRA that it is settled law that once the Sub-contractor's entitlement to the fund arises so that the fund is only charged with the liens of the Sub-subcontractors, Her Majesty takes priority over them as secured creditors because of the explicit language of the *ITA: TransGas; Ledcor Design-Build; Ledcor Construction*. This is clear from the language of s. 227. There is, however, nothing suggesting that Her Majesty's interest becomes something more than it was in the hands of the Subcontractor. Until the entitlement arises, the Sub-contractor's interest in the fund is a conditional right, and no more than that. When the Sub-contractor's right is appropriated by Her Majesty, Her Majesty's interest is exactly the same.

[64] This reasoning is supported by the intention of Parliament in enacting ss. 227(4) and (4.1) of the *ITA*. As Iacobucci J. stated in *First Vancouver* at para. 33, quoted above, the trust applies to property in the hands of the tax debtor. If the Subcontractor would never have become entitled to the holdback fund and yet Her Majesty was allowed to claim it, the CRA would be taking money out of the hands of the Contractor, not the tax debtor. The CRA is not entitled to collect a tax on one person from the property of another: *First Vancouver* at para. 43.

[65] The CRA presented the *Ledcor Construction* case in support of its argument that any deemed trust arising in favour of Her Majesty in the holdback fund takes priority over a claim of setoff. There is one paragraph in Madam Justice

Gerow's judgment, para. 31, which does say exactly that. However, it is obiter and was not the subject of any extensive analysis, and I respectfully disagree with Gerow J. on this one point in her insightful judgment. For the reasons I have given, a claim to setoff is inextricably involved in the issue of what money, if any, the Sub-contractor is entitled to. As such, that question must first be resolved before Her Majesty can assert her interest in the holdback fund.

[66] I pause here to note that arbitrary results follow whether or not I hold that the CRA is entitled to the holdback via the deemed trust. If the CRA were able to seize the holdback fund under any circumstances, then if the Contractor manages to pay the holdback into court before the CRA lays claim to the fund, it will have discharged its liability under s. 23. The party that will be unpaid will then be the Sub-subcontractors holding **BLA** liens. However, if the CRA manages to seize the fund before it has been paid into court, the liens remain on the Contractor's property, not having been discharged under s. 23, and the Contractor must still pay the amount of the holdback to satisfy the liens. The result is arbitrary insofar as the party ultimately liable for the amount of the holdback, whether the Contractor or the Sub-subcontractor, depends on the CRA's timing in asserting its claim.

[67] If the CRA is not entitled to seize the holdback, as I have held, the outcome depends on whether the Sub-contractor is entitled to receive the holdback. Before any setoff may be claimed, the Contractor is required by s. 6 to discharge the liens, which it can do by paying the holdback fund into court. The portion of the holdback to which the Sub-contractor is entitled can then be determined by subtracting the amount of the setoff. If the setoff is larger than the holdback, the Sub-contractor has

no entitlement, and the Sub-subcontractors' lien claims will be satisfied from the fund. If the setoff is smaller than the holdback, the Sub-contractor's entitlement is equal to the amount of the holdback minus the setoff. Because the CRA's claims take priority over the lien-holders, it is then entitled to claim any funds to which the Sub-contractor would have been entitled but for the claims of the Sub-subcontractors. The Sub-subcontractors are then entitled to the remainder, i.e. the amount of the Contractor's setoff, if any. Therefore, the result is arbitrary insofar as whether the Sub-subcontractor is paid from the holdback depends on whether the Sub-contractor is entitled to the money, i.e. the precedent determining the result and the result are entirely unrelated.

[68] I also appreciate that pursuant to my ruling, in some circumstances the CRA may have to litigate on behalf of the Sub-contractor to obtain the holdback funds. However, in my view, this fact and the arbitrariness of the results that flow from either conclusion are an unfortunate reality generated by two legislative schemes from two levels of government, each designed without the other in mind. It is left to this court to rule on the consequences of their interaction in as principled a manner as possible.

The Requirement to Pay

[69] Section 224(1.2) of the ***ITA*** states:

(1.2) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act*, any other enactment of Canada, any enactment of a province or any law, but subject to subsections 69(1) and 69.1(1) of the *Bankruptcy and Insolvency Act* and section 11.4 of the *Companies' Creditors Arrangement Act*, where the Minister has knowledge or

suspects that a particular person is, or will become within one year, liable to make a payment

(a) to another person (in this subsection referred to as the “tax debtor”) who is liable to pay an amount assessed under subsection 227(10.1) or a similar provision, or

(b) to a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor,

the Minister may in writing require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor’s liability under subsection 227(10.1) or the similar provision, and on receipt of that requirement by the particular person, the amount of those moneys that is so required to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty to the extent of that liability as assessed by the Minister and shall be paid to the Receiver General in priority to any such security interest.

[70] An RTP served under s. 224(1.2) is a robust garnishing mechanism designed to ensure that taxes are collected. It can be used to collect deemed trust amounts that arise under ss. 227(4) and (4.1), as well as the employer portion of **EI** and **CPP** contributions along with penalties and interest. The section confirms “the overriding right of the MNR [Minister of National Revenue] to collect by garnishment the taxes collected which ought to have been remitted by the debtor company to the MNR”:

Alberta (Treasury Branches) at para. 18.

[71] Section 224 specifies that when written notice, in these cases in the form of the RTP, is served upon a person who is, or who will become within one year, liable to pay a tax debtor or a secured creditor of a tax debtor, the funds owed are

attached by the RTP and become the property of Her Majesty. The wording of s. 224(1.2) grants priority to Her Majesty to the garnishment amount in the RTP over the interests of secured creditors. As is the case with the deemed trust, it is well-established that the CRA's claims made under an RTP have priority over lien-holders under the **BLA: TransGas**.

The Holdback vis-à-vis the RTP

[72] In the circumstances at bar, the RTP gives the CRA no greater claim to the holdback than does the s. 227 deemed trust. Her Majesty's interest under the RTP arises the moment the Contractor becomes "liable to make a payment" to the Sub-contractor. As discussed above, the Sub-contractor becomes entitled to payment of the holdback fund when the conditions set out in the **BLA** are met. If the Sub-contractor has failed to remit payroll deductions, the conditional right it has to the holdback fund already belongs to Her Majesty under s. 227. Accordingly, if the amount of the holdback due to the Sub-contractor is less than the amount of unremitted payroll deductions, the RTP is redundant.

[73] The situation is not the same if the amount of the holdback remaining after setoff and the amount subject to garnishment by the RTP are greater than the amount subject to the s. 227 deemed trust, or if no deemed trust arises under s. 227. In these situations, the Sub-contractor will at some point become entitled to the portion of the holdback remaining after any setoff claims and deemed trust amounts are deducted. The portion of the holdback that remains after setoff will be subject to the liens of the Sub-subcontractors. If the RTP is served prior to their liens being

satisfied, then the lien-holders' interest in the remaining portion of the fund, as a security interest over which the CRA has priority, is subject to the CRA's claim under the RTP: ***Ledcor Construction***.

[74] It should be noted that whenever the RTP is delivered, it is subject to the Contractor's claim to setoff for the reasons given above. Support for this proposition in the specific context of an RTP can be found in ***Wa-Bowden*** at para. 14 and ***TransGas*** at 264.

[75] In closing this discussion of the applicable legal principles, I would like to deal briefly with the two submissions made by the CRA in the second application based on the language of s. 224(1.2). The CRA argues that as the section applies regardless of "any law", this must include the law of setoff. Under this interpretation, if a Sub-contractor signed a contract but never commenced the work on it, the CRA would nonetheless be entitled to override the law of contract and claim the full amount of the contract from the Contractor. One could, no doubt, devise other examples equally absurd in practical result. As I read the section, it expressly overrules any law which might otherwise divert a payment owing to the tax debtor, i.e. a condition precedent to the applicability of the section is that a payment is owed. As the discussion above on the law of equitable setoff makes clear, setoff is not a diversion of funds otherwise payable, it is a matter that must be taken into account before the amount payable can be determined.

[76] The CRA also argues, based on ***Caisse Populaire***, that a setoff is a "security interest" within the meaning of the section. The item held to be security in that case

was a certificate of deposit assigned to the creditor as security for a debt under a contract titled “Security Agreement Secured by Savings”. The contract gave the creditor the right to “setoff” amounts owing from the certificate of deposit. The case has nothing to do with equitable setoff and therefore has no bearing on the applications at bar.

Discussion

[77] With these principles in mind, the applications at bar can be dealt with succinctly.

1. *PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc. et al.* (S083736)

[78] PCL is required to maintain a holdback fund, and although there is no evidence on this specific point, I assume that it has done so. PCL has paid \$28,005.35 into court pursuant to s. 23 of the **BLA** in order to discharge the liens of the sub-subcontractors G&R and Raydon. Conceptually, if not practically, this money must have come out of the holdback fund.

[79] Based on the analysis of the legal principles above and the evidence adduced in relation to this application, Norex’s, and therefore the CRA’s, entitlement to that fund depends on what is due under the contract, which requires an assessment of any setoff to which PCL is entitled. PCL asserts that nothing is owed to Norex under the contract. If that is the case, Norex has no right to the holdback and neither does the CRA, and these monies belong to the lien-holders G&R and Raydon. If Norex

does have a right to the holdback, that right has been assumed by Her Majesty and takes priority over the lien-holders.

[80] Therefore if the CRA wishes to assert an interest in the holdback fund, it is required to bring a claim on behalf of Norex against PCL, in which PCL and/or the Sub-subcontractors will be entitled to rely on PCL's right to equitable setoff. If the CRA does not pursue Norex's entitlement to the holdback, the funds paid into court belong to the sub-subcontractors G&R and Raydon, which I find is presently the case.

2. *Condura Forming Ltd. v. Menkis Construction Ltd. and Condura Forming Ltd. and Roberto Farinha (Defendants by Counterclaim)* (S072815)

[81] As a preliminary matter in this application, I find that the RTPs served on Menkis which named both Menkis and its principal Leon Menkis were not defective simply because they named both the company and its principal, and any debts owing to Condura would be owed only by the company. Section 224(1.2) requires that notice be given to the particular person who is or will become liable to make a payment to the tax debtor. In this case, Menkis received notice. The fact that it named another party simply means that it is effective against either party, or both jointly. I find that Menkis' reliance on ***Ledcor Design-Build*** is misplaced; in that case, the notice named the wrong company all together.

[82] Condura and Menkis are in an almost identical situation to PCL and Norex, except that Menkis has not paid any of the holdback funds into court and Condura is actively pursuing its entitlement to the holdback. As Menkis is claiming a setoff

against Condura, the right of Condura to the holdback funds, and therefore of the CRA under the deemed trust provisions and the RTPs, remains to be determined. If Menkis should be successful in opposing Condura's claim, National is entitled to the satisfaction of its lien out of the holdback retained by Menkis and the remainder will become the unencumbered property of Menkis. If Condura is successful in its claim against Menkis, the CRA will be entitled to any funds Condura obtains up to the total amount of Condura's tax liability. Therefore, at present the CRA on behalf of Her Majesty is not entitled to any amount of the holdback.

3. *Binar Investments Inc. v. Norex Civil Contractors Inc. et al.* (S082685)

[83] The circumstances of this application differ from the previous two insofar as there is no deemed trust claim relating to unremitted deductions from employees, and the CRA's RTP was issued under the **ETA** in relation to Norex's GST debt. In the circumstances of this application, there is no significant difference between s. 224(1.2) of the **ITA** and s. 317(3) of the **ETA**, and therefore the jurisprudence cited and the comments made in this judgment in relation to s. 224(1.2) of the **ITA** apply equally to s. 317(3) of the **ETA**.

[84] The lack of a deemed trust claim makes no difference to the outcome of this application, which is identical to the previous two. Contrary to the CRA's submission, and although the word setoff does not appear in its petition, Binar has essentially asserted equitable setoff by claiming that the holdback fund is not owed to Norex under their contract. Again, because of the nature of equitable setoff, that issue must be resolved before the CRA can lay claim to the funds paid into court.

[85] If the CRA wishes to assert an interest in the holdback, it may seek to bring an action on behalf of Norex to claim Norex's entitlement under the contract. If the CRA does bring such a claim, Binar and/or the sub-subcontractors, G&R and Lock-Block, will be entitled to resist it on the basis of equitable setoff. If neither Norex nor the CRA pursues a claim, or if any claim is successfully resisted by Binar and/or the Sub-subcontractors, G&R and Lock-Block, the latter are entitled to receive their lien claims from the funds paid into court by Binar.

Conclusion

[86] I appreciate that this ruling, though it does accept the position of the Contractors and Sub-subcontractors, does not settle the issues between the parties, and it may in fact generate more litigation between them. In terms of a broader application I also appreciate that the implications of this ruling may lead to somewhat arbitrary results. Depending on the circumstances, any one of the Contractor, the Sub-subcontractors, or the CRA is liable to lose money if a Sub-contractor who owes remittances or taxes pursuant to the **ITA** or the **ETA** defaults on a construction contract. These consequences are, in my view, the inevitable result of the collision of two legislative schemes designed by two levels of government, neither mindful of the other. In the oft-quoted words of Justice Tallis in **TransGas** at 265, "it is not for this court to pass upon the propriety or wisdom of such legislation."

[87] It was submitted at the hearing that the court has wide discretion as to costs. I have given the matter of costs careful consideration and see no reason to depart from the usual rule that costs follow the event, as was recently re-considered by the

Court of Appeal in ***Catalyst Paper Corporation v. Companhia de Navegação Norsul***, 2009 BCCA 16. As the parties in these applications opposed to the position advanced on behalf of the CRA are the successful parties, I find that they are entitled to their costs at scale B, payable by the CRA on behalf of Her Majesty.

“The Honourable Madam Justice E.A. Arnold-Bailey”

TAB 16

**Her Majesty The Queen in Right of Canada,
as represented by the Minister of National
Revenue** *Appellant*

v.

First Vancouver Finance *Respondent*

and

Great West Transport Ltd. *Respondent*

INDEXED AS: FIRST VANCOUVER FINANCE v. M.N.R.

Neutral citation: 2002 SCC 49.

File No.: 28062.

Hearing and judgment: March 12, 2002.

Reasons delivered: May 23, 2002.

Present: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie and LeBel JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR
SASKATCHEWAN

Income tax — Administration and enforcement — Collection — Source deductions — Trust for moneys deducted — Employer failing to remit payroll deductions — Accounts receivable sold to third party — Whether property acquired by tax debtor after statutory deemed trust arises subject to trust — If so, whether sale of trust property to third party releases property from trust — Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), s. 227(4), (4.1).

The respondent, First Vancouver Finance, entered into a factoring agreement with Great West Transport whereby it would purchase Great West's accounts receivable at a discount. After purchase, the Great West invoices were forwarded to Great West's debtors, along with notification that the accounts had been sold and that subsequent payments should be made directly to First Vancouver. Among the accounts purchased were several owing by Canada Safeway Limited. As of the date of the factoring agreement, Great West owed money to the Minister of National Revenue because of unremitted payroll deductions. First

**Sa Majesté la Reine du chef du Canada,
représentée par le ministre du Revenu
national** *Appelante*

c.

First Vancouver Finance *Intimée*

et

Great West Transport Ltd. *Intimée*

**RÉPERTORIÉ : FIRST VANCOUVER FINANCE c.
M.R.N.**

Référence neutre : 2002 CSC 49.

N° du greffe : 28062.

Audition et jugement : 12 mars 2002.

Motifs déposés : 23 mai 2002.

Présents : Le juge en chef McLachlin et les juges Gonthier, Iacobucci, Major, Bastarache, Binnie et LeBel.

EN APPEL DE LA COUR D'APPEL DE LA
SASKATCHEWAN

Impôt sur le revenu — Administration et exécution — Perception — Retenues à la source — Détention en fiducie des retenues — Défaut de l'employeur de verser les retenues à la source — Comptes débiteurs vendus à un tiers — Les biens acquis par le débiteur après la matérialisation de la fiducie réputée y sont-ils assujettis? — Dans l'affirmative, la vente à un tiers de biens détenus en fiducie a-t-elle pour effet de soustraire ces biens à l'application de la fiducie? — Loi de l'impôt sur le revenu, L.R.C. 1985, ch. 1 (5^e suppl.), art. 227(4), (4.1).

L'intimée, First Vancouver Finance, a conclu, avec Great West Transport, une entente d'affacturage en vertu de laquelle elle devait acheter des comptes débiteurs de Great West selon leur valeur actualisée. Après l'achat, les factures de Great West ont été acheminées aux débiteurs de Great West de pair avec un avis les informant que le compte avait été vendu et que les paiements à venir devaient être versés directement à First Vancouver. Plusieurs des créances vendues étaient payables par Canada Safeway Limited. À la date de l'entente d'affacturage, Great West avait une

Vancouver had made arrangements with the Minister to forward part of the purchase price of the accounts to be applied to Great West's arrears. The Minister served Canada Safeway with Enhanced Requirement to Pay Notices ("RTPs") as authorized by the *Income Tax Act* ("ITA"). In response, Canada Safeway made payments to the Minister relating to accounts which Great West had assigned to First Vancouver. First Vancouver brought an application to recover the amounts paid by Canada Safeway to the Minister pursuant to the RTPs. The Court of Queen's Bench granted the application in part, holding that First Vancouver was entitled to the moneys owing on accounts factored before the RTPs were issued. The Court of Appeal upheld that decision.

Held: The appeal should be dismissed.

The *ITA* requires employers to deduct and withhold amounts from their employees' wages ("source deductions") and remit these amounts to the Receiver General by a specified due date. Under s. 227(4), when source deductions are made, they are deemed to be held separate and apart from the property of the employer in trust for Her Majesty. If the source deductions are not remitted to the Receiver General by the due date, the deemed trust in s. 227(4.1) becomes operative and attaches to property of the employer to the extent of the amount of the unremitted source deductions. The trust is deemed to have existed from the moment the source deductions were made. The s. 227(4.1) deemed trust is similar in principle to a floating charge over all the tax debtor's assets in favour of Her Majesty. As long as the tax debtor continues to be in default, the trust continues to float over the tax debtor's property. At any given point in time, whatever property then belonging to the tax debtor is subject to the deemed trust. As property comes into possession of the tax debtor, it is caught by the trust and becomes subject to Her Majesty's interest. Similarly, property which the tax debtor disposes of is thereby released from the deemed trust. The mutuality of treatment between incoming and outgoing property relating to the deemed trust is supported by both the plain language of the provisions as well as their purpose and intent. Her Majesty's interest in the tax debtor's property is protected because, while property which is sold to third party purchasers is released from the trust, at the same time, the proceeds of disposition of the alienated property are captured by the trust. Commercial certainty is promoted owing to the fact that third party purchasers are free to transact with tax

dette envers le ministre du Revenu national en raison du non-versement de retenues à la source. First Vancouver avait convenu avec le ministre de lui faire parvenir une fraction du prix d'acquisition des comptes pour le paiement des sommes en souffrance que lui devait Great West. Le ministre a signifié à Canada Safeway des demandes péremptoires de paiement renforcées comme l'y autorisait la *Loi de l'impôt sur le revenu* (la « *LIR* »). À la suite de ces demandes, Canada Safeway a versé des sommes au ministre relativement aux comptes que Great West avait cédés à First Vancouver. First Vancouver a présenté une demande de restitution des sommes que Canada Safeway avait versées au ministre conformément aux demandes de paiement. La Cour du Banc de la Reine a accueilli cette demande en partie, statuant que First Vancouver pouvait récupérer le montant des créances facturées avant les demandes péremptoires de paiement. La Cour d'appel a confirmé cette décision.

Arrêt : Le pourvoi est rejeté.

La *LIR* exige que l'employeur déduise et retienne un montant sur le salaire de l'employé (« retenue à la source ») et le verse au receveur général au plus tard à la date fixée par règlement. Suivant le par. 227(4), l'employeur qui fait une retenue à la source est réputé en détenir le montant en fiducie au profit de Sa Majesté, séparément de ses propres biens. Lorsque le montant d'une retenue à la source n'est pas versé au receveur général dans le délai prescrit, la fiducie réputée prévue au par. 227(4.1) prend effet et s'applique aux biens de l'employeur jusqu'à concurrence du montant impayé des retenues à la source. La fiducie est réputée exister depuis le moment où le montant a été déduit à la source. La fiducie réputée prévue au par. 227(4.1) s'apparente sur le plan des principes à une charge flottante grevant la totalité des biens du débiteur fiscal au profit de Sa Majesté. Tant que le débiteur fiscal ne remédie pas à son défaut, la fiducie continue de s'appliquer à ses biens au gré de leur acquisition. Tout bien appartenant au débiteur fiscal à un moment quelconque est réputé détenu en fiducie à ce moment. Tout bien qui se retrouve en la possession du débiteur fiscal est détenu en fiducie et assujéti au droit de Sa Majesté. De la même façon, le bien dont le débiteur fiscal se départit cesse de faire l'objet de la fiducie réputée. Cette réciprocité de traitement des biens acquis et aliénés en ce qui concerne la fiducie réputée trouve appui tant dans le libellé clair des dispositions que dans leur objet et dans l'intention du législateur. Le droit de Sa Majesté sur les biens du débiteur fiscal est protégé, car au moment où le bien vendu à un tiers cesse d'être détenu en fiducie, le produit découlant de la vente de ce bien devient assujéti à la fiducie réputée. Le fait qu'un tiers puisse

debtors or suspected tax debtors without fearing that Her Majesty may subsequently assert an interest in the property so acquired.

Since the deemed trust created by ss. 227(4) and 227(4.1) encompasses property which comes into the hands of the tax debtor after the trust arises, when Great West came into possession of the Canada Safeway invoices, the deemed trust, which had already arisen as a consequence of Great West's default in remittances, successfully attached to those invoices. However, the deemed trust does not operate over assets which a tax debtor has sold in the ordinary course to third party purchasers. Once the Canada Safeway invoices had been factored to First Vancouver, the Minister was prevented from asserting its interest in these invoices.

Cases Cited

Approved: *Royal Bank v. Tuxedo Transport Ltd.* (2000), 79 B.C.L.R. (3d) 1, rev'g (1999), 6 C.B.R. (4th) 285; **referred to:** *Alberta (Treasury Branches) v. M.N.R.*, [1996] 1 S.C.R. 963; *Pembina on the Red Development Corp. v. Triman Industries Ltd.* (1991), 85 D.L.R. (4th) 29; *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411.

Statutes and Regulations Cited

Excise Tax Act, R.S.C. 1985, c. E-15, s. 317(3) [am. 1993, c. 27, s. 133].
Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), ss. 153(1), 224, 224(1.2), 227(4) [repl. 1998, c. 19, s. 226(1)], (4.1) [en. *idem*].

APPEAL from a judgment of the Saskatchewan Court of Appeal (2000), 199 Sask. R. 9, [2000] 8 W.W.R. 386, [2000] 3 C.T.C. 93, [2001] G.S.T.C. 55, [2000] S.J. No. 330 (QL), 2000 SKCA 58, affirming a decision of the Court of Queen's Bench (1999), 190 Sask. R. 286, [2000] 1 W.W.R. 713, [2000] 1 C.T.C. 99, [2001] G.S.T.C. 54, [1999] S.J. No. 738 (QL), 1999 SKQB 166. Appeal dismissed.

Edward R. Sojonky, Q.C., and *Mark Kindrachuk*, for the appellant.

Joel A. Hesje and *David M. A. Stack*, for the respondent First Vancouver Finance.

acheter un bien à un débiteur fiscal ou à une personne soupçonnée d'être un débiteur fiscal sans craindre que Sa Majesté ne fasse ultérieurement valoir un droit sur ce bien favorise la stabilité commerciale.

Étant donné que la fiducie réputée créée par les par. 227(4) et 227(4.1) englobe les biens qui se retrouvent en la possession du débiteur fiscal à compter de sa matérialisation, les factures de Canada Safeway qui se sont retrouvées en la possession de Great West sont effectivement devenues assujetties à la fiducie réputée, qui s'était déjà matérialisée en raison des non-versements par Great West. Toutefois, la fiducie réputée ne s'applique pas aux biens que le débiteur fiscal a vendus à un tiers dans le cadre normal de ses activités. À partir du moment où les comptes de Canada Safeway ont été facturés à First Vancouver, le ministre ne pouvait plus faire valoir son droit sur eux.

Jurisprudence

Arrêt approuvé : *Royal Bank c. Tuxedo Transport Ltd.* (2000), 79 B.C.L.R. (3d) 1, inf. (1999), 6 C.B.R. (4th) 285; **arrêts mentionnés :** *Alberta (Treasury Branches) c. M.R.N.*, [1996] 1 R.C.S. 963; *Pembina on the Red Development Corp. c. Triman Industries Ltd.* (1991), 85 D.L.R. (4th) 29; *Banque Royale du Canada c. Sparrow Electric Corp.*, [1997] 1 R.C.S. 411.

Lois et règlements cités

Loi de l'impôt sur le revenu, L.R.C. 1985, ch. 1 (5^e suppl.), art. 153(1), 224, 224(1.2), 227(4) [repl. 1998, ch. 19, art. 226(1)], (4.1) [aj. *idem*].
Loi sur la taxe d'accise, L.R.C. 1985, ch. E-15, art. 317(3) [mod. 1993, ch. 27, art. 133].

POURVOI contre un arrêt de la Cour d'appel de la Saskatchewan (2000), 199 Sask. R. 9, [2000] 8 W.W.R. 386, [2000] 3 C.T.C. 93, [2001] G.S.T.C. 55, [2000] S.J. No. 330 (QL), 2000 SKCA 58, qui a confirmé une décision de la Cour du Banc de la Reine (1999), 190 Sask. R. 286, [2000] 1 W.W.R. 713, [2000] 1 C.T.C. 99, [2001] G.S.T.C. 54, [1999] S.J. No. 738 (QL), 1999 SKQB 166. Pourvoi rejeté.

Edward R. Sojonky, c.r., et *Mark Kindrachuk*, pour l'appelante.

Joel A. Hesje et *David M. A. Stack*, pour l'intimée First Vancouver Finance.

The judgment of the Court was delivered by

Version française du jugement de la Cour rendu par

IACOBUCCI J. —

LE JUGE IACOBUCCI —

I. Introduction

This appeal concerns the interpretation of the deemed trust provisions in ss. 227(4) and 227(4.1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (“*ITA*”). At the hearing of this appeal, the Court dismissed the appeal with reasons to follow. The dispute is over certain property which came into the hands of the tax debtor after a deemed trust under s. 227(4.1) arose. The property was subsequently sold to a third party, after which time the Minister of National Revenue (“Minister”) asserted an interest in the property on the basis that it continued to be subject to the deemed trust even after its sale.

As a result, the two specific issues to be resolved on this appeal are, first, whether property which comes into the tax debtor’s hands after the deemed trust arises is subject to the trust, and, second, if so, whether the sale of trust property to third parties serves to release this property from the ambit of the trust.

Section 153(1) of the *ITA* requires employers to deduct and withhold amounts from their employees’ wages (“source deductions”) and remit these amounts to the Receiver General by a specified due date. By virtue of s. 227(4), when source deductions are made, they are deemed to be held separate and apart from the property of the employer in trust for Her Majesty. If the source deductions are not remitted to the Receiver General by the due date, the deemed trust in s. 227(4.1) of the *ITA* becomes operative and attaches to property of the employer to the extent of the amount of the unremitted source deductions. As well, the trust is deemed to have existed from the moment the source deductions were made.

For the reasons set forth below, I find that the s. 227(4.1) deemed trust is similar in principle to

I. Introduction

Le présent pourvoi porte sur l’interprétation des dispositions régissant les fiducies réputées des par. 227(4) et (4.1) de la *Loi de l’impôt sur le revenu*, L.R.C. 1985, ch. 1 (5^e suppl.) (« *LIR* »). À l’audience, notre Cour a rejeté le pourvoi en précisant qu’elle prononcerait ses motifs ultérieurement. Le litige porte sur certains biens acquis par le débiteur fiscal après la matérialisation d’une fiducie réputée en application du par. 227(4.1). Les biens ont été subséquemment vendus à un tiers. Par la suite, le ministre du Revenu national (le « ministre ») a fait valoir son droit sur ces biens au motif qu’ils étaient encore assujettis à la fiducie réputée malgré leur vente.

Les deux questions précises que soulève le présent pourvoi sont donc les suivantes : premièrement, les biens que le débiteur fiscal acquiert après la matérialisation de la fiducie réputée y sont-ils assujettis et, deuxièmement, dans l’affirmative, la vente à un tiers de biens détenus en fiducie a-t-elle pour effet de soustraire ces biens à l’application de la fiducie?

Le paragraphe 153(1) de la *LIR* exige que l’employeur déduise ou retienne un montant sur le salaire de l’employé (« retenue à la source ») et le verse au receveur général au plus tard à la date fixée par règlement. Suivant le par. 227(4), l’employeur qui fait une retenue à la source est réputé en détenir le montant en fiducie au profit de Sa Majesté, séparément de ses propres biens. Lorsque le montant d’une retenue à la source n’est pas versé au receveur général dans le délai prescrit, la fiducie réputée prévue au par. 227(4.1) de la *LIR* prend effet et s’applique aux biens de l’employeur jusqu’à concurrence du montant impayé. De plus, la fiducie est réputée exister depuis le moment où le montant a été déduit à la source.

Pour les motifs qui suivent, j’arrive à la conclusion que la fiducie réputée prévue au par. 227(4.1)

a floating charge over all the tax debtor's assets in favour of Her Majesty. The trust arises the moment the tax debtor fails to remit source deductions by the specified due date, but is deemed to have been in existence from the moment the deductions were made. As long as the tax debtor continues to be in default, the trust continues to float over the tax debtor's property. Thus, at any given point in time, whatever property then belonging to the tax debtor is subject to the deemed trust.

s'apparente sur le plan des principes à une charge flottante grevant la totalité des biens du débiteur fiscal au profit de Sa Majesté. La fiducie se matérialise au moment où le débiteur fiscal omet de verser le montant des retenues à la source dans le délai imparti, mais elle est réputée s'appliquer rétroactivement à compter du moment où le montant a été déduit. Tant que le débiteur fiscal ne remédie pas à son défaut, la fiducie continue de s'appliquer à ses biens au gré de leur acquisition. Ainsi, tout bien appartenant au débiteur fiscal à un moment quelconque est réputé détenu en fiducie à ce moment.

5 Viewed in this way, it is clear that, as property comes into possession of the tax debtor, it is caught by the trust and becomes subject to Her Majesty's interest. Similarly, property which the tax debtor disposes of is thereby released from the deemed trust. This mutuality of treatment between incoming and outgoing property relating to the deemed trust is supported by both the plain language of the provisions as well as their purpose and intent. Most importantly, Her Majesty's interest in the tax debtor's property is protected because, while property which is sold to third party purchasers is released from the trust, at the same time, the proceeds of disposition of the alienated property are captured by the trust. Moreover, commercial certainty is promoted owing to the fact that third party purchasers are free to transact with tax debtors or suspected tax debtors without fearing that Her Majesty may subsequently assert an interest in the property so acquired.

De ce point de vue, il est clair que tout bien qui se retrouve en la possession du débiteur fiscal est détenu en fiducie et assujéti au droit de Sa Majesté. De la même façon, le bien dont le débiteur fiscal se départit cesse de faire l'objet de la fiducie réputée. Cette réciprocité trouve appui tant dans le libellé clair des dispositions relatives à la fiducie réputée que dans leur objet et dans l'intention du législateur. Mais surtout, le droit de Sa Majesté sur les biens du débiteur fiscal est protégé, car au moment où le bien vendu à un tiers cesse d'être détenu en fiducie, le produit découlant de la vente de ce bien devient assujéti à la fiducie réputée. De plus, le fait qu'un tiers puisse acheter un bien à un débiteur fiscal ou à une personne soupçonnée d'être un débiteur fiscal sans craindre que Sa Majesté ne fasse ultérieurement valoir un droit sur ce bien favorise la stabilité commerciale.

6 Accordingly, I would dismiss the appeal on the basis that, although the property acquired by the tax debtor after the deemed trust arose became subject to the trust, when this property was sold to a third party, it was thereby released from the ambit of the deemed trust. As such, after the sale, Her Majesty could no longer assert an interest in the property.

Je suis donc d'avis de rejeter le pourvoi pour le motif que, même si les biens acquis par le débiteur fiscal après la matérialisation de la fiducie réputée y ont été assujettis, leur vente à un tiers a eu pour effet de les soustraire à son application. Sa Majesté ne pouvait donc plus, après la vente, faire valoir son droit sur les biens.

II. Facts

II. Les faits

7 The respondent, First Vancouver Finance ("First Vancouver"), is engaged in the business of factoring accounts receivable. Great West Transport Ltd. ("Great West") is in the transportation business. On November 6, 1997, First Vancouver and Great West entered into a factoring agreement providing

L'intimée, First Vancouver Finance (« First Vancouver »), pratique l'affacturage de comptes débiteurs. Great West Transport Ltd. (« Great West ») exploite une entreprise de transport. Le 6 novembre 1997, First Vancouver et Great West ont conclu une entente d'affacturage prévoyant l'achat,

for the purchase by First Vancouver of Great West's accounts receivable at a discount. Pursuant to the agreement, First Vancouver became the owner of certain debts due to Great West.

Under the terms of the factoring agreement, First Vancouver purchased accounts through assignments entered into from time to time at Great West's option. First Vancouver did not purchase an individual account until it was submitted for approval, and it was not bound to purchase it up to that point. After purchase, the Great West invoices were forwarded to Great West's debtors, along with notification that the accounts had been sold and that subsequent payments should be made directly to First Vancouver. Among the accounts purchased were several owing by Canada Safeway Limited or its associated undertakings ("Canada Safeway").

As of the date of the factoring agreement, Great West owed money to the Minister because of unremitted payroll deductions and goods and services tax ("GST"). First Vancouver was aware from the time it began dealing with Great West in November of 1997 that Great West was in arrears in respect of its payroll deductions and GST accounts. First Vancouver had, as of November 10, 1997, made arrangements with the Minister to forward part of the purchase price of the accounts, in the form of semi-monthly payments of \$10,000, to the Minister which were to be applied to the arrears of Great West then outstanding. In addition, Great West remained directly responsible to the Minister for its ongoing payroll deductions and GST remittances as they became due. While First Vancouver regularly made payments pursuant to its arrangement with the Minister, Great West failed to meet its ongoing tax obligations.

In January and February of 1999, Great West made 10 individual assignments to First Vancouver, relating to accounts receivable payable by Canada Safeway and its associated undertakings. On February 10, 1999, the Minister served Canada Safeway with Enhanced Requirement to Pay Notices ("RTPs"), as authorized by s. 224(1.2) of the *ITA* and s. 317(3) of the *Excise Tax Act*, R.S.C.

par First Vancouver, de comptes débiteurs de Great West selon leur valeur actualisée. Conformément à l'entente, First Vancouver est devenue titulaire de certaines créances de Great West.

Suivant les conditions de l'entente d'affacturage, First Vancouver a acquis des comptes au moyen de cessions conclues à différents moments au gré de Great West. Elle n'a acquis et n'était tenue d'acquiescer aucun compte avant qu'il soit soumis à son approbation. Après l'achat, les factures de Great West ont été acheminées aux débiteurs de Great West de pair avec un avis les informant que le compte avait été vendu et que les paiements à venir devaient être versés directement à First Vancouver. Plusieurs des créances vendues étaient payables par Canada Safeway Limited ou par ses entreprises associées (« Canada Safeway »).

À la date de l'entente d'affacturage, Great West avait une dette envers le ministre en raison du non-versement de retenues à la source et de montants perçus au titre de la taxe sur les produits et services (la « TPS »). First Vancouver savait, depuis le moment où elle avait commencé à faire affaire avec elle en novembre 1997, que Great West avait des arriérés de retenues à la source et de TPS à payer. Le 10 novembre 1997, First Vancouver avait convenu avec le ministre de lui faire parvenir une fraction du prix d'acquisition des comptes, à raison de paiements semi-mensuels de 10 000 \$, pour le paiement des sommes en souffrance que lui devait Great West. Par ailleurs, Great West demeurait tenue de verser directement au ministre, au fur et à mesure, ses retenues à la source et ses versements de TPS à leur échéance. First Vancouver a respecté son entente avec le ministre en effectuant régulièrement des paiements, mais Great West a manqué à ses obligations fiscales courantes.

En janvier et en février 1999, Great West a procédé, en faveur de First Vancouver, à 10 cessions individuelles de créances payables par Canada Safeway et ses entreprises associées. Le 10 février 1999, le ministre a signifié à Canada Safeway des demandes péremptoires de paiement renforcées (les « demandes péremptoires de paiement »), comme l'y autorisaient le par. 224(1.2) de la *LIR* et le par.

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1985, c. E-15, as amended. In response, Canada Safeway made payments totalling \$187,444.66 to the Minister relating to accounts which Great West had assigned to First Vancouver between January 4 and February 17, 1999. Two of the sets of Canada Safeway accounts, totalling \$31,086.43, were assigned to First Vancouver on February 11 and February 17, 1999, after the RTPs had been issued. However, the remainder of the accounts had already been assigned to First Vancouver before February 10, 1999 when the RTPs were issued. At no time prior to the payments from Canada Safeway to the Minister did First Vancouver receive any notice that the Minister was claiming an interest in any Great West accounts purchased by First Vancouver.

11 In response to the Minister's actions, First Vancouver brought an application in the Saskatchewan Court of Queen's Bench to recover the amounts paid by Canada Safeway to the Minister pursuant to the RTPs.

12 Wimmer J. of the Court of Queen's Bench held that the monies owing on accounts factored prior to February 10, 1999, the date upon which Canada Safeway was served with the RTPs, were not subject to garnishment or to the deemed trust provisions of the *ITA*, or to any claim pursuant to the *Excise Tax Act*, and therefore that First Vancouver was entitled to these amounts. However, he held that the RTPs had captured the two accounts assigned after the RTPs were issued ("post-RTP accounts").

13 On appeal, the Saskatchewan Court of Appeal dismissed the appeal of the Minister and the cross-appeal of First Vancouver on the issue of the post-RTP accounts.

III. Relevant Statutory Provisions

14 *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.)

227. . . .

(4) [Trust for moneys deducted] Every person who deducts or withholds an amount under this Act is deemed,

317(3) de la *Loi sur la taxe d'accise*, L.R.C. 1985, ch. E-15, modifiée. À la suite de ces demandes, Canada Safeway a versé au ministre des sommes totalisant 187 444,66 \$, relativement aux comptes que Great West avait cédés à First Vancouver entre le 4 janvier et le 17 février 1999. Deux des lots de comptes de Canada Safeway, d'une valeur globale de 31 086,43 \$, avaient été cédés à First Vancouver les 11 et 17 février 1999, soit après la signification des demandes péremptoires de paiement, alors que les autres comptes lui avaient été cédés avant le 10 février 1999, date de la signification. Avant les paiements de Canada Safeway au ministre, First Vancouver n'avait jamais été informée que ce dernier faisait valoir un droit sur des créances qu'elle avait acquises de Great West.

En réaction aux mesures prises par le ministre, First Vancouver a saisi la Cour du Banc de la Reine de la Saskatchewan d'une demande de restitution des sommes que Canada Safeway avait versées au ministre conformément aux demandes de paiement.

Le juge Wimmer de la Cour du Banc de la Reine a statué que le montant des créances facturées avant le 10 février 1999, soit la date de la signification des demandes péremptoires de paiement à Canada Safeway, échappait à la saisie-arrêt ou aux dispositions de la *LIR* établissant la fiducie réputée, ainsi qu'à toute mesure fondée sur la *Loi sur la taxe d'accise*, de sorte que First Vancouver pouvait récupérer ce montant. Il a toutefois conclu que les demandes péremptoires de paiement couvraient les deux comptes cédés après leur signification.

La Cour d'appel de la Saskatchewan a rejeté l'appel du ministre et l'appel incident interjeté par First Vancouver relativement aux comptes cédés après la signification des demandes péremptoires de paiement.

III. Dispositions législatives pertinentes

Loi de l'impôt sur le revenu, L.R.C. 1985, ch. 1 (5^e suppl.)

227. . . .

(4) [Montant détenu en fiducie] Toute personne qui déduit ou retient un montant en vertu de la présente loi est

notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

(4.1) [Extension of trust] Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection (4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

IV. Judgments Below

A. *Saskatchewan Court of Queen's Bench*, [2000] 1 W.W.R. 713

On the preliminary issue of the ownership of the factored accounts, Wimmer J. relied upon the definition of a factoring agreement from *Alberta (Treasury Branches) v. M.N.R.*, [1996] 1 S.C.R. 963, at paras. 30-31. In that case, Cory J. stated at para. 31 that, "A factoring of accounts receivable is based upon an absolute assignment of them. It is in effect a sale by

réputée, malgré toute autre garantie au sens du paragraphe 224(1.3) le concernant, le détenir en fiducie pour Sa Majesté, séparé de ses propres biens et des biens détenus par son créancier garanti au sens de ce paragraphe qui, en l'absence de la garantie, seraient ceux de la personne, et en vue de le verser à Sa Majesté selon les modalités et dans le délai prévus par la présente loi.

(4.1) [Non-versement] Malgré les autres dispositions de la présente loi, la *Loi sur la faillite et l'insolvabilité* (sauf les articles 81.1 et 81.2), tout autre texte législatif fédéral ou provincial ou toute règle de droit, en cas de non-versement à Sa Majesté, selon les modalités et dans le délai prévus par la présente loi, d'un montant qu'une personne est réputée par le paragraphe (4) détenir en fiducie pour Sa Majesté, les biens de la personne, et les biens détenus par son créancier garanti au sens du paragraphe 224(1.3) qui, en l'absence d'une garantie au sens du même paragraphe, seraient ceux de la personne, d'une valeur égale à ce montant sont réputés :

a) être détenus en fiducie pour Sa Majesté, à compter du moment où le montant est déduit ou retenu, séparés des propres biens de la personne, qu'ils soient ou non assujettis à une telle garantie;

b) ne pas faire partie du patrimoine ou des biens de la personne à compter du moment où le montant est déduit ou retenu, que ces biens aient été ou non tenus séparés de ses propres biens ou de son patrimoine et qu'ils soient ou non assujettis à une telle garantie.

Ces biens sont des biens dans lesquels Sa Majesté a un droit de bénéficiaire malgré toute autre garantie sur ces biens ou sur le produit en découlant, et le produit découlant de ces biens est payé au receveur général par priorité sur une telle garantie.

IV. Jugements des tribunaux inférieurs

A. *Cour du Banc de la Reine de la Saskatchewan*, [2000] 1 W.W.R. 713

En ce qui concerne la question préliminaire de la propriété des comptes affacturés, le juge Wimmer s'est fondé sur la définition d'une entente d'affacturage donnée par notre Cour dans *Alberta (Treasury Branches) c. M.R.N.*, [1996] 1 R.C.S. 963, par. 30-31. Dans cet arrêt, le juge Cory dit ce qui suit, au par. 31 : « Un affacturage de comptes débiteurs

a company of its accounts receivable at a discounted value to the factoring company for immediate consideration.”

est basé sur leur cession absolue. C’est, en réalité, une société qui vend, selon leur valeur actualisée, ses comptes débiteurs à une société d’affacturation, moyennant contrepartie immédiate. »

16 Wimmer J. observed that, according to *Alberta (Treasury Branches)*, an absolute and unconditional assignment of book debts is beyond the reach of the Minister under garnishment provisions. He held further that the assignments from Great West to First Vancouver were absolute and unconditional because, upon completion of the assignments, Great West had no residual rights in the property and could not redeem or recover the accounts and, in that circumstance, Canada Safeway had no liability to Great West after there was a completed transfer of accounts. Although the Minister argued that the assignments were not absolute because under the factoring agreement First Vancouver had recourse to Great West if a customer disputed or failed to pay an account, Wimmer J. noted that the definition of factoring approved by Cory J. contemplated that a factor may acquire an absolute interest in book debts with or without recourse (p. 718).

Le juge Wimmer a fait remarquer que, suivant l’arrêt *Alberta (Treasury Branches)*, la cession absolue et inconditionnelle d’une créance comptable faisait obstacle à sa saisie-arrêt par le ministre. Il a ajouté que, une fois menées à terme, les cessions de comptes de Great West à First Vancouver étaient absolues et inconditionnelles, car Great West n’avait plus aucun droit sur les biens et ne pouvait ni racheter ni récupérer les comptes. Canada Safeway n’avait donc plus d’obligation envers Great West une fois la cession des comptes complétée. Même si le ministre soutenait que les cessions n’étaient pas absolues parce que l’entente d’affacturation prévoyait que First Vancouver pouvait exercer un recours contre Great West si un client contestait un compte ou omettait de le payer, le juge Wimmer a signalé que, suivant la définition d’affacturation approuvée par le juge Cory, le droit sur une créance comptable peut être absolu, que l’acquéreur ait ou non un droit de recours (p. 718).

17 As a result, monies owing on accounts factored prior to February 10, 1999, the date upon which Canada Safeway was served with the RTPs, were not subject to garnishment under s. 224 of the *ITA* or s. 317 of the *Excise Tax Act*. However, the two accounts factored after February 10 were effectively intercepted by the RTPs.

Les montants des comptes affacturés avant le 10 février 1999, soit avant la signification des demandes péremptoires de paiement à Canada Safeway, étaient donc à l’abri de toute saisie-arrêt effectuée sur le fondement de l’art. 224 de la *LIR* ou de l’art. 317 de la *Loi sur la taxe d’accise*. Toutefois, les deux comptes affacturés après le 10 février tombaient de fait sous le coup des demandes péremptoires de paiement.

18 With respect to the deemed trust under s. 227(4.1) of the *ITA*, Wimmer J. applied the reasoning of Burnyeat J. of the British Columbia Supreme Court in *Royal Bank v. Tuxedo Transport Ltd.* (1999), 6 C.B.R. (4th) 285. Since the Canada Safeway invoices came into existence after the Great West payroll deduction delinquencies arose and were assessed, the invoices were “after-acquired property” not subject to a s. 227(4.1) deemed trust in favour of Her Majesty. Wimmer J. acknowledged that *Tuxedo Transport* was under appeal. However, he stated that, since the judgment came from a court of comparable jurisdiction, and as he was not

En ce qui a trait à la fiducie réputée prévue au par. 227(4.1) de la *LIR*, le juge Wimmer a repris le raisonnement exprimé par le juge Burnyeat de la Cour suprême de la Colombie-Britannique dans *Royal Bank c. Tuxedo Transport Ltd.* (1999), 6 C.B.R. (4th) 285. Étant donné que l’existence des factures de Canada Safeway était postérieure au défaut de Great West de verser les retenues à la source et à l’établissement d’une cotisation à leur égard, les factures constituaient des « biens postérieurement acquis » non assujettis à la fiducie réputée établie au profit de Sa Majesté en application du par. 227(4.1). Le juge Wimmer a reconnu que la décision *Tuxedo*

satisfied it was wrong, he was prepared to follow that decision.

As a result, Wimmer J. held that amounts owing on accounts factored prior to February 10, 1999, the date upon which the Minister served Canada Safeway with the RTPs, were not subject to garnishment or to a deemed trust pursuant to ss. 224 and 227 of the *ITA*, or to any claim pursuant to s. 317 of the *Excise Tax Act*. Consequently, a declaration was made confirming First Vancouver's entitlement to the funds already paid by Canada Safeway to the Minister, with the exception of the funds covered by the two Canada Safeway accounts factored after February 10, 1999, along with costs.

B. *Saskatchewan Court of Appeal*, [2000] 8 W.W.R. 386

In a very brief oral decision, the Saskatchewan Court of Appeal dismissed the Minister's appeal, and First Vancouver's cross-appeal, both with costs, finding that the trial judge had not erred in the interpretation of the relevant statutory provisions or in the application of those provisions to the facts of the case.

V. Issues

- A. Is property acquired by an employer after a default in remitting payroll deductions ("after-acquired property") subject to the deemed trust in s. 227(4.1) of the *ITA*?
- B. Does the deemed trust under s. 227(4.1) continue to attach to property which has been sold by the tax debtor to a third party purchaser for value?

VI. Analysis

A. *General Scheme and Background of the Section 227(4.1) Deemed Trust*

The collection of source deductions has been recognized as "at the heart" of income tax collection

Transport avait été portée en appel. Il a cependant dit qu'il était disposé à s'y conformer, puisqu'elle avait été rendue par une cour de juridiction comparable et qu'elle ne lui paraissait pas erronée.

Le juge Wimmer a donc conclu que les montants des comptes affacturés avant le 10 février 1999, date à laquelle le ministre avait signifié à Canada Safeway les demandes péremptoires de paiement, échappaient à la saisie-arêt effectuée en vertu de l'art. 224 ou à la fiducie résultant de l'application de l'art. 227 de la *LIR*, de même qu'à toute mesure fondée sur l'art. 317 de la *Loi sur la taxe d'accise*. Par conséquent, il a rendu un jugement déclaratoire confirmant le droit de First Vancouver de recouvrer les sommes déjà payées au ministre par Canada Safeway, à l'exception de celles correspondant aux deux comptes affacturés après le 10 février 1999, avec dépens.

B. *Cour d'appel de la Saskatchewan*, [2000] 8 W.W.R. 386

Dans une décision très succincte rendue de vive voix, la Cour d'appel de la Saskatchewan a rejeté l'appel du ministre et l'appel incident de First Vancouver, avec dépens dans les deux cas, concluant que le juge de première instance n'avait pas interprété erronément les dispositions législatives en cause ni commis d'erreur en appliquant ces dispositions aux faits de l'espèce.

V. Les questions en litige

- A. Les biens acquis par un employeur après son défaut de verser les retenues à la source (les « biens postérieurement acquis ») sont-ils assujettis à la fiducie réputée prévue par le par. 227(4.1) de la *LIR*?
- B. La fiducie réputée prévue par le par. 227(4.1) de la *LIR* continue-t-elle de s'appliquer aux biens aliénés à titre onéreux par le débiteur fiscal?

VI. Analyse

A. *Contexte général et application de la fiducie réputée prévue par le par. 227(4.1)*

Les tribunaux ont reconnu que les retenues à la source sont « au cœur » de la procédure de

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in Canada: see *Pembina on the Red Development Corp. v. Triman Industries Ltd.* (1991), 85 D.L.R. (4th) 29 (Man. C.A.), at p. 51, *per* Lyon J.A. (dissenting), quoted with approval by Gonthier J. (dissenting on another issue) in *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411, at para. 36. Because of the importance of collecting source deductions, the legislation in question gives the Minister the vehicle of the deemed trust to recover employee tax deductions which employers fail to remit to the Minister.

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It has also been noted that, in contrast to a tax debtor's bank which is familiar with the tax debtor's business and finances, the Minister does not have the same level of knowledge of the tax debtor or its creditors, and cannot structure its affairs with the tax debtor accordingly. Thus, as an "involuntary creditor", the Minister must rely on its ability to collect source deductions under the *ITA*: *Pembina on the Red Development*, *supra*, at pp. 33-34, *per* Scott C.J.M., approved by Cory J. in *Alberta (Treasury Branches)*, *supra*, at paras. 16-18. For the above reasons, under the terms of the *ITA*, the Minister has been given special priority over other creditors to collect unremitted taxes.

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This Court had occasion to interpret the deemed trust provisions in *Sparrow Electric*, *supra*. At that time, the relevant provisions were ss. 227(4) and 227(5) of the *ITA* which read as follows:

227. . . .

(4) Every person who deducts or withholds any amount under this Act shall be deemed to hold the amount so deducted or withheld in trust for Her Majesty.

(5) Notwithstanding any provision of the *Bankruptcy Act*, in the event of any liquidation, assignment, receivership or bankruptcy of or by a person, an amount equal to any amount

perception de l'impôt sur le revenu au Canada : voir *Pembina on the Red Development Corp. c. Triman Industries Ltd.* (1991), 85 D.L.R. (4th) 29 (C.A. Man.), p. 51, le juge Lyon (dissident), cité favorablement par le juge Gonthier (dissident quant à une autre question) dans l'arrêt *Banque Royale du Canada c. Sparrow Electric Corp.*, [1997] 1 R.C.S. 411, par. 36. Étant donné l'importance de la perception des retenues à la source, la loi dote le ministre du mécanisme de la fiducie réputée pour lui permettre de recouvrer l'impôt que l'employeur déduit du salaire de l'employé, mais omet de lui verser.

Les tribunaux ont également signalé que, contrairement à la banque du débiteur fiscal, qui a la chance de se familiariser avec les affaires et la situation financière de ce dernier, le ministre ne connaît pas aussi bien le débiteur fiscal ni ses créanciers et ne peut organiser ses affaires en conséquence. À titre de « créancier involontaire », le ministre doit donc s'en remettre aux moyens que lui donne la *LIR* de percevoir les retenues à la source : *Pembina on the Red Development*, précité, p. 33-34, le juge en chef Scott, approuvé par le juge Cory dans *Alberta (Treasury Branches)*, précité, par. 16-18. C'est pourquoi la *LIR* accorde au ministre la priorité de rang sur les autres créanciers pour la perception des versements d'impôt et de taxes en souffrance.

Notre Cour a eu l'occasion d'interpréter les dispositions relatives à la fiducie réputée dans l'affaire *Sparrow Electric*, précitée. Les dispositions en cause à l'époque étaient les par. 227(4) et (5) de la *LIR*, dont voici le libellé :

227. . . .

(4) Toute personne qui déduit ou retient un montant quelconque en vertu de la présente loi est réputée retenir le montant ainsi déduit ou retenu en fiducie pour Sa Majesté.

(5) Malgré la *Loi sur la faillite*, en cas de liquidation, cession, mise sous séquestre ou faillite d'une personne, un montant égal à l'un ou l'autre des montants suivants est considéré comme tenu séparé et ne formant pas partie du patrimoine visé par la liquidation, cession, mise sous séquestre ou faillite, que ce montant ait été ou non, en fait, tenu séparé des propres fonds de la personne ou des éléments du patrimoine :

(a) deemed by subsection (4) to be held in trust for Her Majesty, . . .

shall be deemed to be separate from and form no part of the estate in liquidation, assignment, receivership or bankruptcy, whether or not that amount has in fact been kept separate and apart from the person's own moneys or from the assets of the estate.

In *Sparrow Electric*, both Royal Bank and the Minister claimed an interest in the proceeds of inventory of the tax debtor. In characterizing the nature of the deemed trust provisions, Gonthier J. (dissenting, but not on this issue) stated at para. 34 that, even if collateral was subject to a fixed charge at the time of a triggering event such as bankruptcy or liquidation, the deemed trust operated to attach the Minister's interest to such collateral as long as it was not subject to the fixed charge at the time the source deductions were made:

Thus, s. 227(5) [now s. 227(4.1)] alternatively permits Her Majesty's interest to attach retroactively to the disputed collateral if the competing security interest has attached after the deductions giving rise to Her Majesty's claim in fact occurred. Conceptually, the s. 227(5) deemed trust allows Her Majesty's claim to go back in time and attach its outstanding s. 227(4) interest to the collateral before that collateral became subject to a fixed charge. [Emphasis in original.]

Royal Bank's interest was characterized as a fixed and specific charge over the inventory of the tax debtor. This had the effect of making the bank the legal owner of inventory as it came into possession of the tax debtor, subject to the debtor's equitable right of redemption. The majority of the Court concluded that, since the inventory was subject to the bank's security interest before the deductions giving rise to the deemed trust occurred, the bank's interest attached to the inventory in priority to Her Majesty's interest under the deemed trust.

However, in reaching this conclusion, the majority of the Court noted at para. 112 that Parliament

a) le montant réputé, selon le paragraphe (4), être détenu en fiducie pour Sa Majesté;

Dans l'affaire *Sparrow Electric*, la Banque Royale et le ministre prétendaient tous deux avoir droit au produit de la vente des biens figurant dans l'inventaire du débiteur fiscal. Dans son analyse de la nature des dispositions relatives à la fiducie réputée, le juge Gonthier (dissident, mais pas sur ce point) a dit, au par. 34, que même si le bien donné en garantie est grevé d'un privilège fixe lorsque survient un événement déclencheur comme la faillite ou la liquidation, la fiducie réputée a pour effet de rattacher le droit du ministre à ce bien donné en garantie à condition qu'il n'ait pas été grevé du privilège fixe au moment où les retenues à la source ont été faites :

Ainsi, le par. 227(5) [maintenant le par. 227(4.1)] permet subsidiairement de rattacher rétroactivement le droit de Sa Majesté au bien en litige donné en garantie, si la garantie concurrente s'est concrétisée après que les déductions à l'origine de la créance de Sa Majesté eurent été faites. Sur le plan conceptuel, la fiducie réputée, visée au par. 227(5), permet à la créance de Sa Majesté de s'appliquer rétroactivement et de rattacher le droit qu'elle possède en vertu du par. 227(4) au bien donné en garantie avant qu'il devienne grevé d'un privilège fixe. [Souligné dans l'original.]

Le droit de la Banque Royale a été qualifié de privilège fixe et spécifique sur les biens figurant dans l'inventaire du débiteur fiscal. Ainsi, la banque devenait légalement propriétaire des biens qui se retrouvaient en la possession du débiteur fiscal, sous réserve du droit de rachat que l'équité conférait à ce dernier. Comme la garantie de la banque grevait déjà les biens figurant dans l'inventaire lorsque les retenues à l'origine de la fiducie réputée avaient été faites, les juges majoritaires de notre Cour sont arrivés à la conclusion que le droit de la banque sur les biens figurant dans l'inventaire avait priorité de rang sur le droit de Sa Majesté découlant de la fiducie réputée.

Toutefois, en tirant cette conclusion, les juges majoritaires de notre Cour ont fait remarquer que le

was free to grant absolute priority to the deemed trust by adopting the appropriate language:

Finally, I wish to emphasize that it is open to Parliament to step in and assign absolute priority to the deemed trust. A clear illustration of how this might be done is afforded by s. 224(1.2) *ITA*, which vests certain moneys in the Crown “notwithstanding any security interest in those moneys” and provides that they “shall be paid to the Receiver General in priority to any such security interest”. All that is needed to effect the desired result is clear language of that kind.

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In response to *Sparrow Electric*, the deemed trust provisions were amended in 1998 (retroactively to 1994) to their current form. Most notably, the words “notwithstanding any security interest . . . in the amount so deducted or withheld” were added to s. 227(4). As well, s. 227(4.1) (formerly s. 227(5)) expanded the scope of the deemed trust to include “property held by any secured creditor . . . that but for a security interest . . . would be property of the person”. Section 227(4.1) was also amended to remove reference to the triggering events of liquidation, bankruptcy, etc., instead deeming property of the tax debtor and of secured creditors to be held in trust “at any time an amount deemed by subsection (4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act”. Finally, s. 227(4.1) now explicitly deems the trust to operate “from the time the amount was deducted or withheld”.

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It is apparent from these changes that the intent of Parliament when drafting ss. 227(4) and 227(4.1) was to grant priority to the deemed trust in respect of property that is also subject to a security interest regardless of when the security interest arose in relation to the time the source deductions were made or when the deemed trust takes effect. This is clear from the use of the words “notwithstanding any security interest” in both ss. 227(4) and 227(4.1). In other words, Parliament has reacted to the

législateur pouvait accorder la priorité absolue à la fiducie réputée en recourant au libellé approprié (au par. 112) :

Finalement, je tiens à souligner qu’il est loisible au législateur d’intervenir et d’accorder la priorité absolue à la fiducie réputée. Le paragraphe 224(1.2) *LIR* illustre clairement comment cela pourrait se faire. Cette disposition attribue à Sa Majesté certaines sommes « malgré toute autre garantie au titre de ce[s] somme[s] », et prévoit qu’elles « doi[vent] être payée[s] au receveur général par priorité sur toute autre garantie au titre de ce[s] somme[s] ». Pour obtenir le résultat souhaité, il suffit d’utiliser des termes aussi clairs.

Le législateur a donné suite à l’arrêt *Sparrow Electric* en modifiant les dispositions relatives à la fiducie réputée en 1998 (avec effet rétroactif en 1994) pour adopter leur libellé actuel. Plus particulièrement, les mots « malgré toute autre garantie [. . .] le concernant » ont été ajoutés au par. 227(4). De même, le par. 227(4.1) (l’ancien par. 227(5)) a accru la portée de la fiducie réputée de façon qu’elle englobe les « biens détenus par son créancier garanti [. . .] qui, en l’absence d’une garantie [. . .] seraient ceux de la personne ». Le paragraphe 227(4.1) a également été modifié par la suppression du renvoi aux événements déclencheurs (liquidation, faillite, etc.), le législateur établissant plutôt une présomption selon laquelle les biens du débiteur fiscal et de ses créanciers garantis sont détenus en fiducie « en cas de non-versement à Sa Majesté, selon les modalités et dans le délai prévus par la présente loi, d’un montant qu’une personne est réputée par le paragraphe (4) détenir en fiducie pour Sa Majesté ». Enfin, le par. 227(4.1) précise désormais que les biens sont réputés être détenus en fiducie « à compter du moment où le montant est déduit ou retenu ».

Ces modifications démontrent que le législateur a voulu que les par. 227(4) et (4.1) accordent la priorité de rang à la fiducie réputée lorsque les biens sont par ailleurs grevés d’une garantie, que celle-ci ait pris effet avant ou après les retenues à la source ou l’application de la fiducie réputée. C’est ce qui ressort clairement de l’expression « malgré toute autre garantie » employée aux par. 227(4) et (4.1). En d’autres termes, vu la manière dont les dispositions relatives à la fiducie réputée avaient été interprétées

interpretation of the deemed trust provisions in *Sparrow Electric*, and has amended the provisions to grant priority to the deemed trust in situations where the Minister and secured creditors of a tax debtor both claim an interest in the tax debtor's property.

As noted above, Parliament has also amended the deemed trust provisions in regard to the timing of the trust. Reference to events triggering operation of the deemed trust such as liquidation or bankruptcy have been removed. Section 227(4.1) now states that the deemed trust begins to operate “at any time [source deductions are] . . . not paid to Her Majesty in the manner and at the time provided under this Act” (emphasis added). Thus, the deemed trust is now triggered at the moment a default in remitting source deductions occurs. Further, pursuant to s. 227(4.1)(a), the trust is deemed to be in effect “from the time the amount was deducted or withheld”. Thus, while a default in remitting source deductions triggers the operation of the trust, the trust is deemed to have been in existence retroactively to the time the source deductions were made. It is evident from these changes that Parliament has made a concerted effort to broaden and strengthen the deemed trust in order to facilitate the collection efforts of the Minister.

In light of this overview of the context and operation of the s. 227(4.1) deemed trust, it remains to be determined, first, whether the trust captures property that the tax debtor acquires after the trust is deemed to come into existence, and, second, whether the sale by the tax debtor of trust property effectively releases such property from the purview of the deemed trust.

B. Does the Deemed Trust Attach to After-Acquired Property of the Tax Debtor?

As noted above, in coming to the conclusion that the deemed trust did not attach to after-acquired property of the tax debtor, the courts below relied on the B.C. Supreme Court decision in *Tuxedo Transport*, *supra*. That decision has since been overturned by the B.C. Court of Appeal: *Royal Bank v.*

dans l'affaire *Sparrow Electric*, le législateur les a modifiées de façon à accorder la priorité de rang à la fiducie réputée lorsque le ministre et des créanciers garantis font valoir concurremment un droit sur les biens du débiteur fiscal.

Comme je l'indique précédemment, le législateur a également modifié le moment auquel la fiducie se matérialise. Tout renvoi à un événement déclencheur emportant l'application de la fiducie, comme la liquidation ou la faillite, a été supprimé. Le paragraphe 227(4.1) dispose désormais qu'une fiducie réputée s'applique « en cas de non-versement [de retenues à la source] à Sa Majesté, selon les modalités et dans le délai prévus par la présente loi » (je souligne). Ainsi, l'application de la fiducie réputée est désormais enclenchée dès qu'il y a manquement à l'obligation de verser les retenues à la source. En outre, suivant l'al. 227(4.1)a), les biens sont réputés être détenus en fiducie « à compter du moment où le montant est déduit ou retenu ». Par conséquent, bien que l'omission de verser les retenues à la source enclenche l'application de la fiducie, cette dernière est réputée prendre effet rétroactivement au moment où les retenues à la source ont été faites. Ces modifications révèlent que le législateur a manifestement voulu consolider la fiducie réputée et en accroître la portée afin de faciliter les opérations de recouvrement du ministre.

Après avoir fait brièvement état du fonctionnement de la fiducie réputée prévue par le par. 227(4.1) et du contexte dans lequel elle s'inscrit, il reste à déterminer, premièrement, si la fiducie s'applique aux biens dont le débiteur fiscal fait l'acquisition une fois qu'elle est réputée exister et, deuxièmement, si un bien détenu en fiducie échappe à la fiducie réputée lorsqu'il est vendu à un tiers.

B. La fiducie réputée s'applique-t-elle aux biens postérieurement acquis par le débiteur fiscal?

Rappelons qu'en arrivant à la conclusion que la fiducie englobe les biens postérieurement acquis par le débiteur fiscal, les tribunaux inférieurs se sont fondés sur la décision *Tuxedo Transport* de la Cour suprême de la Colombie-Britannique. Cette décision a depuis été infirmée par la Cour

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Tuxedo Transport Ltd. (2000), 79 B.C.L.R. (3d) 1. In that case, Donald J.A., speaking for the court, characterized the trust as follows, at para. 11:

Subsection 227(4) makes the trust operative at the time of the deductions. Subsection 227(4.1) acts to ensure that if deductions are still unpaid when assets come into the hands of the taxpayer, those assets will be deemed to be part of the trust. Beginning with the date the deductions are made the trust continues forward in time and attaches to any property of the debtor as it comes into existence.

The Court of Appeal based this conclusion on the plain meaning of the language used in the statute, and was bolstered by its view that, to hold otherwise, would lead to “unacceptable results” (at para. 15), such as the following:

Take the example of a company that makes a payroll deduction one day and receives a large payment the next. The company could carry on business using the unremitted deductions for its operating expenses and the deemed trust could not attach to the monies received shortly after the payday.

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I am in essential agreement with the view taken by the B.C. Court of Appeal in *Tuxedo Transport*. In my view, the plain language of the provisions leads to the inevitable conclusion that the deemed trust attaches to after-acquired property. Most notably, s. 227(4.1) refers expressly to the “proceeds” of property which is subject to the trust and directs that “the proceeds of such property shall be paid to the Receiver General in priority to all . . . security interests [in the property]”. In addition, the section states that where, at any time, the debtor is in default to the Minister, that “property of the person . . . equal in value to the amount so deemed to be held in trust is deemed” to be held in trust for Her Majesty (emphasis added). This language implies that Parliament has contemplated a fluidity with respect to the assets of the debtor to which the trust attaches. In particular, reference to the “proceeds” of trust property is an explicit indication that property acquired through the disposition of trust property by the tax debtor after

d’appel de la Colombie-Britannique dans *Royal Bank c. Tuxedo Transport Ltd.* (2000), 79 B.C.L.R. (3d) 1. S’exprimant au nom de la Cour d’appel, le juge Donald a dit ce qui suit au sujet de la fiducie, au par. 11 :

[TRADUCTION] Suivant le paragraphe 227(4), la fiducie prend effet dès le moment de la retenue. Lorsqu’un montant retenu est toujours en souffrance au moment où des éléments d’actif se retrouvent en la possession du contribuable, le paragraphe 227(4.1) assujettit ces éléments à la fiducie réputée. La fiducie s’applique de façon continue à compter du moment où la retenue est effectuée et elle s’applique à tous les biens du débiteur au fur et à mesure qu’il en devient propriétaire.

La Cour d’appel a appuyé cette conclusion sur le sens ordinaire des mots employés dans la loi. Elle l’estimait d’autant plus fondée que toute autre décision aurait des [TRADUCTION] « conséquences inacceptables » (au par. 15) :

[TRADUCTION] Prenons l’exemple d’une société qui effectue une retenue à la source un jour et touche un montant important le lendemain. La société pourrait exercer ses activités en affectant le montant de la retenue à ses frais d’exploitation, et les sommes touchées peu après le jour de la paie échapperaient à la fiducie réputée.

Je partage pour l’essentiel le point de vue exprimé par la Cour d’appel de la Colombie-Britannique dans *Tuxedo Transport*. À mon sens, l’on ne peut que conclure, à partir du libellé clair des dispositions en cause, que la fiducie réputée s’applique aux biens postérieurement acquis. En particulier, le par. 227(4.1) renvoie expressément au « produit » découlant des biens détenus en fiducie et prescrit que « le produit découlant de ces biens est payé au receveur général par priorité sur une [. . .] garantie [grevant ces biens] ». De plus, selon cette disposition, en cas de non-versement d’un montant au ministre par le débiteur, « les biens de la personne [. . .], d’une valeur égale à ce montant sont réputés » être détenus en fiducie pour Sa Majesté (je souligne). Ce libellé laisse entendre que le législateur a envisagé une certaine fluidité des biens du débiteur fiscal auxquels s’applique la fiducie. Plus particulièrement, la mention du « produit » des biens détenus en fiducie indique clairement qu’un bien acquis au moyen de l’aliénation par le débiteur d’un bien détenu en

the trust arises is included within the ambit of the trust.

I find additional support for this view in the fact that s. 227(4.1) deems the trust to be in effect “at any time [source deductions are] not paid to Her Majesty in the manner and at the time provided under this Act” (emphasis added). Further, in the event of default, the trust extends back “from the time the amount was deducted or withheld by the person”. These words indicate that the intent of the section is to allow the trust to operate in a continuous manner, attaching to any property which comes into the hands of the debtor as long as the debtor continues to be in default, and extending back in time to the moment of the initial deduction. The language Parliament has chosen belies the suggestion that the deemed trust only captures property of the tax debtor in existence at some particular moment in time.

I find no contradiction in coming to the conclusion that after-acquired property can be subject to the trust even though the trust reaches back in time to a point before the acquisition of the property by the tax debtor. This is because the property so acquired will presumably have been taken in exchange for property of equal value which the debtor has disposed of. Thus, the acquired property can simply be viewed as replacing the initial subject matter of the trust. Moreover, since the trust is a deemed statutory trust, it is not governed by common law requirements, and, in this regard, the ongoing acquisition of trust property does not present a conceptual difficulty. I emphasize that it is open to Parliament to characterize the trust in whatever way it chooses; it is not bound by restraints imposed by ordinary principles of trust law.

In addition to being supported by the clear wording of the provisions, this view accords with the purpose of the s. 227(4.1) deemed trust. In this respect, I agree with the B.C. Court of Appeal that Parliament could not have intended an employer who is in default one day and comes into a significant payment the next to thereby largely escape the operation of the deemed trust and continue to use the misappropriated funds in its business dealings.

fiducie après la matérialisation de la fiducie est assujetti à celle-ci.

Mon opinion s’appuie en outre sur le fait que, selon le par. 227(4.1), la fiducie est réputée s’appliquer « en cas de non-versement [de retenues à la source] à Sa Majesté, selon les modalités et dans le délai prévus par la présente loi » (je souligne). Par ailleurs, en cas de défaut, la fiducie a un effet rétroactif « à compter du moment où le montant est déduit ou retenu ». L’emploi de ces mots révèle l’intention du législateur de faire en sorte que la fiducie s’applique de manière continue, qu’elle vise tout bien qui se retrouve en la possession du débiteur (tant que ce dernier ne remédie pas au défaut) et qu’elle ait un effet rétroactif au moment de la retenue initiale. Le libellé retenu par le législateur écarte l’hypothèse voulant que la fiducie réputée ne s’applique qu’aux biens appartenant au débiteur fiscal à un moment précis.

Il ne me paraît pas contradictoire de conclure qu’un bien postérieurement acquis peut être assujetti à la fiducie réputée même si elle s’applique à compter d’un moment antérieur à cette acquisition. On peut en effet présumer que le bien postérieurement acquis a été obtenu en échange d’un bien d’égale valeur dont le débiteur fiscal s’est départi. Il est donc possible de considérer simplement le bien acquis comme remplaçant l’objet initial de la fiducie. Qui plus est, la fiducie réputée étant établie par la loi, elle n’est pas assujettie aux exigences de la common law et, à cet égard, l’acquisition continue de biens détenus en fiducie ne pose pas de difficulté conceptuelle. J’insiste sur le fait que le législateur peut qualifier la fiducie comme il l’entend; il n’est pas lié par les contraintes découlant des principes habituels du droit des fiducies.

En plus de s’appuyer sur les termes clairs des dispositions en cause, ce point de vue est conforme à l’objectif de la fiducie réputée prévue par le par. 227(4.1). Sur ce point, je partage l’avis de la Cour d’appel de la Colombie-Britannique selon lequel le législateur n’a pu vouloir que l’employeur qui manque à ses obligations un jour et qui touche une somme importante le lendemain échappe en grande partie à l’application de la fiducie réputée et

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This would not accord with the Parliamentary intention to grant broad powers of collection to the Minister under the deemed trust.

36 As well, if the deemed trust were limited to property held by the employer at the time of the default, the Minister would have difficulty establishing that any particular part of the employer's property was subject to the deemed trust, and would be forced to engage in a significant degree of tracing. However, as noted by Gonthier J. in *Sparrow Electric*, at para. 37, one of the purposes of the deemed trust is to eliminate the need for tracing:

After considering the matter, it is my view that it is not accurate to describe the mechanism of s. 227(5) as a means of "tracing"; indeed, it would seem that this subsection is antithetical to tracing in the traditional sense, to the extent that it requires no link at all between the subject matter of the trust and the fund or asset which the subject matter is being traced into. . . . [Emphasis added.]

37 This observation holds true despite the subsequent amendments to the deemed trust provisions. As with the previous enactment of the section, s. 227(4.1) refers to property "equal in value to the amount so deemed to be held in trust" (emphasis added), and states that this property is subject to the trust "whether or not the property has in fact been kept separate and apart". Indeed, if anything, by deeming the trust to be effective "at any time" the debtor is in default, the amendments serve to strengthen the conclusion that the Minister is not required to trace its interest to assets which belonged to the tax debtor at the time the source deductions were made. In this regard, the remarks of Gonthier J. in *Sparrow Electric*, at para. 31, are apposite:

The trust is not in truth a real one, as the subject matter of the trust cannot be identified from the date of creation of the trust. . . . However, s. 227(5) [now s. 227(4.1)] has the effect of revitalizing the trust whose subject matter has lost all identity. This identification of the subject matter of the trust therefore occurs *ex post facto*. In this respect,

continue d'affecter les fonds détournés à l'exploitation de son entreprise. Une telle situation irait à l'encontre de l'intention du législateur d'accorder au ministre de grands pouvoirs de perception au moyen de la fiducie réputée.

De même, si seuls les biens possédés par l'employeur au moment du défaut étaient visés par la fiducie, le ministre aurait du mal à établir qu'un bien en particulier de l'employeur tombe sous le coup de la fiducie réputée et il devrait déployer des efforts importants pour retracer l'origine du bien. Toutefois, comme l'a signalé le juge Gonthier au par. 37 de l'arrêt *Sparrow Electric*, l'un des objectifs de la fiducie réputée consiste à éliminer la nécessité de retracer l'origine d'un bien :

Après avoir examiné cette question, je suis d'avis qu'il n'est pas exact de qualifier le mécanisme du par. 227(5) de moyen de « retracer l'origine d'un bien »; en fait, il semblerait que le sens de ce paragraphe est à l'opposé du sens traditionnel du mot « retracer », dans la mesure où il ne nécessite aucun lien entre l'objet de la fiducie et le fonds ou l'actif auquel on rattache cet objet . . . [Je souligne.]

Cette remarque vaut toujours malgré les modifications apportées par la suite aux dispositions relatives à la fiducie réputée. Tout comme la disposition qu'il a remplacée, le par. 227(4.1) renvoie à des biens « d'une valeur égale [au] montant [que la personne est réputée détenir en fiducie] » (je souligne) et il précise que ces biens sont assujettis à la fiducie « [qu'ils] aient été ou non tenus séparés ». De toute façon, comme elles prévoient l'application de la fiducie réputée en cas de défaut du débiteur (en anglais, « *at any time* »), les modifications appuient la conclusion que le ministre n'a pas à rattacher son droit aux biens qui appartenaient au débiteur fiscal lorsque les retenues à la source ont été faites. Sous ce rapport, les observations formulées par le juge Gonthier au par. 31 de l'arrêt *Sparrow Electric* sont à-propos :

À vrai dire, la fiducie n'est pas réelle, étant donné que son objet ne peut être identifié à compter de la date de création de la fiducie [. . .] Cependant, le par. 227(5) [maintenant le par. 227(4.1)] a pour effet de revitaliser la fiducie dont l'objet a perdu toute identité. L'identification de l'objet de la fiducie est donc faite après coup. À cet égard, je suis

I agree with the conclusion of Twaddle J.A. in *Roynat*, *supra*, where he states the effect of s. 227(5) as follows, at p. 647: “Her Majesty has a statutory right of access to whatever assets the employer then has, out of which to realize the original trust debt due to Her”. [Emphasis added.]

The reasoning adopted by the courts below would require substantial tracing, as the deemed trust would be restricted to include only property held by the tax debtor on the date the source deductions were made. With respect, this is not in accord with the language or purpose of the deemed trust.

In conclusion, based on the plain language of ss. 227(4) and 227(4.1) as supported by the purpose of the provisions and intentions of Parliament, the deemed trust created by these sections encompasses property which comes into the hands of the tax debtor after the trust arises. As a result, when Great West came into possession of the Canada Safeway invoices, the deemed trust, which had already arisen as a consequence of Great West’s default in remittances, successfully attached to those invoices.

C. Does the Deemed Trust Continue to Operate on Property Which Has Been Sold by the Tax Debtor to Third Parties?

As a preliminary matter, I note that the Minister does not take issue with the chambers judge’s holding, following *Alberta (Treasury Branches)*, *supra*, that First Vancouver is not a secured creditor of Great West, but a third party purchaser of book debts. Thus, the question of the priority of secured creditors does not arise. The issue here is whether the alienation by Great West of the Canada Safeway invoices, which were subject to the deemed trust under ss. 227(4) and 227(4.1), served to release that property from the scope of the trust.

In my view, the scheme envisioned by Parliament in enacting ss. 227(4) and 227(4.1) is that the deemed trust is in principle similar to a floating charge over all the assets of the tax debtor in the amount of the default. As noted above, the trust

d’accord avec la conclusion que le juge Twaddle tire dans l’arrêt *Roynat*, précité, lorsqu’il affirme, à la p. 647, au sujet de l’effet du par. 227(5), que [TRADUCTION] « la Loi confère à Sa Majesté un droit d’accès à tous les éléments d’actif, quels qu’ils soient, que l’employeur possède alors, au moyen desquels elle peut réaliser la fiducie initiale dont elle est bénéficiaire ». [Je souligne.]

Si les jugements des tribunaux inférieurs étaient maintenus, le ministre devrait consentir des efforts substantiels pour retracer l’origine des biens, car la fiducie réputée viserait seulement les biens que le débiteur fiscal possédait le jour où il a fait les retenues à la source. À mon humble avis, un tel résultat serait incompatible avec le libellé des dispositions en cause et avec l’objectif de la fiducie réputée.

En conclusion, vu le libellé clair des par. 227(4) et (4.1), appuyé par leur objectif et par l’intention du législateur, la fiducie réputée qu’ils créent englobe les biens qui se retrouvent en la possession du débiteur fiscal à compter de sa matérialisation. Par conséquent, les factures de Canada Safeway qui se sont retrouvées en la possession de Great West sont effectivement devenues assujetties à la fiducie réputée, qui s’était déjà matérialisée en raison des non-versements par Great West.

C. La fiducie réputée continue-t-elle de s’appliquer à un bien que le débiteur fiscal a vendu à un tiers?

De prime abord, je constate que le ministre ne conteste pas la conclusion du juge en chambre, fondée sur l’arrêt *Alberta (Treasury Branches)*, précité, selon laquelle First Vancouver n’est pas un créancier garanti de Great West, mais le tiers acquéreur de ses créances comptables. La question de la priorité de rang des créanciers garantis ne se pose donc pas. La question à trancher en l’espèce est de savoir si la cession, par Great West, des factures de Canada Safeway, qui étaient détenues en fiducie en vertu des par. 227(4) et (4.1), a eu pour effet de les soustraire à l’application de la fiducie réputée.

Selon moi, le mécanisme que le législateur avait en tête en adoptant les par. 227(4) et (4.1) était l’établissement d’une fiducie réputée s’apparentant, sur le plan des principes, à une charge flottante grevant, jusqu’à concurrence du montant en souffrance,

has priority from the time the source deductions are made, and remains in existence as long as the default continues. However, the trust does not attach specifically to any particular assets of the tax debtor so as to prevent their sale. As such, the debtor is free to alienate its property in the ordinary course, in which case the trust property is replaced by the proceeds of sale of such property.

41 This interpretation finds support in both the words used in ss. 227(4) and 227 (4.1) and the purpose of the deemed trust. In my opinion, s. 227(4.1) explicitly restricts the trust to property owned by the tax debtor by stating that the property of the tax debtor held in trust for Her Majesty “is property beneficially owned by Her Majesty . . . and the proceeds of such property shall be paid to the Receiver General” (emphasis added). This reference to the proceeds of trust property is an acknowledgment in the very words of the *ITA* that Parliament contemplated that a tax debtor is free to alienate its property and that, when it does so, the trust releases the disposed-of property and attaches to the proceeds of sale. In addition, as discussed above, the trust does not attach to any specific property. Instead, by s. 227(4.1), the trust attaches to “property of the [tax debtor] . . . equal in value to the amount [of the tax debt]”. This language indicates, first, that the subject matter of the trust is focussed solely on the tax debtor’s property, and, second, that it is anticipated that the character of the tax debtor’s property will change over time.

42 Indeed, it is the logical corollary to my conclusion on the first issue, namely that the deemed trust attaches to after-acquired property of the tax debtor, that the trust also releases property alienated by the tax debtor. In this way, when an asset is sold by the tax debtor, the deemed trust ceases to operate over that asset; however, the property received by the tax debtor in exchange becomes subject to the deemed trust. As such, the trust is neither depleted nor enhanced; it simply floats over the property belonging to the tax debtor at any given time, for as long as the default in remittances continues.

l’ensemble des éléments d’actif du débiteur fiscal. Comme je l’ai déjà mentionné, la fiducie a la priorité de rang à compter des retenues à la source et continue de s’appliquer tant qu’il n’est pas remédié au défaut. Cependant, la fiducie ne vise pas certains biens en particulier du débiteur fiscal de façon à en empêcher la vente. Le débiteur est donc libre de se départir d’un bien détenu en fiducie dans le cadre normal de ses activités, ce bien étant alors remplacé par le produit de la vente.

Cette interprétation trouve appui tant dans le texte des par. 227(4) et (4.1) que dans l’objectif de la fiducie réputée. À mon avis, le par. 227(4.1) limite expressément l’application de la fiducie aux biens appartenant au débiteur fiscal en précisant que les biens du débiteur fiscal détenus en fiducie pour Sa Majesté « sont des biens dans lesquels Sa Majesté a un droit de bénéficiaire [. . .] et le produit découlant de ces biens est payé au receveur général » (je souligne). Cette mention du produit découlant des biens détenus en fiducie confirme explicitement dans la *LIR* l’intention du législateur de faire en sorte que le débiteur fiscal puisse aliéner ses biens et que, en cas d’aliénation, les biens en cause cessent d’être assujettis à la fiducie et soient remplacés par le produit de la vente. Aussi, je le répète, la fiducie ne vise aucun bien précis. Suivant le par. 227(4.1), elle vise plutôt « les biens [du débiteur fiscal . . .] d’une valeur égale [au] montant [de la dette fiscale] ». Ce libellé indique premièrement que l’objet de la fiducie s’entend uniquement des biens du débiteur fiscal et, deuxièmement, qu’il est à prévoir que la nature des biens du débiteur fiscal changera avec le temps.

En fait, le corollaire logique de ma conclusion quant à la première question, savoir que la fiducie réputée s’applique aux biens postérieurement acquis par le débiteur fiscal, est que, à l’inverse, la fiducie cesse de s’appliquer aux biens dont il se départit. Ainsi, lorsque le débiteur fiscal vend un élément de son actif, la fiducie réputée cesse de s’appliquer à cet élément, mais la contrepartie touchée est dès lors détenue en fiducie. Il n’y a donc ni appauvrissement ni enrichissement de la fiducie; celle-ci s’applique simplement aux biens qui, à un moment ou à un autre, appartiennent au débiteur fiscal, tant qu’il ne remédie pas au défaut.

Although it would be open to Parliament to extend the trust to property alienated by the tax debtor, such an interpretation is simply not supported by the language of the *ITA*. It is significant in this regard that purchasers for value are not included in ss. 227(4) and 227(4.1) whereas secured creditors are. In *Pembina on the Red Development*, *supra*, Twaddle J.A. took note of the “long-established principle of law that, in the absence of clear language to the contrary, a tax on one person cannot be collected out of property belonging to another” (p. 46). In *Sparrow Electric*, *supra*, at para. 39, Gonthier J. also referred to this principle, stating that:

[T]his provision does not permit Her Majesty to attach Her beneficial interest to property which, at the time of liquidation, assignment, receivership or bankruptcy, in law belongs to a party other than the tax debtor. Section 227(4) and (5) are manifestly directed towards the property of the tax debtor, and it would be contrary to well-established authority to stretch the interpretation of s. 227(5) [now s. 227(4.1)] to permit the expropriation of the property of third parties who are not specifically mentioned in the statute. [Emphasis added.]

Thus, in the absence of an express reference to third party purchasers, there is no basis upon which to allow the Minister’s interest in the tax debtor’s property to continue once such property has been sold to third parties.

Although it is not necessary to resort to policy arguments, in my view it is worthwhile noting that to allow s. 227(4.1) to override the rights of purchasers for value would result in an unprecedented level of uncertainty. In fact, in oral argument, counsel for the Minister conceded that such an interpretation would, in theory, allow the Minister to go so far as to assert an interest in assets sold by tax debtors to ordinary consumers. In my view, it is no exaggeration to say that adopting this interpretation of the deemed trust would have a general chilling effect on commercial transactions.

Furthermore, to allow the deemed trust to attach to property sold to third parties would be more likely to hinder, rather than help, the Minister’s collection

Le législateur aurait pu prévoir que les biens aliénés par le débiteur fiscal continuent d’être détenus en fiducie. Or, ce n’est pas ce qui ressort du libellé de la *LIR*. À cet égard, il est révélateur que, contrairement au créancier garanti, l’acquéreur à titre onéreux ne soit pas mentionné aux par. 227(4) et (4.1). Dans l’arrêt *Pembina on the Red Development*, précité, le juge Twaddle a rappelé : [TRADUCTION] « Il est établi depuis longtemps en droit que, en l’absence de termes clairs exprimant le contraire, l’impôt dû par une personne ne peut pas être perçu sur les biens d’une autre personne » (p. 46). Dans *Sparrow Electric*, précité, par. 39, le juge Gonthier a dit ce qui suit au sujet de ce principe :

[C]ette disposition ne permet pas à Sa Majesté de faire valoir son droit à titre bénéficiaire sur un bien qui, au moment de la liquidation, cession, mise sous séquestre ou faillite, appartient à quelqu’un d’autre que le débiteur fiscal. Les paragraphes 227(4) et (5) visent manifestement les biens du débiteur fiscal, et il serait contraire à une jurisprudence bien établie de forcer le sens du par. 227(5) [maintenant le par. 227(4.1)] de manière à permettre l’expropriation des biens de tiers non mentionnés expressément dans la Loi. [Je souligne.]

Partant, en l’absence d’un renvoi exprès au tiers acquéreur, rien ne justifie que le droit accordé au ministre continue de s’appliquer au bien que le débiteur fiscal a vendu à un tiers.

Il n’est pas nécessaire, en l’espèce, de s’en remettre à des arguments de principe, mais il convient à mon avis de signaler que, si on permettait que l’application du par. 227(4.1) l’emporte sur le respect des droits de l’acquéreur à titre onéreux, il en résulterait un degré d’incertitude sans précédent. En fait, lors de sa plaidoirie, l’avocat du ministre a reconnu que, théoriquement, une telle interprétation pourrait même permettre au ministre de faire valoir sa garantie sur un bien vendu par le débiteur fiscal à un simple consommateur. Selon moi, il n’est pas exagéré de dire qu’une telle interprétation des dispositions relatives à la fiducie réputée aurait un effet général dissuasif sur les échanges commerciaux.

De plus, l’application de la fiducie réputée au bien vendu à un tiers serait davantage susceptible de nuire à la perception des créances du ministre que

efforts. For example, in the case at bar, if First Vancouver had thought that it could not purchase Great West's assets free and clear of Her Majesty's claim, it would have been unlikely to have entered into the factoring agreement with Great West. As a result, Her Majesty would not have received the semi-monthly payments of \$10,000 from First Vancouver. More generally, the interpretation advocated by the Minister would likely frustrate the ability of a tax debtor to convert hard assets into cash in order to pay "the proceeds of such property . . . to the Receiver General" as contemplated by s. 227(4.1), because prospective purchasers would fear that the Minister would assert an interest in these assets. The practical effect of this would be to freeze the tax debtor's assets and prevent it from carrying on business. In my view, this is clearly not a result intended by Parliament.

de la faciliter. Par exemple, dans la présente affaire, si First Vancouver avait pensé qu'elle ne pouvait faire l'acquisition des éléments d'actif de Great West francs et quittes de tout droit de Sa Majesté, elle n'aurait vraisemblablement pas conclu l'entente d'affacturage avec Great West et Sa Majesté n'aurait pas touché les versements semi-mensuels de 10 000 \$ effectués par First Vancouver. De manière plus générale, l'interprétation préconisée par le ministre empêcherait vraisemblablement le débiteur fiscal d'échanger des biens durables contre des espèces afin que « le produit découlant de ces biens [soit] payé au receveur général » comme le prévoit le par. 227(4.1), étant donné que les acquéreurs éventuels craindraient que le ministre ne fasse valoir un droit sur ces biens. Il en résulterait dans les faits un gel de l'actif du débiteur fiscal et l'impossibilité, pour ce dernier, d'exercer ses activités. À mon sens, tel n'était manifestement pas l'intention du législateur.

46 In summary, the deemed trust does not operate over assets which a tax debtor has sold in the ordinary course to third party purchasers. As such, once the Canada Safeway invoices had been factored to First Vancouver, the Minister was prevented from asserting its interest in these invoices.

En résumé, la fiducie réputée ne s'applique pas aux biens que le débiteur fiscal a vendus à un tiers dans le cadre normal de ses activités. Ainsi, à partir du moment où les comptes de Canada Safeway ont été affacturés à First Vancouver, le ministre ne pouvait plus faire valoir son droit sur eux.

VII. Conclusion

VII. Conclusion

47 For the foregoing reasons, I would dismiss the appeal with costs.

Pour les motifs qui précèdent, je suis d'avis de rejeter le pourvoi avec dépens.

Appeal dismissed with costs.

Pourvoi rejeté avec dépens.

Solicitor for the appellant: The Attorney General of Canada, Ottawa.

Procureur de l'appelante : Le procureur général du Canada, Ottawa.

Solicitors for the respondent First Vancouver Finance: McKercher McKercher & Whitmore, Saskatoon.

Procureurs de l'intimée First Vancouver Finance : McKercher McKercher & Whitmore, Saskatoon.

TAB 17

2017 MBQB 27

Manitoba Court of Queen's Bench

Manitoba Housing and Renewal Corp. v. Able Eavestroughing Ltd.

2017 CarswellMan 56, 2017 MBQB 27, [2017] 5 C.T.C. 158, [2017] 8
W.W.R. 707, 2017 D.T.C. 5016, 275 A.C.W.S. (3d) 444, 65 C.L.R. (4th) 83

**THE MANITOBA HOUSING AND RENEWAL CORPORATION (Applicant)
and ABLE EAVESTROUGHING LTD., DUNCALFE MECHANICAL LTD.,
NICKEL ELECTRIC LTD., SPRINGFIELD COLONY WORDWORKING LTD.,
UNITED RENTALS OF CANADA LTD., 5927324 MANITOBA LTD., carrying on
business as PROGRESSIVE SANITATION, SUNOVA CREDIT UNION LIMITED,
FALCON CREEK INDUSTRIES INC. and ATTORNEY GENERAL OF CANADA
REPRESENTING THE MINISTER OF NATIONAL REVENUE (Respondents)**

Simonsen J.

Judgment: January 27, 2017

Docket: Winnipeg Centre CI 11-01-74577

Counsel: Allan J. Ladyka, for Applicant

James W. MacLellan, for Guarantee Company of North America and Respondents, Able Eavestroughing Ltd., Duncalfe Mechanical Ltd. and Nickel Electric Ltd.

Sean C. Brennan, for Springfield Colony Woodworking Ltd.

Denyse T. Côté, for Attorney General of Canada

Subject: Civil Practice and Procedure; Contracts; Corporate and Commercial; Income Tax (Federal); Insolvency

Related Abridgment Classifications

Construction law

II Contracts

II.4 Payment of contractors and subcontractors

II.4.h Miscellaneous

Construction law

IV Construction and builders' liens

IV.9 Priorities

IV.9.b Between types of creditors

IV.9.b.xv Miscellaneous

Tax

II Income tax

II.23 Administration and enforcement

II.23.i Collection of tax

II.23.i.x Priorities and superpriorities of Minister

Headnote

Tax --- Income tax — Administration and enforcement — Collection of tax — Priorities and superpriorities of Minister

Issues arose from construction project to residential housing complex in Manitoba — Manitoba Housing and Renewal Corporation (MHRC) retained general contractor and required it to provide and maintain performance bond and labour and material payment bond — Labour and material payment bond was issued by bonding company — MHRC paid general contractor total of \$1,809,662.89 and held back 7.5 percent of amounts payable to general contractors as required under [Builders' Liens Act](#) — Numerous builders' liens were filed by subcontractors, and other subcontractors made demands to MHRC with respect

to fund — After substantial performance of project was achieved, CRA required MHRC to pay all amounts owed to general contractor to receiver general under [s. 224\(1.2\) of Income Tax Act](#) — MHRC commenced interpleader application seeking to pay into court funds held back on project — Since application was filed, bonding company paid outstanding accounts of unpaid contractors and became assignee of their interests — MHRC brought application for order that, upon payment of monies into court, any and all liability it may have with respect to funds be extinguished — Application granted — MHRC had no obligation to pay funds to bonding company or unpaid subcontractors — Under contract, funds were payable to general contractor given that work was completed — However, CRA's requirement to pay took priority over and was entitled to funds that were to be paid into court under interpleader order — Relevant provisions of contract did not create obligation on part of MHRC to pay subcontractors — Private arrangements between MHRC, general contractors and bonding company could not affect rights of Crown under s. 224(1.2) of Act; these rights could not be displaced by private arrangements — There were important policy considerations involved in collection of withholding tax and source deductions, and private arrangements such as this could not interfere with this — By including term in contract giving MHRC option of paying unpaid subcontractors did not intend to give unpaid subcontractors right to sue it.

Construction law --- Contracts — Payment of contractors and subcontractors — Miscellaneous

Issues arose from construction project to residential housing complex in Manitoba — Manitoba Housing and Renewal Corporation (MHRC) retained general contractor and required it to provide and maintain performance bond and labour and material payment bond — Labour and material payment bond was issued by bonding company — MHRC paid general contractor total of \$1,809,662.89 and held back 7.5 percent of amounts payable to general contractors as required under [Builders' Liens Act](#) — Numerous builders' liens were filed by subcontractors, and other subcontractors made demands to MHRC with respect to fund — After substantial performance of project was achieved, CRA required MHRC to pay all amounts owed to general contractor to receiver general under [s. 224\(1.2\) of Income Tax Act](#) — MHRC commenced interpleader application seeking to pay into court funds held back on project — Since application was filed, bonding company paid outstanding accounts of unpaid contractors and became assignee of their interests — MHRC brought application for order that, upon payment of monies into court, any and all liability it may have with respect to funds be extinguished — Application granted — MHRC had no obligation to pay funds to bonding company or unpaid subcontractors — Under contract, funds were payable to general contractor given that work was completed — However, CRA's requirement to pay took priority over and was entitled to funds that were to be paid into court under interpleader order — Relevant provisions of contract did not create obligation on part of MHRC to pay subcontractors — By including term in contract giving MHRC option of paying unpaid subcontractors did not intend to give unpaid subcontractors right to sue it — To contrary, requirement it imposed upon contractor to obtain labour and material payment bond confirmed that MHRC was attempting to avoid being involved in any dispute with unpaid contractor.

Construction law --- Construction and builders' liens — Priorities — Between types of creditors — Miscellaneous

Issues arose from construction project to residential housing complex in Manitoba — Manitoba Housing and Renewal Corporation (MHRC) retained general contractor and required it to provide and maintain performance bond and labour and material payment bond — Labour and material payment bond was issued by bonding company — MHRC paid general contractor total of \$1,809,662.89 and held back 7.5 percent of amounts payable to general contractors as required under [Builders' Liens Act](#) — Numerous builders' liens were filed by subcontractors, and other subcontractors made demands to MHRC with respect to fund — After substantial performance of project was achieved, CRA required MHRC to pay all amounts owed to general contractor to receiver general under [s. 224\(1.2\) of Income Tax Act](#) — MHRC commenced interpleader application seeking to pay into court funds held back on project — Since application was filed, bonding company paid outstanding accounts of unpaid contractors and became assignee of their interests — MHRC brought application for order that, upon payment of monies into court, any and all liability it may have with respect to funds be extinguished — Application granted — MHRC had no obligation to pay funds to bonding company or unpaid subcontractors — Under contract, funds were payable to general contractor given that work was completed — However, CRA's requirement to pay took priority over and was entitled to funds that were to be paid into court under interpleader order — Relevant provisions of contract did not create obligation on part of MHRC to pay subcontractors — By including term in contract giving MHRC option of paying unpaid subcontractors did not intend to give unpaid subcontractors right to sue it.

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Iona Contractors Ltd. (Receiver of) v. Guarantee Co. of North America (2015), 2015 ABCA 240, 2015 CarswellAlta 1286, 26 C.B.R. (6th) 173, 387 D.L.R. (4th) 67, [2015] 9 W.W.R. 469, 44 C.L.R. (4th) 165, 19 Alta. L.R. (6th) 87, (sub nom. *Iona Contractors Ltd. v. Guarantee Company of North America*) 602 A.R. 295, (sub nom. *Iona Contractors Ltd. v. Guarantee Company of North America*) 647 W.A.C. 295 (Alta. C.A.) — followed

Manitoba Hydro v. Chartrand (2007), 2007 MBQB 196, 2007 CarswellMan 314, [2007] 5 C.T.C. 127, 65 C.L.R. (3d) 38, [2007] G.S.T.C. 101, 218 Man. R. (2d) 298, 2008 G.T.C. 1135 (Eng.) (Man. Q.B.) — considered

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TransGas Ltd. v. Mid-Plains Contractors Ltd. (1993), 93 D.T.C. 5391, [1993] 4 W.W.R. 337, 8 C.L.R. (2d) 293, 105 Sask. R. 211, 32 W.A.C. 211, 101 D.L.R. (4th) 238, [1993] 1 C.T.C. 280, 14 C.R.R. (2d) 311, 1993 CarswellSask 414 (Sask. C.A.) — considered

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Generally — referred to

Builders' Liens Act, R.S.M. 1987, c. B91

Generally — referred to

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

Generally — referred to

s. 224(1.2) — considered

s. 224(1.3) "secured creditor" — referred to

s. 224(1.3) "security interest" — referred to

s. 224(4) — considered

Rules considered:

Queen's Bench Rules, Man. Reg. 553/88

R. 43.04(1)(b) — considered

APPLICATION by Manitoba Housing and Renewal Corporation for order that, upon payment of monies into court, any liability it may have with respect to funds be extinguished.

Simonsen J.:

1 This is a dispute about whether an interpleader application brought by The Manitoba Housing and Renewal Corporation ("MHRC") should be allowed, and if it is, who is entitled to the funds paid into court. These issues arise from a construction project involving repairs and improvements to a residential housing complex in Brandon, Manitoba (the "Project").

2 On the interpleader application, MHRC, as owner, seeks to pay into court funds held back on the Project. It asserts that it has no interest in the funds other than a lien for costs, fees and expenses. As part of its application, it seeks an order that, upon payment of the monies into court, any and all liability it may have with respect to the funds be extinguished (*Queen's Bench Rule* 43.04(1)(b)).

3 The bonding company on the Project, Guarantee Company of North America ("Guarantee Company"), and the respondent Springfield Colony Woodworking Ltd. ("Springfield"), an unpaid subcontractor, contend that MHRC does in fact have an interest in the funds, that is, a legal obligation to pay the funds to them - such that an interpleader order, and in particular, the extinguishment order sought, is inappropriate.

4 With respect to entitlement, the contest is between Guarantee Company/Springfield and the respondent Attorney General of Canada representing the Minister of National Revenue ("CRA"). Prior to the filing of the interpleader application, CRA delivered to MHRC a Requirement to Pay, requiring MHRC to pay to the Receiver General all amounts owed by MHRC to Falcon Creek Industries Inc. ("Falcon Creek"), the general contractor on the Project. CRA's Requirement to Pay was issued under s. 224(1.2) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), which provides as follows:

224(1.2) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act*, any other enactment of Canada, any enactment of a province or any law, but subject to subsections 69(1) and 69.1(1) of the *Bankruptcy and Insolvency Act* and section 11.09 of the *Companies' Creditors Arrangement Act*, if the Minister has knowledge or suspects that a particular person is, or will become within one year, liable to make a payment

(a) to another person (in this subsection referred to as the "tax debtor") who is liable to pay an amount assessed under subsection 227(10.1) or a similar provision, or

(b) to a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor,

the Minister may in writing require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under subsection 227(10.1) or the similar provision, and on receipt of that requirement by the particular person, the amount of those moneys that is so required to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty to the extent of that liability as assessed by the Minister and shall be paid to the Receiver General in priority to any such security interest.

[emphasis added]

The consequences for failure to comply with s. 224(1.2) are set out in s. 224(4):

224(4) Every person who fails to comply with a requirement under subsection 224(1), 224(1.2) or 224(3) is liable to pay to Her Majesty an amount equal to the amount that the person was required under subsection 224(1), 224(1.2) or 224(3), as the case may be, to pay to the Receiver General.

5 It is common ground that, if the funds sought to be interpleaded are payable to Falcon Creek, MHRC is required to pay them to CRA pursuant to the Requirement to Pay. However, as I have said, Guarantee Company/Springfield take the position that MHRC has a legal obligation to pay the funds to them; as such, the funds are not payable to Falcon Creek, and hence not to CRA.

6 Although Guarantee Company is not a respondent in the interpleader application, it initially opposed that application and asserted its position on entitlement, without any objection on the basis that it was not a named party. Since the application was filed, Guarantee Company has paid the outstanding accounts of the respondents, Able Eavestroughing Ltd., Duncalfe Mechanical Ltd. and Nickel Electric Ltd., who were unpaid subcontractors on the Project; as a result, Guarantee Company became the assignee of their interests. So Guarantee Company now also opposes the interpleader application and advances its position on entitlement on the basis of these assigned interests. Guarantee Company has not paid Springfield such that it is not an assignee of its interests.

7 The respondents United Rentals of Canada Inc. and 5927324 Manitoba Ltd., as well as a company known as 6585575 Manitoba Ltd. (now dissolved) which had been operating as CCR Sigurdson (and is not a respondent in these proceedings) are also apparently unpaid subcontractors. They have not been paid by Guarantee Company and as such their rights have not been assigned. They have been given notice of these proceedings and either did not appear or have indicated that they take no position. The respondent Sunova Credit Union Limited ("Sunova") had at one time advised MHRC that, pursuant to a general security agreement, it had a prior perfected security interest over all monies owed by MHRC to Falcon Creek; however, it now takes no position on the issues before the court. And the respondent Falcon Creek, which is insolvent, has also indicated that it takes no position with respect to either the interpleader application or the issue of entitlement.

8 Counsel agree that I may decide all issues based on the affidavits that have been tendered and that, subject to one area of contention to which I will refer later in these reasons, there are no facts in dispute.

BACKGROUND

9 By written contract effective May 3, 2010, MHRC retained Falcon Creek as the general contractor on the Project. Pursuant to the request for tender issued by MHRC, the contractor was required to provide and maintain a performance bond and a labour and material payment bond. On May 6, 2010, Guarantee Company issued the two bonds in relation to the Project. The labour and material payment bond (the "Bond") was in the amount of \$1,113,708.75. Falcon Creek was named principal, Guarantee Company was surety and MHRC was obligee.

10 Falcon Creek retained subcontractors and commenced the work. Thereafter, MHRC paid Falcon Creek a total of \$1,809,662.89, with the last payment being made on June 27, 2011. MHRC held back 7.5% of the amounts payable to Falcon Creek as required under *The Builders' Liens Act*, C.C.S.M., c. B91.

11 From June 30 to October 30, 2011, a number of builders' liens were filed by subcontractors and between March and June 2012, other subcontractors and Sunova made demands of MHRC with respect to the funds.

12 Substantial performance of the Project was achieved on April 18, 2012.

13 On August 8, 2012, MHRC received the Requirement to Pay from CRA requiring MHRC to pay to the Receiver General all amounts owed by MHRC to Falcon Creek up to the sum of \$862,376.87. That amount, which is comprised of Falcon Creek's payroll source deductions for 2010 to 2012, has since been amended to \$711,901.19 as at November 17, 2016.

14 When the interpleader application was filed on August 30, 2012, MHRC was holding the sum of \$463,060.02 including GST. Of that amount, \$146,729.41 constituted the 7.5% holdback of amounts previously paid to Falcon Creek, as required by *The Builders' Liens Act*. The balance was an amount held back, as allowed by the contract, as a result of Falcon Creek's breach in failing to pay the subcontractors. It is all of these funds that are the subject of the interpleader application.

15 The total amount Guarantee Company has paid to lien claimants is \$610,183.88. This includes payments to two additional unpaid subcontractors who are not parties to this proceeding, and who have also assigned their rights to Guarantee Company.

16 MHRC has not made a claim under the performance bond because the Project is complete.

ANALYSIS AND DECISION

17 As I have said, the central question on both the interpleader application and the entitlement issue is whether MHRC has a legal obligation to pay the funds to Guarantee Company/Springfield.

18 Guarantee Company submits that MHRC is legally required to pay it the funds, advancing the following arguments:

1. Under the law of guarantee, once the obligation of Guarantee Company under the Bond was triggered, MHRC was obliged to pay the funds to Guarantee Company to mitigate its exposure under the Bond. This obligation was owed to

Guarantee Company in its own capacity, as well as to unpaid subcontractors. On a related point, counsel made submissions about whether, under the terms of the contract and the Bond, MHRC is obliged to pay unpaid subcontractors, including Guarantee Company as assignee of some of those subcontractors;

2. The principles of equitable subrogation under the law of guarantee provide that when Guarantee Company was called upon under the Bond, it became subrogated to the position of MHRC. In this subrogated position, it is entitled, under the contract, to pay the funds as it sees fit. And it would pay them to itself and the unpaid subcontractors, likely on a pro-rata basis; and

3. The unpaid subcontractors, and Guarantee Company as assignee, have rights against MHRC pursuant to the third party beneficiary exception to the usual principle that a person who is not a party to a contract cannot sue on it; that is, the subcontractors, and Guarantee Company as assignee, have a right of action against MHRC under the contract.

19 Springfield adopts these arguments, and makes an additional point with respect to the interpleader application, and in particular the extinguishment order. It contends that it stopped work under its subcontract because it had not been paid by Falcon Creek, but was then encouraged by MHRC to perform additional work - for which it has also not been paid. It alleges, in a separate proceeding against MHRC (Queen's Bench File No. CI 14-01-91478), that it relied upon representations made by MHRC or entered into an oral contract with it such that MHRC is responsible for payment for work done and materials provided after it persuaded Springfield to continue. Springfield is particularly concerned that any extinguishment order not preclude it from pursuing this action. MHRC agrees that any extinguishment order should allow Springfield to continue to advance this claim.

20 Both MHRC, in support of its position on interpleader, and CRA, in support of its position on entitlement, contend that MHRC has no obligation to pay the funds to Guarantee Company or the unpaid subcontractors. CRA further submits that if MHRC has no obligation to pay the funds to Guarantee Company or the subcontractors, the funds are payable to Falcon Creek under the contract, and hence to CRA under [s. 224\(1.2\)](#).

21 If the funds are payable to Falcon Creek, unpaid subcontractors have claims against them as lien claimants and trust claimants under *The Builders' Liens Act*. However, all parties agree that a Requirement to Pay issued by CRA under [s. 224\(1.2\)](#) takes priority over the subcontractors who have those interests. Although Guarantee Company/Springfield take no issue with this proposition about priority, they do, as I have explained, maintain that the funds are payable to them and not Falcon Creek; therefore, [s. 224\(1.2\)](#) does not come into operation.

22 With respect to Guarantee Company's first argument, it submits that, under the law of guarantee, and irrespective of the wording of the contract and Bond, MHRC has an obligation to mitigate the losses of Guarantee Company. And to meet this obligation, it must pay to Guarantee Company and the unpaid subcontractors the funds sought to be interpleaded. In support of this position, counsel for Guarantee Company relies on two textbooks, K.W. Scott and R.B. Reynolds, *Scott and Reynolds on Surety Bonds* (Canada: Thomson Carswell, 2005), at pp. 10-26.12(5)-10-26.13 and K.P. McGuinness, *The Law of Guarantee, A Treatise on Guarantee, Indemnity and the Standby Letter of Credit*, 2nd ed. (Scarborough: Carswell, 1996), at p. 414:

It is felt to be inequitable for a creditor to fail to realize against a security which is available to him in respect of the guaranteed debt, and instead throw the whole liability upon the surety.

23 Guarantee Company argues that MHRC is "the creditor" to which this excerpt refers. However, CRA points out that the excerpts from both textbooks relate to performance bonds rather than labour and material payment bonds. The objectives of the two are very different. A performance bond requires a guarantee company to arrange for completion of a project in the event the general contractor fails to do so and to pay any additional costs associated with completion. A labour and material payment bond, on the other hand, provides financial security to subcontractors, to ensure that they are paid. Although counsel for Guarantee Company points to evidence of Linda Cook, Contract Administrator for MHRC, on cross-examination on her affidavit in which she agreed that the Bond is "really for [MHRC's] benefit to make sure that the subs get paid", that is simply her own view. And the Bond does benefit MHRC by ensuring that the trades on its Project are paid. With this background, it seems

to make little sense that there would be a general duty to mitigate on the part of MHRC in the context of a labour and material payment bond that would require it to pay subcontractors when that is the very purpose of the Bond. And although counsel for Guarantee Company argues that there is such a duty on the basis of first principles of guarantee law, he acknowledges that there are no Canadian authorities which have found an owner in a construction project liable to a surety on this basis.

24 In the absence of relevant Canadian authorities, and recognizing that the excerpts from the textbooks relied upon speak of performance bonds, I am not persuaded that there is any obligation generally on the part of MHRC to mitigate the losses of Guarantee Company by paying the funds to it - or to the subcontractors.

25 With respect to whether MHRC has an obligation under the contract and Bond to pay the unpaid subcontractors (and Guarantee Company as assignee of some of those subcontractors), Guarantee Company contends that there is an admission of fact by MHRC that it owes no funds to Falcon Creek under the contract. In this regard, he relies on evidence of Ms. Cook in which she stated that Falcon Creek will never be entitled to final payment under the contract because it has not paid subcontractors or provided a statutory declaration. However, I agree with counsel for MHRC and CRA that Ms. Cook simply stated her own understanding - and it was not about a matter of fact but rather about a point of law, which is for this court to decide.

26 The relevant provisions of the contract between MHRC and Falcon Creek are:

19.01 If an event of default has occurred, MH may do any one or more of the following:

- (a) withhold or retain the whole or part of any payment;
- (b) take the whole of the Work, or any part or parts thereof out of the hands of the Contractor;
- (c) demand payment for any amount owed to MH;

all as more particularly set forth in GC:19.03 to GC:19.16 below.

19.03 If any event of default has occurred, MH may withhold or retain the whole or part of any payment to the Contractor.

19.04 MH may apply the amount withheld or retained to:

- (a) pay any person to whom the Contractor is indebted in respect of Material, labour or services furnished for the Work;
- (b) secure the discharge of a lien or trust claim served upon MH pursuant to *The Builders' Liens Act*;
- (c) indemnify, compensate or reimburse MH for amounts paid or costs incurred by MH in connection with the event of default.

19.05 Payment of such amounts shall discharge MH's liability to the Contractor to the same extent as payment directly to him.

19.06 Upon remedy of the event of default, any amount remaining from the amount withheld will be released to the Contractor.

27 The obligations created by similar provisions were recently considered in *Iona Contractors Ltd. (Receiver of) v. Guarantee Co. of North America*, 2015 ABCA 240, 19 Alta. L.R. (6th) 87 (Alta. C.A.), leave denied (2016), [2015] S.C.C.A. No. 404 (S.C.C.)). In *Iona Contractors Ltd. (Receiver of)*, the surety, again Guarantee Company, provided a labour and material payment bond to Iona as principal and the Calgary Airport as obligee. Iona had substantially completed its work but had not paid all of its subcontractors. It eventually made an assignment in bankruptcy. The airport initially brought an interpleader action with respect to funds it had held back on the contract with Iona. However, the parties agreed that the funds would be transferred to Iona's lawyer to be held in trust pending an application for advice and direction by Iona's trustee in bankruptcy as to entitlement.

28 On the issue of entitlement, which was a contest between Guarantee Company and the Trustee, Guarantee Company argued that the contract and bond created an obligation on the part of the airport to pay the subcontractors (that is, Guarantee Company as their assignee).

29 Slatter J.A., writing for the majority, concluded that the owner had no obligation, and only the right or discretion, to pay the subcontractors (para. 15). And he added, as follows:

17 The appellant argues that even if the Airport Authority merely had a discretion (and not an "obligation") to pay subcontractors under the contract, it does have such an obligation under the Labour and Material Payment Bond. The appellant argues that when the construction contract and the bond are read together, they disclose an obligation on the part of the Airport Authority to "mitigate" the exposure of the surety, which includes using the holdback funds to pay the subcontractors. Even if the agreements, when read together, disclose some intention to minimize the exposure of the surety, the private arrangements between the owner, the contractor, and the bonding company cannot affect the rights of third parties like the Trustee in bankruptcy and the secured creditor. Whatever rights the appellant may have were not registered at the Personal Property Registry, and cannot displace the rights of the secured party. Further, in *Green view* the Court confirmed that the existence of a surety and a bonding arrangement did not change the outcome.

30 Paperny J.A., while dissenting on the disposition of the appeal, agreed that the contract and the bond, when read together created no obligation for the airport to pay unpaid subcontractors (or Guarantee Company as their assignee):

76 The difficulty with this argument is that nothing in the Contract or Payment Bond imposes an obligation on the Airport to pay the subcontractors directly. In the absence of a positive contractual obligation to pay subcontractors, Canadian authority makes clear that an owner cannot make such payments in the face of a contractor's bankruptcy, even if the contract gives it the option to do so: *A.N. Bail Co. v. Gingras*, [1982] 2 S.C.R. 475.

31 Although the factual matrix in *Iona* is different in that the party claiming entitlement to the funds was a trustee in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, rather than CRA pursuant to the *Income Tax Act*, I am satisfied that the conclusion that the contract and Bond do not create an obligation on the part of MHRC to pay subcontractors is applicable to the case before me. That is, the private arrangements between MHRC, Falcon Creek and Guarantee Company cannot affect the rights of the Crown under s. 224(1.2). The Crown acquired those rights by operation of law and the issuance of a Requirement to Pay; its rights too cannot be displaced by private arrangements.

32 There are important policy considerations involved in the collection of withholding tax and source deductions. The *Income Tax Act* entrusts employers with the duty of deducting income tax from the wages of employees and remitting it on their behalf. Employers' withholding tax or source deductions is at the heart of the collection procedures for personal income taxation in Canada. (*Pembina on the Red Development Corp. v. Trimman Industries Ltd.* (1991), 75 Man. R. (2d) 175 (Man. C.A.)). Private arrangements between MHRC, Falcon Creek and Guarantee Company cannot interfere with this.

33 Guarantee Company's second argument is based on the doctrine of equitable subrogation - that is, that Guarantee Company is subrogated to the position of MHRC. Counsel for Guarantee Company acknowledges that there is no Canadian authority which has held that the doctrine operates in this manner in connection with a labour and material payment bond, as opposed to a performance bond. He, therefore, turns to American authorities which he says support this proposition. However, Paperny J.A. in *Iona* rejected Guarantee Company's arguments about the applicability of some of these same American authorities (albeit in the context of a submission about the owner's obligation to pay subcontractors), by stating as follows:

87 GCNA [Guaranty Company of North America] relies on American jurisprudence which, it says, stands for the proposition that a surety is subrogated to and acquires the rights of the contractor whose obligation it discharged, the subcontractors whose claims it paid, and the owner who holds the balances and retention. The surety, GCNA argues, has a right to payment due the contractor when the surety completes the defaulted contractor's obligations. In particular, GCNA relies upon the following description of the right of subrogation in *Pearlman v Reliance Insurance Company*, 371 US 132, pp 7-8: "... that the Government has a right to use the retained fund to pay the laborers and materialmen; that the laborers

and materialmen had a right to be paid out of the fund; that the contractor, had he completed his job and paid the laborers and materialmen, would have become entitled to the fund; and the surety, having paid the laborers and materialmen, is entitled to the benefit of all these rights to the extent necessary to reimburse it".

88 Those authorities are not persuasive given that existing Canadian authority deals with the issue. The equitable doctrine of subrogation described by the British Columbia Court of Appeal in *Canadian Indemnity Company v British Columbia Hydro and Power Authority*, 1976 CarswellBC 1227 at para 15; [1976] BCJ No. 815 (QL) (CA) (also relied upon by GCNA) is said to entitle a surety, who carries out its obligations to pay or perform what a contractor has failed to pay or perform, to the rights of the person to whom the surety was obligated. In this case, those rights would include the right to use retained funds to complete the project, as was done. The chambers judge relied on the reasoning in *Canadian Indemnity* to include in that amount the cost of paying an electrical subcontractor to return to finish its work, and I would not interfere with that conclusion. It is clear from this Court's decision in *Horizon Earthworks*, however, that the surety's subrogated rights would not include repayment for fulfilling the contractor's obligation to pay the subcontractors. The Airport has no corresponding obligation to make those payments under the Contract and importantly, under the law as set out in *Horizon Earthworks* and *A.N. Bail*, the Airport had no ability to use the Funds to make voluntary payments to subcontractors in priority to other creditors, in the face of Iona's bankruptcy. I also note the decision of *St. Paul v Genereux Workshop (Bonnyville) Ltd.* (1984), 12 DLR (4th) 238 (ABCA), where this Court declined to follow the American authorities relied upon by GCNA.

34 Regardless, I cannot accept that Guarantee Company is both the assignee of subcontractors and subrogated to the position of MHRC.

35 As for Guarantee Company's third argument, it submits that the court should find that MHRC has a legal obligation to the subcontractors (and hence, Guarantee Company), and thus an interest in the funds sought to be interpleaded on the basis of the third party beneficiary exception to the usual principle that a person who is not a party to a contract cannot sue on it. He acknowledges that the circumstances of this case would involve a new exception to that rule.

36 In *Fraser River Pile & Dredge Ltd. v. Can-Dive Services Ltd.*, [1999] 3 S.C.R. 108 (S.C.C.), the Supreme Court of Canada emphasized that the application of this exception to the doctrine of privity of contract is dependent on the intention of the parties to the contract (para. 32). He also stated (at para. 31) that this determination must be based on two factors:

- a) Did the parties to the contract intend to extend the benefit in question to the third party seeking to rely on the contractual provision? and
- b) Are the activities performed by the third party seeking to rely on the contractual provision the very activities contemplated as coming within the scope of the contract in general, or the provision in particular, again as determined by reference to the intentions of the parties?

37 In this case, there is no evidence that MHRC intended to extend the ability to sue on the contract to unpaid subcontractors. In fact, I infer that by including a term in the contract giving MHRC the option of paying unpaid subcontractors, it did not intend to give unpaid subcontractors the right to sue it. To the contrary, the requirement it imposed upon the contractor to obtain a labour and material payment bond confirms that MHRC was attempting to avoid being involved in any dispute with an unpaid contractor, or in any lawsuit started by one.

38 Furthermore, the Supreme Court in *Fraser River Pile & Dredge Ltd.* cautioned that the third-party beneficiary exception is only to be used as a shield and not a sword; that is, it is only to be used as a defence to a claim and not as a basis for commencing one (para. 37). Finally, Guarantee Company has provided no case law in which a court has found an owner on a construction project liable to subcontractors based on the third-party beneficiary exception.

39 For the foregoing reasons, MHRC has no obligation, in these circumstances, to pay the funds to Guarantee Company or unpaid subcontractors. Therefore, MHRC has no interest in the funds (other than a lien for costs, fees and expenses) and may interplead them and is granted the extinguishment order sought, subject to the exception for the Springfield action to which

I have referred. Failing agreement between counsel as to the wording of this exception, they may make further submissions on the matter.

40 Having concluded that the funds are not payable to Guarantee Company in its own capacity or as assignee of the subcontractors, or to the subcontractors who have not been paid by Guarantee Company, it follows that they are payable to Falcon Creek under the contract, given that it has completed the work contracted for. Unless any payment is made to unpaid subcontractors under clause 19.04 of the contract, MHRC remains liable for payment of those funds to Falcon Creek. This liability to Falcon Creek is confirmed by clause 19.05 which states: "Payment of such amounts [to unpaid contractors under clause 19.04] shall discharge MH's liability to the contractor to the same extent as payment directly to him."

41 The funds payable to Falcon Creek are subject to lien and trust claims in favour of the unpaid subcontractors under the provisions of The [Builders' Liens Act](#). However, as I have said, there is no dispute that if the funds are payable to Falcon Creek, CRA's Requirement to Pay takes priority over these claims. And there was no suggestion that this priority is any different in relation to the statutory holdback funds, as opposed to the additional funds held back as a result of Falcon Creek's breach in failing to pay the subcontractors.

42 In *TransGas Ltd. v. Mid-Plains Contractors Ltd.* (1993), 101 D.L.R. (4th) 238 (Sask. C.A.), the Saskatchewan Court of Appeal held that unpaid subcontractors under provincial builders' liens legislation are "secured creditors" with a "security interest" (as defined in s. 224(1.3)) for the purposes of s. 224(1.2) of the *Income Tax Act*. As such, they rank behind the Crown for monies held back by an owner on a construction contract. Likewise, in *Manitoba Hydro v. Chartrand*, 2007 MBQB 196, 218 Man. R. (2d) 298 (Man. Q.B.), this court concluded that the claim by CRA under its enhanced Requirement to Pay ranked ahead of competing claims of secured creditors, even when those creditors' claims were secured by a statute such as *The Builders' Liens Act*.

43 Therefore, CRA is entitled to the funds that are to be paid into court by MHRC under the interpleader order.

44 Counsel may speak to costs if they cannot agree.

Application granted.

Appendix “I”

2022 01G 1964
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies*
Creditors Arrangement Act, R.S.C., 1985 c.
C-36 as amended (the “CCAA”)

AND IN THE MATTER OF an application of
Edward Collins Contracting Ltd., Classic
Security Limited, FGC Holdings Limited,
51037 Newfoundland and Labrador Inc. and
H&E Designs Ltd. (collectively, “ECC” or the
“Company”)

MEMORANDUM OF FACT AND LAW
ON BEHALF OF WESTERN SURETY COMPANY

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TO: GRANT THORNTON LIMITED
In its capacity as Monitor of the Debtors
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PART I – OVERVIEW

1. Western Surety Company (“Western”) makes these submissions in the Claims Process in connection with the Town of Placentia Waterline Project Claim, as will be defined in the Claims Procedure Order to be filed.
2. Western previously brought an application in the Supreme Court of Newfoundland for an order affirming and declaring settlement agreements between Edward Collins Contracting Ltd. (“ECC”), Crane Supply Canada (“Crane”), Rodco Mechanical (2014) Ltd. (“Rodco”), and Western, which settlements provide that the Holdback (defined below), then being held by the Town of Placentia (the “Town”), be paid to Crane and Rodco (now, Western).
3. In support of the application, Western served and filed the Affidavit of James Toothill, sworn February 10, 2023 (the “Toothill Affidavit”). After the Toothill Affidavit was served and filed, Western followed up with the Town and received a complete copy of the contract between the Town and ECC.¹ Western also followed up with Rodco and received an executed copy of the Rodco Agreement (defined below) from Rodco.²
4. On or about May 11, 2023, Justice MacDonald adjourned Western’s application *sine die* in favour of a claims process to determine the issue and directed that the Town pay the Holdback (\$237,785.27) to the Monitor to be held in trust.³

¹ Contract, Western’s Compendium, Tab 1.

² Settlement Agreement, Western’s Compendium, Tab 2.

³ Order of Justice MacDonald filed May 11, 2023, Western Compendium, Tab 3.

5. In this Claims Process, Western is advancing a direct claim to the Holdback as assignee and subrogee of Crane and Rodco pursuant to its rights as Surety (defined below) and the Release, Assignment, Undertaking and Grant that Crane and Rodco each executed in favour of Western.

6. As will be discussed in more detail below, ECC entered into a contract with the Town for water system upgrades (the “Project”). Crane and Rodco were subtrades of ECC and were subcontracted to supply certain services and materials in relation to the Contract. Crane and Rodco performed their obligations under their respective subcontracts, but ECC failed to pay Crane and Rodco for their work.

7. To resolve the issue of outstanding payment, ECC entered into valid and binding settlement agreements with Crane and Rodco (the “Settlement Agreements”) whereby ECC acknowledged, agreed, and irrevocably directed that Crane and Rodco would be paid directly from the Holdback. Therefore, as a result of the Settlement Agreements, Crane and Rodco (now, Western) are the owners of the Holdback.

8. Western is not advancing a claim to the Holdback pursuant to the lien rights of Crane and Rodco. Rather, Western’s claim to the Holdback is based on its assigned and subrogated rights to the Holdback pursuant to the Settlement Agreements. As such, this is not a case of priority of interest between creditors, but rather a case of ownership of the Holdback.

9. It is respectfully submitted that Western is entitled to the Holdback for the following reasons:

(a) The Settlement Agreements direct the Holdback to Crane and Rodco (now, Western);

- (b) The Holdback was not payable or immediately owing to ECC under the *Mechanics' Lien Act* or the Contract at the time of the Settlement Agreements; and
- (c) The Canada Revenue Agency (the "CRA") is not entitled to the Holdback pursuant to its deemed trust rights because the Holdback was never the property of ECC or otherwise payable to ECC.

PART II – STATEMENT OF FACTS

10. On March 19, 2021, ECC entered into a contract with the Town (the "Contract") in the total sum of \$2,259,486,65 inclusive of HST (the "Contract Funds"). The Contract specifies that monthly payments would be made to ECC for the value of the work certified completed, with 10% being held back and becoming due when the project was completed (the "Holdback") pursuant to the *Mechanics' Lien Act*.⁴

11. It was a pre-condition to the award of the Contract to ECC, and a requirement of the Town in the Contract, that ECC provide performance security in the form of a performance bond and labour & material payment bond.⁵

12. On March 10, 2021, Western issued Performance Bond and Labour & Material Payment Bond No. 532,090 each in the amount of \$1,129,743.33, with ECC as Principal, the Town as Obligee (beneficiary or the person to whom Western is bound under the Bonds) and Western as Surety.⁶

⁴ Contract, Western's Compendium, Tab 1.

⁵ Affidavit of James Toothill, sworn February 10, 2023, at para 7 [Toothill Affidavit].

⁶ Toothill Affidavit at para 9, Exhibit "D", p. 78.

13. During the course of the Project, ECC defaulted under the Contract by, among other things, failing to make payment to Crane and Rodco (together, the “Subcontractors”) for work performed under the Contract.⁷

14. To satisfy the indebtedness owed to the Subcontractors, ECC entered into Settlement Agreements whereby ECC agreed and acknowledged that the Subcontractors would be paid directly from the Holdback.

The Crane Settlement

15. On or about September 1, 2021, Crane gave notice to Western of its unpaid account and made a claim under the Labour & Material Payment Bond (the “Payment Bond”) in the amount of \$251,635.00 (the “Crane Debt”).⁸ Crane also registered a Claim for Lien in the Supreme Court of Newfoundland and Labrador (the “Crane Lien”).⁹

16. On September 22, 2021, Michael Cabot, then counsel for ECC, wrote to counsel for Crane, Lee Ballet, indicating that he had been retained by ECC in relation to the Crane Debt and that ECC was prepared to resolve the Crane Debt by way of settlement. Mr. Cabot presented an offer to Crane that contemplated ECC assigning the Holdback to Crane in exchange for Crane discharging the Crane Lien. During these discussions, Mr. Cabot represented to Mr. Ballet that should Crane accept the proposed offer, Crane could expect the Holdback to be released to it within 2-4 weeks of October 15, 2021.¹⁰

⁷ Contract, Western’s Compendium, Tab 1.

⁸ Toothill Affidavit at para 12.

⁹ Toothill Affidavit at para 13, Exhibit “F”, pp. 133-136.

¹⁰ Toothill Affidavit at para 27, Exhibit “M”, pp. 195-196.

17. In reliance on Mr. Cabot's representations, Crane accepted ECC's offer. On October 5, 2021, Crane complied with its obligations pursuant to the terms of settlement and discharged the Crane Lien.¹¹

18. On October 7, 2021, ECC and Crane executed a settlement agreement (the "Crane Agreement") directing ECC to pay \$204,781.31 inclusive of HST from the Holdback to Crane by way of Irrevocable Direction to Pay ("Irrevocable Direction").¹²

19. On November 1, 2021, Mr. Cabot wrote to Western confirming that ECC and Crane had agreed to resolve the Crane Debt by way of assignment of ECC's interest in the Holdback retained by the Town and that the Crane Agreement was binding.¹³

The Rodco Agreement

20. After the Crane Settlement, ECC defaulted on its obligations under the Subcontract and failed to make payment to Rodco. On or about December 2, 2021, Rodco gave notice to Western of its unpaid account and made a claim under the Payment Bond in the amount of \$508,271.50 (the "Rodco Debt").¹⁴ Rodco also registered a Claim for Lien and issued a Notice of Action and Statement of Claim in the Supreme Court of Newfoundland and Labrador (the "Rodco Lien") thereby perfecting the Rodco Lien.¹⁵

¹¹ Toothill Affidavit at para 30, Exhibit "P", pp. 205-207.

¹² Toothill Affidavit at para 31, Exhibit "Q", pp. 210-214.

¹³ Toothill Affidavit at para 33, Exhibit "S", pp. 221-222.

¹⁴ Toothill Affidavit at para 14.

¹⁵ Toothill Affidavit at para 15, Exhibit H, pp. 163-165.

21. As a result of Rodco Lien and pursuant to its obligations under the *Mechanics' Lien Act* (“*MLA*”), the Town would not distribute the Holdback to Crane as contemplated in the Crane Agreement and the Irrevocable Direction.¹⁶

22. On May 26, 2022, Mr. Cabot, wrote to Brad Leyte, counsel for Rodco, stating that he understood their clients had worked out a framework to resolve the Rodco Debt and the Crane Debt, which included Crane and Rodco being paid certain amounts directly from the Holdback in exchange for Rodco discharging its lien.¹⁷

23. On May 27, 2022, Mr. Cabot provided further details regarding the proposed settlement offer. He confirmed the total amount of the Holdback to be \$244,977.53 and indicated that Crane would receive \$304,781.36 with Rodco being paid the balance of \$40,196.17.¹⁸

24. Importantly, on May 30, 2022, Mr. Cabot confirmed that no other company was claiming any payment from the Holdback, including ECC.¹⁹ On that basis, Mr. Leyte agreed to move forward with the settlement.²⁰

25. On June 3, 2022, Mr. Cabot circulated a draft settlement agreement and Mr. Leyte provided comments. On June 7, 2022, Mr. Cabot confirmed that Mr. Leyte’s comments had been addressed and Mr. Cabot circulated the final iteration of the agreement (the “Rodco Agreement”).²¹

¹⁶ Toothill Affidavit at para 36 and 39, Exhibit V, p. 235.

¹⁷ Toothill Affidavit at para 40, Exhibit Y, p. 245.

¹⁸ Toothill Affidavit at para 41, Exhibit Z, p. 248.

¹⁹ Toothill Affidavit at para 42, Exhibit “AA”, p. 251.

²⁰ Toothill Affidavit at para 43, Exhibit “BB”, p. 254.

²¹ Toothill Affidavit at para 45, Exhibit “DD”, pp. 267-272.

26. On June 8, 2022, Mr. Cabot and Mr. Leyte agreed that their clients would sign the Rodco Agreement in counterpart.²² Mr. Cabot also confirmed that the Town would cooperate in having the Holdback released to Crane and Rodco as contemplated in the Rodco Agreement.²³

27. On June 23, 2022, Mr. Cabot wrote to the Town copying Western confirming that Rodco and ECC had settled the terms of the Rodco Agreement on June 7, which included the Rodco Lien being vacated. Mr. Cabot said all that remained was execution of the Rodco Agreement.²⁴

28. On July 4, 2022, Rodco signed the Rodco Agreement.²⁵

29. On July 6, 2022, Mr. Cabot confirmed that ECC had signed the Rodco Agreement.²⁶

30. On July 19, 2022, Western signed the Rodco Agreement.²⁷

31. All parties but ECC have produced their executed copy of the Rodco Agreement.²⁸

32. Despite entering into the Rodco Agreement and agreeing that Crane and Rodco would be paid directly from the Holdback, ECC failed to perform its obligations under the Rodco Agreement.²⁹

33. Crane and Rodco subsequently called on Western as Surety under the Payment Bond to make good the default of ECC. Western paid the valid claims of Crane and Rodco under the Payment Bond and is subrogated to the rights of Crane and Rodco. In addition, Crane and Rodco

²² Toothill Affidavit at para 45 and 46, Exhibit “DD” and Exhibit “EE”, pp. 267-272 and 275.

²³ Toothill Affidavit at para 47, Exhibit “FF”, p. 278.

²⁴ Toothill Affidavit at para 48, Exhibit “GG” p. 282.

²⁵ Toothill Affidavit at para 49, Exhibit “HH” pp. 285-286

²⁶ Toothill Affidavit at para 52, Exhibit KK, p. 301.

²⁷ Toothill Affidavit at para 55, Exhibit “NN”, pp. 326-331.

²⁸ Settlement Agreement, Western’s Compendium, Tab 2, and Toothill Affidavit at para 55, Exhibit “NN”, pp. 326-331.

²⁹ Toothill Affidavit at para 59.

each executed a Release, Assignment, Undertaking and Grant in favour of Western assigning all their rights in connection with the Settlement Agreements and the Holdback to Western.³⁰

34. On July 20, 2022, Justice Marshall granted a consent stay order (the “Stay Order”) in favour of ECC until September 16, 2022. On October 5, 2022, ECC obtained the CCAA Initial Order,³¹ which was most recently extended to September 14, 2023.

35. A critical issue for determination by the Monitor is whether the Holdback was payable under the Contract to ECC at the time of the Settlement Agreements. Western respectfully submits that the Holdback was not payable to ECC under the Contract at that time or subsequently as ECC had clearly and unequivocally relinquished any right and/or interest in the Holdback to Crane and Rodco (now, Western) by way of the Settlement Agreements.

PART III – LIST OF ISSUES

36. The relevant issues to be decided in this Claims Process are:

- (a) Are the Settlement Agreements valid and binding?
- (b) Does the CCAA proceeding have any affect on the Settlement Agreements *vis a vis* the priority rights of creditors?

³⁰ Toothill Affidavit at para 23 and 24, Exhibit “L”, pp. 188-192

³¹ *Edward Collins Contracting Limited (Re)*, 2022 NLSC 149 at paras 4 and 9, Western’s Brief of Authorities, Tab 1.

PART IV – ARGUMENT

(a) The Settlement Agreements Are Valid and Enforceable

The Requirements for a Settlement Agreement Have Been Met

37. It is well settled law in Newfoundland and Labrador that a settlement agreement is a contract. To conclude a contract exists, the Court (in this case, the Monitor) must find there was: (1) offer; (2) acceptance; (3) consideration; (4) certainty of terms; and (5) an intention to create legal relations.³²

38. When dealing with settlement agreements it is almost certain that there is consideration flowing in return for the promise – by definition, settlements are compromises, and so there will be consideration flowing both ways.³³

39. It is also settled law that the test to contract formation is objective – objectively, one must be convinced that there was *consensus ad idem* or a meeting of the minds.³⁴ In circumstances where the agreement is in writing, it is to be measured by an objective reading of the language chosen by the parties to reflect their agreement.³⁵

40. In *Hunt River Camps/Air Northland Ltd. v Canamera Geological Ltd.*, the Newfoundland Court of Appeal stated that Courts will generally strive to give effect to the reasonable expectations of the parties, objectively determined, where it is apparent that they intended some legal relationship to exist. The test is whether a reasonable bystander observing the parties would

³² *Andrews v Canada (Attorney General)*, 2019 NLSC 42 at para 13 and *Pittman's Enterprises Ltd. v Mike Kelly & Sons Limited*, 2021 NLSC 126 at para 67, Western's Brief of Authorities, Tabs 2 and 3.

³³ *Apotex Inc. v Allergan, Inc.*, 2016 FCA 155 (CanLII) at para 25, Western's Brief of Authorities, Tab 4.

³⁴ *McCabe v Verge*, 1999 CanLII 18936 (NL CA), at para 12, Western's Brief of Authorities, Tab 5.

³⁵ *Olivieri v Sherman*, 2007 ONCA 491 (CanLII) at para 44, Western's Brief of Authorities, Tab 6.

conclude that the parties, in making a settlement offer and accepting it, intended to enter into legal relations.³⁶

41. Finally, the jurisprudence makes clear that, while it is within the Court's (in this case, the Monitor's) discretion to decline to affirm settlement, such discretion "*should rarely be exercised*" and "*utmost consideration must be given to the policy of the court to promote settlement.*"³⁷ Importantly, this is particularly relevant when the settlement is entered into by properly retained solicitors and where there are no known limitations of authority.³⁸

42. In *Ozon v Lutex*, the Newfoundland Supreme Court held:

The ability of lawyers on behalf of their clients to negotiate with one another in order to attempt to reach a final resolution of a claim without a court hearing is a matter that is obviously in the best interest not only of the individual clients but also the interest of the justice system. Where contractual terms are agreed to and perfected, the court [in this case, the Monitor] should uphold the enforceability of such agreement.³⁹

43. In other words, settlements entered into with the assistance of counsel should be upheld except in the clearest and most exceptional cases.⁴⁰

³⁶ *Killick Fisheries Inc. v Atlantic Treasure Seafoods Limited et al.*, 2012 CanLII 31223 (NL SC) at para 8, Western's Brief of Authorities, Tab 7.

³⁷ *Cellular Rental Systems Inc v Bell Mobility Cellular Inc.*, [1995] OJ No. 721 at para 17 and *Stoewner v Hanneson*, [1992] OJ No. 697 at p. 3, Western's Brief of Authorities, Tabs 8 and 9.

³⁸ *L-Jalco Holdings Inc. v Lawrynnowicz & Associates*, 2018 ONSC 4002 (CanLII) at para 39, Western's Brief of Authorities, Tab 10.

³⁹ *Ozon v Lutex et al*, 2015 NTLD 147 at para 11, Western's Brief of Authorities, Tab 11.

⁴⁰ *31 Kingsbury Inc. v Delta Elevator Company Limited*, 2019 ONCS 3619 (CanLII) at para 36, Western's Brief of Authorities, Tab 12.

Applying The Principles to the Settlement Agreements

The Crane Agreement is Valid and Binding

44. On September 22, 2021, Mr. Cabot presented an offer to counsel for Crane, acting with instructions from ECC and with the authority to make such offer, to resolve the Crane Debt. Mr. Cabot, on behalf of ECC, offered to assign the Holdback to Crane in exchange for Crane discharging its lien. Crane accepted the offer, and the parties prepared the Crane Agreement.

45. Crane executed the Crane Agreement on October 4, 2021, and ECC executed the Crane Agreement on October 7, 2021. The Crane Agreement is in writing and the terms are clear and unambiguous: (i) ECC would provide an Irrevocable Direction in favour of Crane directing the Town to pay \$178,070.71 plus HST from the Holdback to Crane; and (ii) Crane would discharge the Crane Lien.

46. Applying the reasonable bystander test, it is clear that ECC and Crane intended to enter into legal relations.

47. In the materials filed in this Claims Process, CRA makes reference to a letter from Mr. Darren O'Keefe, current counsel for ECC, dated October 19, 2022 (the "O'Keefe Letter"), in support of its position that that the *settlement agreements were never executed*. CRA mischaracterizes Mr. O'Keefe's comments in the O'Keefe Letter with respect to the Crane Agreement. Mr. O'Keefe does not allege that the Crane Agreement was not executed. Rather, Mr. O'Keefe acknowledges that there was a contract between ECC and Crane. In any event, the O'Keefe Letter merely contains bald assertions which are contradicted by the evidence, the O'Keefe was written almost one year after the Crane Agreement and the Irrevocable Direction

were executed, and Mr. O’Keefe was not counsel for ECC when the Crane Agreement was negotiated, finalized, and signed. CRA’s reliance on the O’Keefe Letter to assert that the Crane Agreement was not executed is misplaced and contrary to the facts and the evidence contained in the Toothill Affidavit, which CRA has had since February 10, 2023.

The Rodco Agreement is Valid and Binding

48. On May 26, 2022, Mr. Cabot wrote to Mr. Leyte with the understanding that their clients had discussed the terms for a resolution of the Rodco Debt. Mr. Cabot outlined the terms of settlement in his email, which included the Rodco Lien being discharged and ECC directing most of the Holdback to Crane with the balancing going to Rodco. Mr. Cabot advised that ECC would pay the balance owing to Rodco by July 27, 2022, failing which Western would satisfy the claim.

49. As will be discussed in more detail below, Rodco and Western accepted ECC’s offer, and the terms of the agreement were put into writing.

50. On June 3, 2022, Mr. Cabot circulated a draft settlement agreement to the parties. Mr. Leyte responded to the draft settlement agreement and provided comments, which were addressed in the finalized version – the Rodco Agreement. Western also provided comments but ultimately did not insist on any changes. After the terms of the Rodco Agreement were finalized, the parties agreed to execute the Rodco Agreement in counterpart, and they did:

(a) Rodco executed the Rodco Agreement on June 28, 2022.⁴¹

⁴¹ Toothill Affidavit at para 49, Exhibit “HH” pp. 285-286 and Settlement Agreement, Western’s Compendium, Tab 2.

(b) On July 6, 2022, Mr. Cabot confirmed in writing that ECC had signed the Rodco Agreement;⁴² and

(c) Western executed the Rodco Agreement on July 19, 2022.⁴³

51. When looking at the Rodco Agreement, the terms are clear and unambiguous: (i) ECC acknowledged and agreed that \$204,781.32 of the Holdback would be released directly to Crane; (ii) \$40,196.17 of the Holdback would be released directly to Rodco; (iii) Rodco would discharge the Rodco Lien; (iv) ECC would pay the balance of monies due and owing to Rodco by July 28, 2022; and (v) if ECC failed to pay the balance owing to Rodco, Western would pay the difference to Rodco under the Payment Bond.

52. On June 28, 2022, Mr. Leyte advised that Rodco had executed the discharge for the Rodco Lien, which he would hold in escrow pending payment of the Holdback to Rodco. In other words, Rodco partially performed its obligations under the Rodco Agreement and was waiting on ECC.

53. Western also performed its obligations under the Rodco Agreement – Western paid the shortfall of Rodco Debt when it issued full payment to Rodco under the Payment Bond.

54. CRA relies on the O’Keefe Letter to assert that the Rodco Agreement was not executed. This is contrary to the facts and the evidence in the Toothill Affidavit, which CRA has had since February 10, 2023:

(a) ECC made an offer, which was accepted by Rodco and Western;

⁴² Toothill Affidavit at para 52, Exhibit KK, p. 301.

⁴³ Toothill Affidavit at para 55, Exhibit “NN”, pp. 326-331.

(b) The Rodco Agreement is in writing and the terms are clear and unambiguous; and

(c) The evidence is clear that the parties intended to enter into legal relations.

55. Notably, ECC only changed its position on the Rodco Agreement after it retained new counsel.

56. In *Homewood v Ahmed*, the Superior Court for Ontario held that Courts (in this case, The Monitor) will enforce settlement where the plaintiff (in this case, ECC) merely “*changes his mind*” because of “*the change in circumstances*” after the settlement had been concluded in accordance with his instruction.⁴⁴

57. In light of the foregoing, Western submits that the Settlement Agreements are valid and binding and that it is in the interest of justice to maintain the Settlement Agreements. The evidence shows that clear, express settlement offers were tendered and accepted. All parties participated in drafting the terms of settlement, without objection by any of the parties involved, and the Settlement Agreements were entered into with the assistance of counsel. Respectfully, there should be no doubt that the Settlement Agreements were executed and finalized. ECC simply resiled from its promise to pay the Subcontractors directly from the Holdback.

(b) The CCAA Proceedings Do Not Affect the Valid Settlement Agreements

The Holdback is Not Captured by The Deemed Trust

58. CRA incorrectly asks the Monitor to determine that it has a priority to the Holdback over any other party and that the Holdback be paid to CRA. CRA asserts that sections 227(4) and

⁴⁴ *Homewood v Ahmed* (2003), 42 CPC (5th) 291 at paras 55 and 57, Western’s Brief of Authorities, Tab 13.

227(4.1) of the *Income Tax Act* (“*ITA*”)⁴⁵, and the parallel statutes, confer a priority to CRA in respect of all property of the tax debtor and suggests this includes the Holdback. To be clear, this is not a dispute about priority.

59. Pursuant to the *MLA* and the Contract, ECC was not entitled to the Holdback when it entered into the Settlement Agreements. As will be discussed, conditions precedent must first be satisfied before the Holdback is payable to ECC.

60. In *PCL Constructors Westcoast Inc v Norex Civil Contractors Inc.* (“*Norex*”), the Supreme Court of British Columbia determined that the holdback creates a fund to which the contractor (in this case, ECC) “*may eventually become entitled*”.⁴⁶ A principle that was recognized and followed by the Ontario Superior Court of Justice.⁴⁷

61. Sections 12(1) and (5) of the *MLA* requires that the person who is primarily liable on a contract under which a lien may arise (in this case, this person is the Town) to retain a holdback equal to 10% of the greater of the value of the work performed. That holdback is charged with a lien in favour of every person engaged by the person for whom the holdback is retained (in this case, this person is ECC).⁴⁸

62. Importantly, under sections 12(1) and 12(7) of the *MLA*, ECC’s entitlement to the Holdback is subject to:

12. (1) In all cases, the person primarily liable upon a contract under and by virtue of which a lien may arise shall, as the work is done or the materials are provided

⁴⁵ *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) ss. 227(4) and 227(4.1) [*ITA*].

⁴⁶ *Northwest Angle 33 First Nations v Razar Contracting Services Ltd. et al*, 2023 ONSC 1233 at para 86 [*Razar*] citing *PCL Constructors Westcoast Inc v Norex Civil Contractors Inc*, 2009 BSSC 95 at para 62 [*Norex*], Western’s Brief of Authorities, Tab 14.

⁴⁷ *Razar* at para 87, Western’s Brief of Authorities Tabs 14.

⁴⁸ *Mechanics’ Lien Act*, RSNL 1990, C M-3 ss. 12(1) and (5) [*MLA*].

under the contract, retain for a period of 30 days after the completion or abandonment of the work done or to be done under the contract 10% of the value of the work and materials [...] [emphasis added]

12. (7) Payment of the percentage required to be retained under this section [10%] may be validly so made as to discharge all claims in respect of that percentage after the expiration period of 30 days mentioned in subsection (1) unless in the meantime proceedings have been started to enforce a lien [...] [emphasis added]

63. Read together, ECC's entitlement to the Holdback arises upon the completion of the Contract or expiration of the holdback period, being 30 days after completion or abandonment of the work, unless in the meantime proceedings have been started to enforce a lien.⁴⁹

64. Under section 12(8) of the *MLA*, all contracts shall be considered amended where necessary to be in conformity with section 12 of the *MLA*.

65. In the present circumstances, there is no dispute that ECC was not entitled to the Holdback under the *MLA* at the time of the Settlement Agreements.

66. In addition, there is no dispute that ECC is not entitled to the Holdback under the Contract. There are several conditions precedent under the Contract that must be satisfied before the Holdback is payable or a debt owing to ECC:

GC 21.4

Holdbacks will be released on the following conditions:

iv) the Contractor provides an approved statutory declaration that all monies have been paid to Subcontractors.

GC 21.7

Following the issuance of the Certificate of Substantial Performance and upon receipt from the Contractor of all documentation called for in the Contract

⁴⁹ *MLA*, s 12(7).

Documents the Owner shall issue a certificate for payment of holdback monies. The release of the holdback monies authorized by this certificate shall become due and payable on the day following the expiration of the Statutory Limitation Period stipulated in the *Mechanics' Lien Act* applicable to the place of building, providing that no lien or privilege claims against the Work exist and the Contractor has submitted to the Owner a sworn statement that all account for labour, subcontracts, products, construction machinery and equipment and any other indebtedness which may have been incurred by the Contractor in the Substantial Performance of the Work and for which the Owner might in any way be held responsible have been paid in full except holdback monies properly retained. [emphasis added]

GC 21.9

The release of any remaining holdback monies shall become due and payable on the day following the expiration of the Statutory Limitation Period stipulated in the *Mechanics' Lien Act* applicable to the place of building or where such legislation does not exist or apply in accordance with such other legislation, regulations governing privileges, industry practice or such other provisions which may be agreed to between the parties, provided that no claims against the Work exist and the Contractor has submitted to the Owner a sworn statement that all account for labour, Subcontracts, products, construction machinery and equipment and any other indebtedness which may have been incurred by the Contractor in the Total Performance of the Work and for which the Owner might in any way be held responsible, have been paid in full except holdback monies properly retained. [emphasis added]

67. The Contract provides that the Holdback is not payable to ECC until: (i) the issuance of a Certificate of Substantial Performance; (ii) the expiration of the Statutory Limitation Period stipulated in the *MLA*; (iii) no lien claims against the Work; and (iv) the Contractor submits to the Owner a sworn statutory declaration that all monies have been paid to Subcontractors. In other words, under the Contract, the Holdback is a fund to which ECC “*may eventually become entitled*”.⁵⁰

68. In the present circumstances, ECC did not satisfy the conditions precedent for payment of the Holdback under the Contract or the *MLA* at the time of the Settlement Agreements. The

⁵⁰ *Norex* at para 62, Western’s Brief of Authorities, Tab 15.

Contract is uncontroverted that the Holdback is not due and owing when claims against the work exist, in the present case this would be the Rodco Lien and the Crane Lien before it was discharged.⁵¹ Under the Contract, until all liens are paid/resolved or discharged, ECC is not entitled to be paid the Holdback. Moreover, at the time of the Crane Agreement, the Contract had not achieved Substantial Performance.

69. CRA has not provided any evidence to show that the Holdback was payable to ECC at the time of the Settlement Agreements pursuant to the Contract, the *MLA*, or at all:

(a) CRA has not shown that the Holdback was a receivable of ECC; and

(b) CRA has not shown that the Holdback was otherwise immediately payable to ECC.

70. Finding that the Holdback was payable to ECC at the time of the Settlement Agreements, or at all, is akin to finding that ECC satisfied all the conditions precedent for payment under the Contract and the *MLA*, which it did not. Such a scenario is completely untenable on the evidence or at law.

71. Not only was the Holdback not payable to ECC under the Contract and *MLA*, ECC also gave away the possibility of any future claim to the Holdback when it entered into the Settlement Agreements with Crane, Rodco, and Western.

⁵¹ Contract, at GC 21.9, Western's Compendium, Tab 1.

72. Importantly, the Supreme Court of Canada (“SCC”) in *First Vancouver Finance v M.R.N.* (“*First Vancouver*”) confirmed that sections 227(4) and 227(4.1) of the *ITA* only encompass property which comes into the hands of the tax debtor (in this case, ECC).⁵²

73. In *Norex*, the Court considered the deemed trust under the *ITA* in the construction context and the impact on holdback funds. The Court found that CRA can have no higher right to the funds than the tax debtor (in this case, ECC). In *Norex*, as a result of there being no amounts “otherwise and immediately payable” to the tax debtor, no amounts were accordingly payable to CRA:

There is, however, nothing suggesting that Her Majesty’s interest becomes something more than it was in the hands of the Sub-contractor [tax debtor]. Until the entitlement arises, the Sub-contractor’s interest in the fund is a conditional right, and no more than that. When the Sub-contractor’s right is appropriated by Her Majesty, Her Majesty’s interest is exactly the same. [emphasis added]⁵³

74. In other words, the deemed trust “*only gives the CRA a beneficial right to the property of the contractor which the contractor actually holds.*”⁵⁴ The CRA’s deemed trust cannot result in CRA having a greater beneficial ownership than the tax debtor. Therefore, if ECC has no claim to any portion of the Holdback, neither does CRA.⁵⁵

75. The principles established in *First Vancouver* and *Norex* were recently applied in the decision of *Northwest Angle 33 First Nation v Razar Contracting Services Ltd et al.* (“*Razar*”).

76. In *Razar*, CRA sought payment from the tax debtor from the holdback on the basis of its deemed trust claim. The Ontario Superior Court of Justice emphasized that CRA’s claim to the holdback in priority of all other claimants is premised on the holdback being the property of the

⁵² *First Vancouver Finance v M.R.N.*, 2022 SCC 49 (CanLII) at para 33 [*First Vancouver*], Western’s Brief of Authorities, Tab 16.

⁵³ *Norex* at para 63, Western’s Brief of Authorities, Tab 15.

⁵⁴ *Razar* at para 86, Western’s Brief of Authorities, Tab 14.

⁵⁵ *Razar* at para 86 citing *Norex* at para 79, Western’s Brief of Authorities, Tab 14.

tax debtor or a debt payable to the tax debtor.⁵⁶ On that basis, the Court found that CRA had not established that the holdback was the tax debtor's property and therefore its claim could not succeed.⁵⁷ The Court arrived at this conclusion based on the following findings:

- (a) Pursuant to the contract, it was the intention of the contracting parties that the holdback would be held by the owner for the benefit of unpaid subcontractors pending substantial completion of the contract. Therefore, at all material times, the holdback was not the property of the contractor or a debt owing to the contractor;⁵⁸
- (b) Pursuant to the contract, the parties agreed that should the owner exercise its right to take the work out of the contractor's hands, which it did, any right the contractor had to the holdback would be extinguished under the contract;⁵⁹ and
- (c) If the holdback was not payable or otherwise a debt owing to the contractor, CRA could not assert its priority claim over the holdback.⁶⁰

77. In the present case, the Contract is unequivocal in that ECC and the Town intended the same thing: the Town would hold back funds from ECC for the benefit of subtrades to remain available as a fund for unpaid subtrades as required under the *MLA*. Therefore, the Holdback held by the Town was not payable or otherwise owing to ECC. Since the *ITA* “only gives the CRA a beneficial right to the property of the contractor which the contractor actually holds”,⁶¹ neither ECC nor CRA have a claim to the Holdback.

⁵⁶ *Razar* at para 81, Western's Brief of Authorities, Tab 14.

⁵⁷ *Razar* at para 88, Western's Brief of Authorities, Tab 14.

⁵⁸ *Razar* at para 70, Western's Brief of Authorities, Tab 14.

⁵⁹ *Razar* at para 72, Western's Brief of Authorities, Tab 14.

⁶⁰ *Razar* at 71, Western's Brief of Authorities, Tab 14.

⁶¹ *Razar* at para 86, Western's Brief of Authorities, Tab 14.

78. Most importantly, ECC entered into the Settlement Agreements, including the Irrevocable Direction, which clearly and unequivocally acknowledge that the Holdback would be paid directly to Crane and Rodco. In other words, ECC relinquished any future right to the Holdback before the Holdback was property in its hands.

79. In its submissions, CRA relies on the Manitoba Court of Queen’s Bench decision of *Guarantee Company of North America v Manitoba Housing and Renewal Corporation et al* (“*Falcon Creek*”)⁶² for the general proposition that a “private arrangement” cannot displace the rights of the federal Crown. Respectfully, CRA’s reliance on *Falcon Creek* is misplaced and distinguishable from the present facts:

- (a) The “private arrangement” referenced in *Falcon Creek* was not in regard to an executed settlement agreement or an executed irrevocable direction. Rather, the “private arrangement” related to the interpretation of a construction contract and performance bond such that, when read together, they required an obligee to pay subcontractors;
- (b) Importantly, the Court’s comments in *Falcon Creek* regarding “private arrangements” relate to the CRA’s rights pursuant to an enhanced requirement to pay notice (“RTP”) under to section 224(1.2) of the *ITA*.⁶³ Section 224(1.2) provides that the obligation to pay the CRA in priority to others is triggered by a registered letter or letter served personally requiring that person (in this case, the Town) to pay monies otherwise payable to the tax debtor (in this case, ECC).⁶⁴ In the present case, CRA has not

⁶² *The Guarantee Company of North America v Manitoba Housing and Renewal Corp. et al*, 2017 MBQB 27 at para 31 and 32 [*Falcon Creek*], Western’s Brief of Authorities, Tab 17.

⁶³ *Falcon Creek* at para 31, Western’s Brief of Authorities, Tab 17.

⁶⁴ *ITA* at section 224(1.2).

provided any evidence to show that it delivered a RTP on the Town before the Settlement Agreements; and

(c) In *Falcon Creek*, the contractor did not relinquish, by way of settlement or irrevocable direction, any right to the funds in dispute.

80. Western respectfully submits that the Settlement Agreements, including the Irrevocable Direction, did not interfere with CRA's collection of unremitted source deductions because, at all material times, the Holdback was not in the hands of ECC or otherwise payable to ECC.

81. Pursuant to the Settlement Agreements and the Irrevocable Direction, ECC relinquished any right to the Holdback such that ECC could never become entitled to it, yet the CRA asserts it is allowed to claim the Holdback. If this were to occur, the CRA would be taking money out of the hands of Crane and Rodco (now, Western), not the tax debtor (in this case, ECC). The CRA is not entitled to collect a tax on one person from the property of another.⁶⁵

82. In *Pembina on the Red Development*, the Court of Appeal of Manitoba took note of the “long-established principle of law that, in the absence of language to the contrary, a tax on one person cannot be collected out of the property belonging to another.”⁶⁶ The SCC in *First Vancouver* also referenced this principle, stating that:

[...] it would be contrary to well-established authority to stretch the interpretation of s. 227(5) [now s. 227(4.1)] to permit the expropriation of the property of third parties who are not specifically mentioned in the statute.⁶⁷

⁶⁵ *Norex* at para 64 citing *First Vancouver* at para 33 and 43, Western's Brief of Authorities, Tab 15.

⁶⁶ *First Vancouver* at para 43 citing *Pembina on the Red Development Corp. Ltd. v Triman Industries Ltd.*, 1991 CanLII 2699 (MB CA) at p. 46, Western's Brief of Authorities, Tab 16.

⁶⁷ *First Vancouver* at para 43 citing *Royal Bank of Canada v Sparrow Electric Cop.* [1997] 1 SCR 411 at para 39, Western's Brief of Authorities, Tab 16.

83. In the present circumstances, the dispute is about the Holdback, which are Contract Funds that do not become payable to ECC until conditions precedents under the Contract and the *MLA* have been satisfied. Until ECC becomes entitled to the Holdback under the Contract, the Holdback remains in the hands of the Town and is earmarked for ECC's subtrades. At the time of the Settlement Agreements, the Holdback was not payable or otherwise a debt owing to ECC under the Contract or the *MLA*. Therefore, the Settlement Agreements could not have interfered with the CRA's collection of unremitted source deductions.

84. In summary, Western's submissions on the issue of the deemed trust and CRA's alleged priority claim are as follows:

- (a) Any possible right ECC might have had to the Holdback was relinquished when it entered into the Settlement Agreements with Western, Crane and Rodco;
- (b) CRA only has a beneficial right to the property that ECC holds and it cannot have a better right to the property than ECC. Here, ECC does not hold any right to the Holdback under the Contract. ECC also gave any future right it may have in the Holdback to Crane and Rodco (now, Western) when it entered into the Settlement Agreements, including the Irrevocable Direction;
- (c) The Settlement Agreements did not interfere with the CRA's collection of unremitted source deductions because, at all material times, the Holdback was not in the hands of ECC or otherwise payable to ECC; and

- (d) The Holdback was not payable or a debt owed to ECC under the terms of the Contract or the *MLA*. Therefore, the Holdback has never been in the hands of ECC as tax debtor, which is a precondition to the CRA's deemed trust claim.

PART V – CONCLUSION

85. In conclusion, this is not a case of priority of interest between creditors, but rather a case of ownership of the Holdback. It is respectfully submitted that the only conclusion that could reasonably be drawn from the evidence and applicable law is that:

- (a) the Settlement Agreements are valid and binding such that Western as assignee and subrogee of Crane and Rodco is the owner of the Holdback; and
- (b) that CRA, along with other creditors, are not entitled to any amount of the Holdback, because no amount of the Holdback is payable to ECC, which is the condition precedent pursuant to the *ITA*, and the parallel statutes.

86. Western therefore requests that the Monitor pay to it the Holdback in its entirety, being \$237,785.27.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of July 2023.

BORDEN LADNER GERVAIS LLP

Per:



Andrew Punzo and Mark Borgo,
Lawyers for Western Surety Company

SCHEDULE “A”
LIST OF AUTHORITIES

1. *Edward Collins Contracting Limited (Re)*, 2022 NLSC 149.
2. *Andrews v Canada (Attorney General)*, 2019 NLSC 42.
3. *Pittman’s Enterprises Ltd. v Mike Kelly & Sons Limited*, 2021 NLSC 126.
4. *Apotex Inc. v Allergan, Inc.*, 2016 FCA 155.
5. *McCabe v Verge*, 1999 CanLII 18936 (NL CA).
6. *Olivieri v Sherman*, 2007 ONCA 491 (CanLII).
7. *Killick Fisheries Inc. v Atlantic Treasure Seafoods Limited et al.*, 2012 CanLII 31223 (NL SC).
8. *Cellular Rental Systems Inc v Bell Mobility Cellular Inc.*, [1995] OJ No. 721.
9. *Stoewner v Hanneson*, [1992] OJ No. 697.
10. *L-Jalco Holdings Inc. v Lawryniewicz & Associates*, 2018 ONSC 4002 (CanLII).
11. *Ozon v Lutex et al*, 2015 NTLD 147.
12. *31 Kingsbury Inc. v Delta Elevator Company Limited*, 2019 ONCS 3619 (CanLII).
13. *Homewood v Ahmed* (2003), 42 CPC (5th) 291.
14. *Northwest Angle 33 First Nations v Razar Contracting Services Ltd. et al*, 2023 ONSC 1233.
15. *PCL Constructors Westcoast Inc. v Norex Civil Contractors Inc*, 2009 BSSC 95.
16. *First Vancouver Finance v M.R.N.*, 2022 SCC 49 (CanLII).
17. *The Guarantee Company of North America v Manitoba Housing and Renewal Corp. et al*, 2017 MBQB 27.

SCHEDULE “B”
RELEVANT STATUTES

1. *Mechanics’ Lien Act*, RSNL 1990, C M-3

Holdback

12. (1) In all cases, the person primarily liable upon a contract under and by virtue of which a lien may arise shall, as the work is done or the materials are provided under the contract, retain for a period of 30 days after the completion or abandonment of the work done or to be done under the contract 10% of the value of the work and materials actually done, placed or provided, as referred to in section 6, irrespective of whether the contract or subcontract provides for partial payments or payment on completion of the work, and the value shall be calculated, upon evidence given in that regard, on the basis of the contract price or, where there is no specific contract price, on the basis of the actual value of the work or materials.

12. (5) Where there is a lien under section 6, the lien is a charge upon the amount directed to be retained by this section in favour of the lien claimants whose liens are derived under persons to whom the money required to be retained are respectively payable and where there is no lien on the land by virtue of section 5, a claim for work done or materials placed or furnished is a charge upon the amount directed to be retained by this section.

12. (7) Payment of the percentage required to be retained under this section [10%] may be validly so made as to discharge all claims in respect of that percentage after the expiration period of 30 days mentioned in subsection (1) unless in the meantime proceedings have been started to enforce a lien or charge against the percentage as provided by section 23 and 24, in which case the owner may pay the percentage into court in the proceedings, and that payment constitutes valid payment in discharge of the owner to the amount paid into court.

2. *Income Tax Act*, R.S.C. 1985, c 1 (5th Supp).

Garnishment

224(1.2) Notwithstanding any other provisions of this Act, the *Bankruptcy and Insolvency Act*, any other enactment of Canada, any enactment of a province or any law, but subject to subsections 69(1) and 69.1(1) of the *Bankruptcy and Insolvency Act* and section 11.09 of the *Companies’ Creditors Arrangement Act*, if the Minister has knowledge or suspects that a particular person is, or will become within one year, liable to make a payment

- (a) to another person (in this subsection referred to as the “tax debtor”) who is liable to pay an amount assessed under subsection 227(10.1) or a similar provision, or
- (b) to a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor,

the Minister may in writing require the particular person to pay forthwith, where the money are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under subsection 227(10.1) or the similar provision, and on receipt of that requirement by the particular person, the amount of those moneys that is so required to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of His Majesty to the extent of that liability as assessed by the Minister and shall be paid to the Receiver General in priority to any such security interest.

Trust Moneys Deducted

227(4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditors (as defined in subsection 224(1.3)) of that person but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of Trust

227(4.1) Notwithstanding any other provisions of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act) any other enactment of Canada, any enactment of the province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

- (a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such security interest, and
- (b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest.

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and the process thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

Appendix “J”

2022 01G 1964
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies*
Creditors Arrangement Act, R.S.C., 1985 c.
C-36 as amended (the “CCAA”)

AND IN THE MATTER OF an application of
Edward Collins Contracting Ltd., Classic
Security Limited, FGC Holdings Limited,
51037 Newfoundland and Labrador Inc. and
H&E Designs Ltd. (collectively “ECC” or the
Company”)

WESTERN SURETY COMPANY
COMPENDIUM

July 31, 2023

BORDEN LADNER GERVAIS LLP

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Lawyers for the Claimant,
Western Surety Company

I N D E X

TAB	DOCUMENT
1.	Contract dated March 23, 2023
2.	Settlement Agreement executed June 28, 2022
3.	Order of Justice MacDonald dated May 11, 2023

TAB 1

TENDER SPECIFICATION

TOWN OF PLACENTIA

WATER SYSTEM UPGRADES

OWNER:

Town of Placentia
P.O. Box 99
Placentia, NL
A0B 2V0

CONTRACTOR:

Edward Collins Contracting Ltd
P.O. Box 51
Jerseyside, NL
A0B 2G0

ENGINEERS/PROJECT MANAGERS:

Meridian Engineering Inc.
10 Thompson Street
Clareville, NL
A5A 1Y9

ISSUED FOR CONSTRUCTION
MERIDIAN ENGINEERING NO:
DMAE PROJECT NO's:

MARCH 2021
CC20TOP043
17-GI-20-00050 / 17-SCF-19-00129



CIVIL / STRUCTURAL PERMIT



MECHANICAL / ELECTRICAL PERMIT

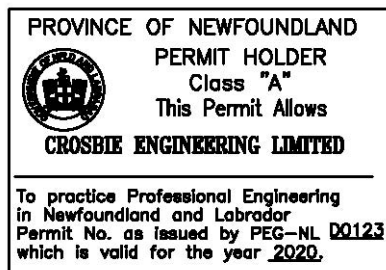


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STANDARD MUNICIPAL SPECIFICATIONS

Municipal Infrastructure Master Specification Latest Revision at Department of Transportation and Infrastructure website: <https://www.gov.nl.ca/ti/mi/>

SUPPLEMENTARY TECHNICAL SPECIFICATIONS

Section 04 05 00 – Common Work Results for Masonry
 Section 04 05 12 – Masonry Mortar and Grout
 Section 04 05 19 – Masonry Anchorage and Reinforcing
 Section 04 05 23 – Masonry Accessories
 Section 04 22 00 – Concrete Unit Masonry

 Section 06 10 00 – Rough Carpentry

Section 06 17 53 – Pre-Fabricated Roof Truss

Section 06 20 00 – Finish Carpentry

Section 07 11 13 – Bituminous Dampproofing

Section 07 21 13 – Board Insulation

Section 07 21 16 – Blanket Insulation

Section 07 26 00 – Vapour Retarders

Section 07 27 00.01 – Air Barriers

Section 07 31 13.13 – Fiberglass Reinforced Asphalt Shingles

Section 07 62 00 – Sheet Metal Flashing and Trim

Section 07 92 00 – Joint Sealants

Section 08 11 00 – Metal Doors and Frames

Section 08 51 13 – Aluminum Windows

Section 08 71 00 – Door Hardware

Section 08 80 00 – Glazing

Section 09 21 16 – Gypsum Board Assemblies

Section 09 91 13 – Exterior Painting

Section 09 91 16 – Interior Painting

Section 15 00 00 – Pumping Control System

Section 15 10 00 – PRV Stations

Section 15 20 00 – Water Intake Screens

Section 15 30 00 – Gas Chlorination System

Section 15 40 00 – Hypo Chlorination System

Refer to Drawings for Mechanical Specifications

Refer to Drawings for Electrical Specifications

LIST OF DRAWINGS

Civil Drawings

C1 of 22 Existing / New Pumphouse Plan

C2 of 22 Overall Watermain Route – Gull Pond to Clarke's Pond

C3 of 22 Plan and Profile Gull Pond to Barron Pond Sta 0+050 – 0+600

C4 of 22 Plan and Profile Gull Pond to Barron Pond Sta 0+600 – 1+200

C5 of 22 Plan and Profile Gull Pond to Barron Pond Sta 1+200 – 1+810

C6 of 22 Plan and Profile Barron Pond to Little Barron Pond Sta 0+050 – 0+400

C7 of 22 Plan and Profile Little Barron Pond to Clarke's Pond Sta 0+035 – 0+650

C8 of 22 Miscellaneous Details

C9 of 22 New Water Main (Dunville) Sheet #1

C10 of 22 New Water Main (Dunville) Sheet #2

C11 of 22	New Water Main (Dunville) Sheet #3
C12 of 22	New Water Main (Dunville) Sheet #4
C13 of 22	Floor PLAN New PRV Building
C14 of 22	Existing / Demolition Pumphouse Floor Plan
C15 of 22	Existing / Demolition Pumphouse Section Thru Wet Well
C16 of 22	Existing / New Foundation Plan and Sections
C17 of 22	New Pumphouse Floor Plan
C18 of 22	New Pumphouse Building Elevations
C19 of 22	New Pumphouse Section Thru Wet Well
C20 of 22	New Pumphouse Building Sections, Door Schedule & Details
C21 of 22	Masonry Wall Reinforcing Elevation, Details & Notes
C22 of 22	Miscellaneous Details

Mechanical Drawings

MS-1	Mechanical Specifications
MSP-1	Site Plan – PRV Station #1
MSP-2	Site Plan – PRV Station #2
MD-1	Floor Plan – Demolition Layout
MP-1	Floor Plan – Plumbing Layout
MP-2	Plumbing Schedules
MP-3	Plumbing Details
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MV-2	Ventilation Schedules and Details

Electrical Drawings

E1	Legend
E2	Site Plan
E3	Site Plan
E4	Typical PRV Station Layout
E5	Floor Plans – Demolition Plan
E6	Floor Plans – Electrical Layouts
E7	Electrical Schedules and Details
E8	Electrical Details
E9	Electrical Specifications

Tender # MI2764

AMENDMENT NO. 1

Owner: Town of Placentia

Project Name: Water System Upgrades

Project Number: 17-GI-20-00050 / 17-SCF-19-00129

Date Issued: January 25, 2021

1. This Amendment shall form an integral part of the specification to be read in conjunction therewith. This Amendment shall take precedence over all forms of the aforementioned specification with which it may prove to be at variance or may otherwise be qualified in writing by authorized personnel.

2. The General Conditions and all documents issued with this specification shall apply to govern all phases of the work covered by this Amendment.

3. The purpose of this Amendment is to inform bidders of clarifications to the contract documents.

To advise Contractors of the following changes:

1. Section 15 00 00 – Pumping / Control System
 - a. Singer and Cla-Valves are approved valves.
 - b. Siemens and Krohne Flow meters are approved providing they meet the upstream and downstream run distances.
2. Section 15 10 00 – PRV Stations
 - a. 2.4.1 – Flow meter size to be “...75mm (3”) flanges...”
 - b. 2.7.2 The size of the enclosure to read”...The enclosure shall be approximately 3.658m x 3.658m.”
3. Section 15 20 00 – Intake Screens
 - a. Intake screens by Elgin Separation Solutions is approved.
4. Section 15426 – Gas Chlorination System Title should read Section 15 30 00 Gas Chlorination System.
5. Section 15426 – Gas Chlorination System
 - a. 1.7.1.6 – Replace with “Supply and Installation of four (4) new chlorine valve regulators.”
 - b. 1.7.1.7 – Replace with “Supply and Installation of new FEP tubing between chlorine regulators and chlorine gas manifolds.”
 - c. Replace 2.6.2: Ejector selection shall be based on the following parameters.

Under normal operating conditions when the distribution pumps are operating, they supply 85-90 psi. The maximum pressure the pumps can supply is 125 psi.

6. Drawing C17 of 22 – New Pumphouse Floor Plan

- a. Delete Item 33.
- b. Item 34 to read “Chlorine gas manifolds fabricated of ½” Sch 80 PVC.
- c. Replace item 33 with item 35.

Clarifications

7. Regarding Reservoir SCADA Links. Please confirm our interpretation of the specification.

- a. Question: The contractor will reuse the existing Scada link between the Clarks pond pumphouse and reservoirs 418 and 1032?

Response: **Yes, unless it is not compatible with new system.**

- b. **Question:** The contractor will establish new communications link between Clarks pond and Wyse's pond?

Response: Yes

- c. Question: The old pump control panel is being removed and be replaced with a new panel. The new panel must communicate with reservoirs 418, 1032 and Wyse's Pond?

Response: Yes

- d. Question: If the interpretation is correct can you provide more details of the existing SCADA equipment at Clarks Pond and the 418 and 1032 reservoirs. To allow us to budget the cost of this SCADA work please provide the following additional details. What SCADA hardware is installed at reservoirs 418 and 1032 (modems, radios, internet service, PLC's, etc)?

Response: There are two remote reservoir cabinets mounted at reservoirs 1032 and 418. The communication between the main pumphouse and remote cabinets is accomplished using VHF band data radios. The wireless modem is Integra – TR by Dataradio.

- e. Question: The exact location of the Wyse's Reservoir does not appear to be detailed in the tender docs.

Response: Wyse's Pond Reservoir is located off Fox Harbour Road in Dunville next to Wyse's Pond.

- f. Question: Is there a service building at Wyse's reservoir to house the new SCADA equipment or will this be exterior mounted.

Response: Yes, there is a building to house the equipment.

- g. Question: Additionally, what style of level sensing device would be most suitable at this location and the required range?

Response: Level Pro is indicated but other suppliers are acceptable. The tanks are not that deep so 10-15m range would be adequate, but Contractor is to confirm.

- h. Question: Also regarding Wyse's Reservoir, what are the options or preferred method to establish this new link?

Response: To be determined by designer of communication system.

8. Regarding VFD sizing for the 100 HP pumps: Bidders are to ensure that the VFD's selected for the 100 HP pumps are to be over sized to meet the manufacture's pump requirements. The combination of the higher-than-normal running currents and the lowering of the carrier frequency usually means a significant de-rating of the VFD selected. Additionally, proper dv/dt filters should be utilized with these pump motors.

Contractors are advised to acknowledge receipt of this Amendment on the Tender Form when submitting a bid.

Stephen Slaney
Tendering & Contracts
Transportation & Infrastructure
Ground Floor, East Block, Confederation Bldg.
St. Johns, NF. A1B 4J6
709-729-2012
Fax: 709-729-6729
stephenslaney@gov.nl.ca

END

Tender # MI2764
AMENDMENT NO. 2

Owner: Town of Placentia

Project Name: Water System Upgrades

Project Number: 17-GI-20-00050 / 17-SCF-19-00129

Date Issued: January 29, 2021

1. This Amendment shall form an integral part of the specification to be read in conjunction therewith. This Amendment shall take precedence over all forms of the aforementioned specification with which it may prove to be at variance or may otherwise be qualified in writing by authorized personnel.
2. The General Conditions and all documents issued with this specification shall apply to govern all phases of the work covered by this Amendment.
3. The purpose of this Amendment is to inform bidders of clarifications to the contract documents.

To advise Contractors of the following changes:

Clarifications

1. Note 2 on C10,11 And 12 indicates asbestos pipe is present. There is no unit price for the removal of Asbestos pipe in the contract.
 - a. Refer to attached revised unit price table.
2. Item 1005 in Part A and B indicates that the contractor must provide the town with Chlorinated water at all times during construction. This indicate the contractor must set up a temporary chlorination system, who will be responsible to perform the Chlorination test after the system is in place and operational.
 - a. The Town operations will perform chlorination test. Contractor is to work with the Town at all times and make adjustments as required to ensure that chlorine levels are adequate.
3. Can the consultant provide a concrete slab design for the PRV Enclosure?
 - a. Concrete slab to be 100mm thick with 15m rebar at 250 mm on centre each way. 100mm of Class 'A' to be placed under the slab and compacted to 100 % SPDD.
4. Is the piping the same diameter for both PRV's, drawing note indicate PRV #1 not 2?
 - a. Item 9 on drawing C13 of 22 should read:
150mm of 200mm dia Tee (PRV Building #1)
150mm of 150mm dia Tee (PRV Building #2)
5. Is the underground pipe for the PRV PVC or ductile Iron?
 - a. Underground pipe to be PVC pipe.

6. Can the consultant provide a detail for the restraint/thrust block required at the underground 90's for the PRV?
 - a. Trust blocks to be as per detail in Master Specification.
 - b. If joint restraints are used, they are to be installed as per manufactures recommendations.
7. The specification indicates the enclosure is 2.5x3.3m but the drawings indicate 3.658 x 3.658m, which is correct.
 - a. The correct dimension is 3.658 x 3.658m.
8. There are no joint restraints or thrust blocks in the unit price table for the PVC pipe and fittings.
 - a. On drawing C8 of 22 at note 13: Mechanical joint restraints to be used at all watermain fitting locations. Joint restraints to be installed as per manufacture's recommendations. No separate payment will be made for joint restraints.
9. Do the PRV pipe require pipe stands? If so, how many per PRV and a drawing be provided.
 - a. All pipe, valves and fittings are to be supported as per manufactures requirements.
10. Are new VFD's required for the two existing 100 HP pumps.
 - a. Yes new VFD's are required for the existing 100 HP pumps.

Tender Closing Date has been Extended to Tuesday, February 9, 2021.

Contractors are advised to acknowledge receipt of this Amendment on the Tender Form when submitting a bid.

Stephen Slaney
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END

Part A (Addendum 2)
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
<u>01005</u>	<u>Maintain Existing Services</u>				
1	Maintain Existing Water Systems (Contractor to is required to ensure that the Town has a supply of Chlorinated water at all times).	L.S.	Unit	_____	_____
<u>01010</u>	<u>Mobilization & Demobilization</u> (not greater than 5% if on the Island and 10% if in Labrador, or 15% north of Cartwright of item a. "sub-total" on last page)	L.S.	Unit	_____	_____
<u>01020</u>	<u>Cash Allowances</u>				
1	Contribution in Aid of Hydro	Allow.	Unit	<u>\$5,000.00</u>	<u>\$5,000.00</u>
<u>01500</u>	<u>Temporary Facilities</u>				
1	Engineers Site Office	L.S	Unit	_____	_____
<u>01570</u>	<u>Traffic Regulations</u>				
1	Flagpersons Wages	hour	680	_____	_____
<u>01560</u>	<u>Environmental Requirements</u>				
1	Silt Fence	m	50	_____	_____
<u>01580</u>	<u>Project Sign</u>				
1	Project Sign	LS	1	_____	_____
<u>01710</u>	<u>Reinstatement and Cleaning</u>				
1	Ditching	m	450	_____	_____

Part A (Addendum 2)
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

DIVISION #2

02070 **Sitework, Demolition & Removal**
of Structures

1	Remove and replace section of arch culvert on Hrabour Drive to install new watermain	LS	1		
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02111 **Clearing and Grubbing**

1	Clearing	ha	1.2		
2	Grubbing	ha	1.2		

02215 **Site Work & Site Grading**

1	Mass Common Excavation	m ³	750		
---	------------------------	----------------	-----	--	--

02223 **Excavation, Trenching and Backfilling**

1	Main Trench Excavation	m ³	2,300		
.1	Rock				
.2	Common				
2	Imported Rock Backfill	m ³	950		
3	Rock Underbedding	m ³	150		
4	Granular Pipe Bedding	m ³	4,015		
.1	Type 3				
5	Supply & Placement of Marking Tape	m	3,640		
.1	Plastic Tape				

02233 **Selected Granular Base & Sub-base Materials**

1	Class "A" Granular Base	m ³	200		
2	Class "B" Granular Base	m ³	200		

Part A (Addendum 2)
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

<u>02434</u>	<u>Pipe Culverts</u>				
1	Supply and Install 450mm HDPE	m	60		
<u>02574</u>	<u>Reshaping & Patching of Asphalt Pavement</u>				
1	Removal of Asphalt	m ²	400		
2	Patching of Asphalt	m ²	400		
3	Cutting of Asphalt	m	250		
<u>02713</u>	<u>Water Mains</u>				
1	Supply & Installation of Water Main				
.1	150mm Ø PVC Pipe DR18	m	400		
.2	300mm Ø PVC Pipe DR18	m	190		
.3	300mm Ø HDPE DR17 Fused Pipe	m	3,050		
2	Supply & Installation of Fitting				
.1	150mm dia off 150mm dia tee	each	3		
.2	300mm dia off 300mm dia tee	each	2		
.3	200mm dia to 150 mm dia reducer	each	1		
.4	300mm dia to 150 mm dia reducer	each	1		
.5	150mm dia 90 deg bend	each	6		
.6	150mm Ø Sleeve Type Coupling	each	7		
.7	200mm Ø Sleeve Type Coupling	each	1		
.8	300mm Ø Sleeve Type Coupling	each	3		
3	Supply & Install Valves including valve boxes				
.1	150mm Ø	each	3		
.2	300mm Ø	each	1		
.3	300mm Ø (c/w post indicator)	each	6		

Part A (Addendum 2)
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

	4	Supply and Install New Fire Hydrant	each	1		
	5	Swabbing of Water Lines	m	555		
	6	Flush HDPE Water Line	m	3,050		
	7	Locate & Connect to Existing System	each	5		
	8	Supply and Install Rigid Insulation (thk as identified on the attached drawings)	m ²	6		
	9	Supply & Install Air Release Valves				
	.1	50mm dia Air Release Valve (ARI-D-090)	each	2		
<u>15 10 00</u>		<u>Pressure Reducing Valve Station</u>				
	1	Includes the supply, installation and commissioning of the PRV station as detailed in the specifications. Includes all valves, piping, fittings, joint restraints, flow meters, civil work and pre - fabricated enclosure. To includes all valves, fittings and joints restraints required to connect to main line. No extra payment will be made for locate and connect to existing piping.	LS	2		
<u>15 20 00</u>		<u>Intake at Gull Pond</u>				
	1	Supply and Install Timber Crib	LS	1		
	2	Supply and Install Concrete Pipe Anchors	ea	10		
	3	Supply and Install Wedgewire Screen	ea	1		
	4	300mm HDPE DR17 Intake Pipe	m	30		
	5	End of pipe flange fitting to accept new screen	ea	1		
<u>15 20 00</u>		<u>Discharge into Barron Pond</u>				
	1	Supply and Install Concrete Pipe Anchors	ea	10		
	2	300mm HDPE DR17 Intake Pipe	m	30		
<u>15 20 00</u>		<u>Intake at Barron Pond</u>				
	1	Supply and Install Timber Crib	LS	1		
	2	Supply and Install Concrete Pipe Anchors	ea	10		

Part A (Addendum 2)
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

3	Supply and Install Wedgewire Screen	ea	1		
4	300mm HDPE DR17 Intake Pipe	m	30		
5	End of pipe flange fitting to accept new screen	ea	1		
<u>15 20 00</u>	<u>Discharge into Little Barron Pond</u>				
1	Supply and Install Concrete Pipe Anchors	ea	10		
2	300mm HDPE DR17 Intake Pipe	m	30		
<u>15 20 00</u>	<u>Intake at Little Barron Pond</u>				
1	Supply and Install Timber Crib	LS	1		
2	Supply and Install Concrete Pipe Anchors	ea	10		
3	Supply and Install Wedgewire Screen	ea	1		
4	300mm HDPE DR17 Intake Pipe	m	30		
5	End of pipe flange fitting to accept new screen	ea	1		
<u>15 20 00</u>	<u>Discharge into Clarkes Pond</u>				
1	Supply and Install Concrete Pipe Anchors	ea	12		
2	300mm HDPE DR17 Intake Pipe	m	30		
<u>15 40 00</u>	<u>Hypo - Chlorination System</u>				
1	The supply, installation and commissioning of a new hypo chlorination system including emergency eye / shower unit for the PRV Station as detailed on the drawings and specifications.	LS	2		

a. Sub-Total:

b. HST @ 15%

c. PART A Total:

Part B (Addendum 2)
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
<u>01005</u>	<u>Maintain Existing Services</u>				
1	Maintain Existing Water Systems (Contractor to is required to ensure that the Town has a supply of Chlorinated water at all times).	L.S.	Unit	_____	_____
<u>01010</u>	<u>Mobilization & Demobilization</u> (not greater than 5% if on the Island and 10% if in Labrador, or 15% north of Cartwright of item a. "sub-total" on last page)	L.S.	Unit	_____	_____
<u>01020</u>	<u>Cash Allowances</u>				
1	Contribution in Aid of Hydro	Allow.	Unit	\$20,000.00	\$20,000.00
<u>01500</u>	<u>Temporary Facilities</u>				
1	Engineers Site Office	L.S	Unit	_____	_____
<u>01570</u>	<u>Traffic Regulations</u>				
1	Flagpersons Wages	hour	200	_____	_____
<u>01580</u>	<u>Project Sign</u>				
1	Project Sign	LS	1	_____	_____
<u>DIVISION #2</u>					
<u>02070</u>	<u>Sitework, Demolition & Removal of Structures</u>				
1	Removal of existing piping, walls, roof truss, shingles, etc as required to complete the new pumphouse extension. Any materials that are deemed useable are to be turned over to the Town.	LS	1	_____	_____
2	Removal of 300mm dia End Cap	ea	1	_____	_____
3	Remove existing valve and reconnect piping (outside the pumphouse)	LS	1	_____	_____

Part B (Addendum 2)
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

4	Removal and disposal of AC pipe	m	20		
<u>02223</u>	<u>Excavation, Trenching and Backfilling</u>				
1	Main Trench Excavation				
.1	Rock	m ³	200		
.2	Common	m ³	900		
2	Imported Rock Backfill	m ³	150		
3	Rock Underbedding	m ³	50		
4	Granular Pipe Bedding				
.1	Type 3	m ³	380		
5	Supply & Placement of Marking Tape				
.1	Plastic Tape	m	300		
<u>02233</u>	<u>Selected Granular Base & Sub-base Materials</u>				
1	Class "A" Granular Base	m ³	70		
2	Class "B" Granular Base	m ³	70		
<u>02574</u>	<u>Reshaping & Patching of Asphalt Pavement</u>				
1	Removal of Asphalt	m ²	50		
2	Patching of Asphalt	m ²	50		
3	Cutting of Asphalt	m	100		
<u>02713</u>	<u>Water Mains</u>				
1	Supply & Installation of Water Main				
.1	300mm Ø PVC Pipe DR18	m	300		
2	Supply & Installation of Fitting				
.1	250mm dia off 250mm dia tee	each	2		

Part B (Addendum 2)
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

	.2	300mm dia to 250 mm dia reducer	each	2		
	.3	300mm dia 90 deg bend	each	1		
	.4	300mm dia 45 deg bend	each	4		
	.5	300mm Ø Sleeve Type Coupling	each	2		
	3	Supply & Install Valves including valve boxes				
	.2	250mm Ø	each	3		
	5	Swabbing of Water Lines	m	300		
	7	Locate & Connect to Existing System	each	2		
		<u>Pumphouse Extension</u>				
<u>06000</u>	1	Includes but not limited to all excavation and backfill required to supply and install the concrete foundation and floor slab. Includes building construction including but not limited to, all interior and exterior finishes. Includes all work within 1.5m perimeter of the building.	LS	1		
	2	Includes but not limited to all building mechanical and electrical items. Includes but not limited to lighting, heating, electrical panels, exhaust fans, intake fans, electrical upgrades, plumbing and emergency eyewash / shower units.	LS	1		
		<u>Pumping / Control System</u>				
<u>15 00 00</u>	1	Includes but not limited to the supply, installation and commissioning of all piping, fittings, valves, P3 submersible pump assembly, three VFD's, flow meters, etc to provide and fully operational system.	LS	1		
	2	Includes the supply, installation and commissioning of the pressure reducing solenoid - controlled control valve going to Dunville System as detailed in the specifications.	LS	1		
	3	Includes the supply, installation and commissioning of the solenoid - controlled control valve going to Argentia System as detailed in the specifications.	LS	1		

Part B (Addendum 2)
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

4	Includes the design, supply, installation and commissioning of the pump / system control panel. Includes programming, equipment, level sensors at the Wysè's Pond reservoir and required communication equipment. Minimum requirements for the control system and sequence is outlines in eth specifications.	LS	1		
15 30 00	<u>Gas Chlorination System</u>				
1	The supply, installation and commissioning of a new gas chlorination system as detailed on the drawings and specifications.. Includes, but not limited to, new booster pumps, piping, gauges, valves, fittings and gas detection system.	LS	1		
a. Sub-Total:					
b. HST @ 15%					
c. Part B Total:					
1 PART A TOTAL					
2 PART B TOTAL					
3 BID TOTAL (carry forward to Appendix 'A' of the Bid Form)					

Tender # M12764
AMENDMENT NO. 3

Owner: Town of Placentia

Project Name: Water System Upgrades

Project Number: 17-GI-20-00050 / 17-SCF-19-00129

Date Issued: February 1, 2021

1. This Amendment shall form an integral part of the specification to be read in conjunction therewith. This Amendment shall take precedence over all forms of the aforementioned specification with which it may prove to be at variance or may otherwise be qualified in writing by authorized personnel.
2. The General Conditions and all documents issued with this specification shall apply to govern all phases of the work covered by this Amendment.
3. The purpose of this Amendment is to inform bidders of clarifications to the contract documents.

To advise Contractors of the following changes:

Clarifications

1. Note 3&4 on MV-1 indicates magnetic starters to be explosion proof.
 - a. Magnetic starters are to be of standard construction.
2. EF-1 to be complete with explosion proof motor.
3. Louvers located in generator room to remain as is.

Contractors are advised to acknowledge receipt of this Amendment on the Tender Form when submitting a bid.

Stephen Slaney
Tendering & Contracts
Transportation & Infrastructure
Ground Floor, East Block, Confederation Bldg.
St. Johns, NF. A1B 4J6
709-729-2012
Fax: 709-729-6729
stephenslaney@gov.nl.ca

END

Description of Work

1. The work will consist of, but will not necessarily be limited to, the following:
 1. Removal of existing piping, walls, roof truss, shingles, etc. as required to complete the new pumphouse extension
 2. Pumphouse Extension: Includes but not limited to all excavation and backfill required to supply and install the concrete foundation and floor slab. Includes building construction including but not limited to, all interior and exterior finishes.
 3. Pump / Control System:
 - i. Includes but not limited the supply, installation and commissioning of all piping, fittings, valves, submersible pump assembly, VFD's, control valves, flow meters, etc. to provide and fully operational system.
 - ii. Includes the design, supply, installation, and commissioning of the pump / system control panel. Includes programming, equipment, level sensors at the Wyse's Pond reservoir and required communication equipment.
 4. New Gas Chlorination system: The supply, installation and commissioning of a new gas chlorination system as detailed on the drawings and specifications. Includes, but not limited to, new booster pumps, piping, gauges, valves, fittings and gas detection system.
 5. New PRV Stations: Includes the supply, installation, and commissioning of the PRV station as detailed in the specifications. Includes all valves, piping, fittings, hypo chlorination system, flow meters, civil work and prefabricated enclosure.
 6. Interconnection of Gull Pond – Barron Pond – Little Barron Pond – Clarkes Pond.
 - i. Supply and installation of new 300mm dia HDPE fused pipe c/w fittings and valves.
 - ii. Supply and Installation stainless steel wedge wire screens, timber crib, concrete anchor blocks, and intake pipe in Gull Pond, Barron Pond, Little Barron Pond.
 - iii. Supply and Installation concrete anchor blocks and intake pipe in Barron Pond, Little Barron Pond and Clarkes Pond.
 7. Supply and installation of water main, valves and fittings in Dunville to create additional pressure zones.

INSTRUCTIONS TO BIDDERS

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INSTRUCTIONS TO BIDDERS

1. INTERPRETATION

- (a) This document shall be governed by and interpreted in accordance with the laws of the Province of Newfoundland and Labrador and the laws of Canada.
- (b) Where the Contractor consists of more than one person, the obligations of the Contractor shall be joint and several.
- (c) If any provision of this Contract is void, illegal, invalid or unenforceable; it shall be severable from the Contract and shall not invalidate or impair the remaining provisions of the Contract.
- (d) The Contractor is acknowledged to be an independent contractor and neither the Contractor, nor any officer, servant nor agent of the Contractor is deemed to be an employee of the Owner.
- (e) The Contract constitutes the entire agreement between the Owner and the Contractor. There are no other agreements of any kind other than those contained within the Contract.

2. OPEN CALL FOR BIDS

- (a) Bids must be received on or before the exact closing time and date indicated in the advertisement. BIDS RECEIVED AFTER THAT TIME WILL NOT BE CONSIDERED OR OPENED.
- (b) The Form of Agreement is included in the Contract Documents at the time of the Open Call for Bids for the purpose of information to Bidders and shall not be completed at the time of Bid submission.
- (c) Before submitting a Bid, Bidders shall carefully examine the Contract Documents and the site of the proposed work and fully inform themselves of the existing conditions and limitations. No subsequent allowance under the Contract Documents will be considered for any Bidder who had failed to become familiar with all aspects of the work.
- (d) By submitting a Bid, a Bidder represents to the Owner that the Bidder has made such examination and is satisfied as to the conditions that will be encountered in performing the Work and as to the requirements described in the Open Call for Bids.
- (e) The Owner will not defray any expenses incurred by the bidders in the preparation and submission of their bids.
- (f) Bidders shall identify any information in the bid that may qualify for an exemption from disclosure under subsection 39(1) of the **Access to Information and Protection of Privacy Act, 2015**.
- (g) This procurement is subject to trade agreements, such as the Canada Free Trade Agreement and the Canada European Union Comprehensive & Economic Trade Agreement, where applicable.

INSTRUCTIONS TO BIDDERS

3. CONTRACT DOCUMENTS

- (a) Notices of Open Calls for Bids will be posted on the Government of Newfoundland and Labrador's online procurement service provider website www.MERX.com.
- (b) The Contract Documents that form part of the Open Call for Bids consist of the Instructions to Bidders, Bid Form, Agreement, General Conditions, Supplementary General Conditions, Drawings, Specifications, and any Amendments to the Contract Documents issued during the bid period.
- (c) Every interpretation of, or addition to, the Contract Documents to be considered a valid part of the Contract Documents will be issued in the form of a written amendments.
- (d) No amendments will be issued less than five (5) days prior to the closing date of the Open Call for Bids.
- (e) Bidders are responsible for ensuring they have received all Open Call for Bids Amendments and are advised to check the Government of Newfoundland and Labrador's online procurement service provider website for Open Call for Bids Amendments before submitting their Bids.
- (f) Bidders shall acknowledge amendments:
 - (i) where submitting a bid electronically, by using the online acknowledgement space provided; or
 - (ii) where submitting bids in paper form, by using the amendment acknowledgement form provided with the Open Call for Bids or their bid may be rejected.
- (g) The Owner or the Government of Newfoundland and Labrador may also avail of the e-procurement service provider, MERX, audit log for the purpose of verifying Bidder receipt and/or acknowledgement of amendments.

4. ENQUIRIES

- (a) A Bidder is solely responsible for obtaining all information that may be necessary in order to understand the requirements of the Open Call for Bids and to submit a Bid in accordance with the terms and conditions of the Open Call for Bids.
- (b) If a Bidder finds errors, discrepancies or omissions in the Open Call for Bids, the Bidder should notify the Contract Administrator of the error, discrepancy or omission as soon as possible. If a Bidder is unsure of the meaning or intent of any provision in the Open Call for Bids, the Bidder should request clarification from the Contract Administrator.
- (c) All enquiries related to the Open Call for Bids must be directed, in writing, to the Contract Administrator identified in the Open Call for Bids.

INSTRUCTIONS TO BIDDERS

- (d) Responses to enquiries which, in the sole judgment of the Contract Administrator, require a correction or modification to the Open Call for Bids will be provided by an Amendment.
- (e) Responses to enquiries which, in the sole judgment of the Contract Administrator, do not require a correction or modification to the Open Call for Bids, will be provided by the Contract Administrator only to the Bidder that made the enquiry.
- (f) A Bidder is not entitled to rely on any response or interpretation received pursuant to an enquiry unless that response or interpretation is provided in writing by the Contract Administrator or by an Amendment to the Open Call for Bids.
- (g) If a Bidder has sent an enquiry and has not received any acknowledgement of its enquiry, the Bidder should follow up with the Contract Administrator.
- (h) Enquiries received within 48 hours of the Submission Deadline may not receive a response from the Contract Administrator.

5. BID SURETY AND BONDING

- (a) Bidding Security
 - (i) Every Bidder shall submit with the Bid a bid bond issued by an approved Surety Company licensed to do business in the Province of Newfoundland and made out in favour of the Owner.
 - (ii) The bid bond shall be at least ten percent (10%) of the bid amount. All bids, regardless of monetary value require a Bid Security of at least ten percent (10%) of the total bid amount, with a minimum security of five hundred dollars (\$500.00)." Bid Securities shall be in the form of a Bid Bond or Certified Cheque in favour of the Owner. An approved certified cheque may be substituted in lieu of the bid bond. The bidding security will be returned upon receipt of the Performance and Labour and Materials Bonds.
 - (iii) For bids less than \$25,000.00, the terms of the Bid Security will be invoked and the amount retained by the Owner, if the Bidder fails to provide the required insurances and commence work within 30 days of being notified of the award of the work within the Open Call for Bids validity period.
 - (iv) The Bid Security of the unsuccessful bidders numbers 2 & 3 will be returned to them upon award of the contract, Bid Securities of bidders higher than 3 will be returned after the Open Call for Bids opening. The Bid Security of the successful bidder will be retained until the first progress payment.
 - (v) Failure to submit a bid security in accordance with this

INSTRUCTIONS TO BIDDERS

- requirement will result in rejection of bid submitted.
 - (vi) The terms of the bid security will be invoked and the amount retained by the Owner if the Bidder fails to enter into an agreement when notified of the award of the work within the Open Call for Bids validity period; or fails to provide the Performance and Labour and Materials Bonds in the amount and within the period specified.
- (b) Performance Bond
 - (i) A Performance Bond will be required in the amount of fifty percent (50%) of the contract price. The Performance Security is to be received not later than two (2) weeks after the award of the contract by the letter of intent and prior to the formal execution of the agreement. No work is to be undertaken until the Performance Security has been received. Performance Security will not be required for a contract value of less than \$25,000.
 - (ii) In lieu of the Performance Bond, the Owner may accept at their sole discretion an approved certified cheque for ten percent (10%) of the bid amount. The cheque will be retained until satisfactory completion of the work including the guarantee period, after which this amount will be returned to the Contractor together with the accrued interest thereon at the current bank rate.
- (c) Labour and Materials Payment Bond
 - (i) A Labour and Materials Payment Bond will be required in the amount of fifty percent (50%) of the contract price, which will either be the Sub-Total of Bid Prices or the Total Estimated Bid Items, not including the Harmonized Sales Tax (HST). The Labour and Materials Payment Bond is to be received not later than two (2) weeks after the award of the contract by the letter of intent and prior to the execution of the formal agreement. No work is to be undertaken until the Labour and Materials security has been received. Labour and Materials security will not be required for a contract valued at less than \$25,000.
 - (ii) In lieu of the Labour and Materials Bond, the Owner may accept at their sole discretion an approved certified cheque of ten percent (10%) of the bid amount. The cheque will be retained until substantial completion of the work. This security, if in the form of a cheque, will be returned to the Contractor together with the accrued interest thereon at the current bank rate.
- (d) E-Bonds
 - (i) Contractors may provide Bid Bonds, Performance Bonds as well as Labour and Material Payment Bonds in either paper or electronic format (e-Bonds).

INSTRUCTIONS TO BIDDERS

- (ii) In accordance with the recommendations of the Surety Association of Canada, the e-Bonds shall be digitally verifiable through a third party digital certification service provider that can maintain integrity of e-Bond content and provide secure access to the e-Bond such as Mobile Bonds, Xenex Enterprises or Trisura Guarantee Insurance Company.
- (iii) Where Bids are submitted through the Government of Newfoundland and Labrador's online procurement service provider, MERX, E-Bonds are to be submitted through the MERX website.
- (iv) Where paper Bids are submitted, E-Bonds are to be emailed to tenderingandcontracts@gov.nl.ca in advance of the specified closing date and time. The subject line must include "Electronic Bond for Open Call for Bids (reference number)".
- (e) Contractors are advised that Certified Cheques, Money Orders, or Bank Drafts from a recognized financial institution registered to do business in the Province of Newfoundland and Labrador, are acceptable forms of Bid Surety and Bonding in lieu of Bonds for Bid Security, Performance Bonds, and Labour & Materials Payment Bonds. No other forms of Bid Surety and Bonding, including cash, will be accepted.
- (i) Where a certified cheque, money order or bank draft is the format chosen by the bidder, and the bid is submitted electronically, the bidder may submit the certified cheque, money order or bank draft in person at the Tendering and Contracts office prior to closing, or via registered post. The registered post must be received no later than two (2) business days of the closing or the bid will be disqualified. The bidder must scan a copy of the certified cheque and registered mail receipt and include the documentation with the electronic bid.

6. BID PROCEDURES

- (a) Bids must be submitted before the Submission Deadline to the Submission Location, using one of the submission methods specified in the Open Call for Bids for this purpose.
- (b) Where a bidder chooses to submit a bid electronically, it is recommended to complete the bid process electronically. Where a bidder chooses to submit a bid in paper format, it is recommended to continue with this format throughout the process. Alternating between formats is not recommended.
- (c) Bids received by the Government of Newfoundland and Labrador after the Submission Deadline, or at an incorrect Submission Location, or by an unacceptable submission method, will be

INSTRUCTIONS TO BIDDERS

- rejected.
- (d) The Open Call for Bids indicates which methods of delivery are acceptable for the Bid (e.g. mail, personal or courier delivery, facsimile, e-mail), and the Bidder shall submit the Bid only in accordance with the methods permitted.
 - (e) Bids that are submitted by mail, personal delivery or courier must be enclosed in a sealed envelope clearly marked with the Open Call for Bids reference number. The envelope should also indicate the Bidder's name and the Bidder's return address.
 - (f) The Owner may extend the Submission Deadline by issuing an Amendment to the Open Call for Bids at any time before the Submission Deadline.
 - (g) Bidders must submit their Bids using the forms contained in the Open Call for Bids. Bids that are submitted on one or more forms that are different from the forms contained in the Open Call for Bids may be rejected by the Owner.
 - (h) For the purpose of the evaluation of Bids received on the Bid Form
 - (i) the bid shall be the Total Bid Amount.
 - (ii) Work associated with Separate Prices may be deleted at the sole discretion of the Owner at the time of contract award and a deduction(s) will be made to the Total Bid Amount equal to the amount(s) in Section A4 of the Bid Price Table on Appendix "A" of the Bid Form.
 - (iii) Costs associated with Unit Price work will vary depending upon the quantities authorized by the Owner's Representative during the course of construction and the final contract amount will be adjusted accordingly, upwards or downwards, based upon the quoted unit rate, within the limits of the Public Procurement Act.
 - (i) **ONLINE BID SUBMISSION PROCEDURES**
 - (i) The online procurement service provider is www.MERX.com.
 - (ii) Bidders are required to submit a Bid through the Government of Newfoundland and Labrador's online procurement service provider.
 - (iii) The Bidders are required to register a user profile with the Government of Newfoundland and Labrador's online procurement service provider, and the submission procedures set out on the online procurement service provider website shall apply, including those with respect to Amendment Acknowledgements and bid bond submission.
 - (iv) It is solely the Bidder's responsibility to ensure that its Bid is received by the online procurement service provider before the Submission Deadline. Bids received after the Submission Deadline will not be accepted.
 - (j) **PAPER COPY BID SUBMISSION PROCEDURES**
 - (i) The Bidder may submit a paper copy Bid in lieu of an

INSTRUCTIONS TO BIDDERS

electronic bid. For greater clarity, the submission procedures set out in this subsection do not apply to Bids submitted using the Government of Newfoundland and Labrador's online procurement service provider.

- (ii) Envelopes containing the Bid are to be clearly marked:

Bid for:

Water System Upgrades

Town of Placentia

17-GI-20-00050 / 17-SCF-19-00129

Addressed to:

Town of Placentia (Owner)

Mailing and Deliver Address:

Deputy Minister
c/o Tendering & Contracts
Ground Floor, Confederation Building, East Block
P.O. Box 8700, St. John's, NL, A1B 4J6

Courier Address:

Deputy Minister
c/o Tendering and Contracts
Ground Floor, Confederation Building, East Block
100 Prince Philip Drive
St. John's, NL, A1B 4J6

The name and address of the Bidder and the closing time must be shown on the envelope.

- (iii) A Bidder must complete in its entirety and submit the Bid Form contained in the Open Call for Bids as part of its Bid. The Bidder should retain a copy for their records.
- (iv) Type or legibly print the Bidders full business name and address in the spaces provided on the Bid Form.
- (v) Sign the Bid Form in the space provided as indicated:
- In the case of a Sole Proprietorship, signature of Sole Proprietor will sign where indicated in the presence of a witness who will sign where indicated. Insert the words "Sole Proprietor" next to the signature.
 - In the case of a Partnership, signature of all partners will sign where indicated in the presence of a witness who will sign where indicated. Insert the word "Partner" next to signatures.

INSTRUCTIONS TO BIDDERS

- c. In the case of a Limited Company, signatures of authorized signing officers in the presence of a witness who will sign where indicated, and the corporate seal will be affixed. Indicate next to signature the corporate title of each signer.
- (vi) Spaces or Appendices will be provided with the Bid Form if required for a list of sub- contractors, use of bid depository, contractor's experience, list of equipment. All such spaces and appendices must be completed in their entirety legibly by typewriter or by printing in ink.
- (vii) If it becomes necessary to correct an error made on the Bid Form, such correction must be initialed and dated by the person or persons signing the Bid Form.
- (k) If the Owner requests more information about a Bidder's legal name or status, address or contact information, the Bidder must provide the Owner with such information within three (3) calendar days of the request. Failure to provide The Owner with the requested information within such time period may result in that Bidder's Bid being rejected.
- (l) It is solely the Bidder's responsibility to ensure that its Bid and any Bid change (including any Amendment Acknowledgement submitted subsequent to Bid submission) or Bid withdrawal is received at the Submission Location specified in the Open Call for Bids prior to the Submission Deadline.
- (m) Notwithstanding that a Bidder may be entitled to use facsimile transmission or e-mail to change or withdraw a Bid, the Owner cannot assure Bidders that information or documents sent by facsimile transmission or e-mail will reach the intended recipient before the Submission Deadline. By using facsimile transmission or e-mail, Bidders acknowledge that all risks associated with failed or late delivery are borne by the Bidder. Bidders are responsible for ensuring that the intended recipient received such information or documents by the Submission Deadline.

7. CURRENCY AND TAX CONDITIONS

- (a) All prices must be quoted in Canadian dollars.
- (b) The Owner certifies that the amounts payable to the successful Bidder for the Work will be paid by the Owner's funds.

8. OWNERSHIP AND RELEASE OF INFORMATION

- (a) Bids that are not withdrawn in accordance with these Bidding Procedures become the property of the Owner after the Submission Deadline.
- (b) The Bidder is advised that any information contained in a Bid may

INSTRUCTIONS TO BIDDERS

be released by the Owner in original or other forms if authorized or required by the Owner's or the Government of Newfoundland and Labrador's policies or procedures, including these Bidding Procedures, or by any law, including The ***Auditor General Act (Newfoundland and Labrador)***, and the ***Access to Information and Protection of Personal Privacy Act (2015)***.

- (c) The financial value of the contract will be publicly released by the Owner as a part of the award notification.

9. IRREVOCABLE BID PERIOD

- (a) The Owner will endeavour to award a Contract within the specified validity period; however, Bids are irrevocable for sixty (60) calendar days after the Submission Deadline. A Bidder is bound to enter into the Contract if it is awarded the Contract during this period of irrevocability.
- (b) The Owner may request that Bidders agree to an extension of this period of irrevocability. The Bid of each Bidder that consents to such an extension remains irrevocable for the additional time requested by the Owner. The Bid of each Bidder that does not consent to such an extension remains irrevocable for the irrevocable bid period currently in force upon the Bid.
- (c) No Bidder has any obligation to enter into a Contract with the Owner upon the expiration of the irrevocable bid period. Where the irrevocable bid period in force upon a Bid has expired, further Bid information will not be released by the Owner provided the Bidder has so requested.

10. BIDDER DECLARATIONS

- (a) In submitting a Bid, the Bidder declares that the Bidder:
 - (i) is incorporated and in good standing under The Corporations Act (Newfoundland and Labrador), or otherwise authorized or permitted to legally carry on business in the Province of Newfoundland and Labrador;
 - (ii) is financially capable of carrying out the terms of the Contract; and
 - (iii) possesses all the necessary experience, capital, organization, and equipment to perform the Work in accordance with the terms and conditions of the Contract.
- (b) In submitting a Bid, the Bidder declares and represents that it has not knowingly participated in bid-rigging, collusion, or fraud in the preparation of its Bid. Further, the Bidder declares and represents that it has produced the Bid independently from, and without consultation, communication, agreement or arrangement with, any competitor, except where the competitor intends to become a

INSTRUCTIONS TO BIDDERS

- Subcontractor for a portion of the Work or intends to form a joint venture arrangement with the Bidder.
- (c) The Bidder is advised that, under the *Competition Act* (Canada), the Bidder is responsible for notifying the Owner of any aforementioned agreements or arrangements with its competitors.
 - (d) In submitting a Bid, the Bidder declares and represents that the Bidder does not knowingly have a conflict of interest related to the performance of the Work by the Bidder or by its Subcontractors. If the Bidder is in doubt as to whether individuals or circumstances give rise to a conflict of interest, the Bidder should consult with the Contract Administrator prior to submitting a Bid. The Owner may reject any Bid if, in its sole discretion, the Owner determines that an actual or potential conflict of interest exists.
 - (e) By submitting a Bid, the Bidder agrees that:
 - (i) the Open Call for Bids, in its entirety, is deemed to be incorporated into and form part of the Bid notwithstanding that all parts of the Open Call for Bids may not be attached to or accompany the Bid;
 - (ii) all Open Call for Bids amendments have been received, considered and addressed in the Bid;
 - (iii) any changes to the submitted Bid received by the Government of Newfoundland and Labrador before the Submission Deadline forms part of the Bid;
 - (iv) any proposals, counter-offers, qualifications or changes to the terms, conditions or specifications in the Open Call for Bids by the Bidder will not be accepted by the Owner but will be disregarded and will not be incorporated into the Contract;
 - (v) if they are the preferred Bidder, the Bidder will enter into a Contract with the Owner to complete the Work in accordance with the Bid and the terms, conditions and specifications contained in the Open Call for Bids; and
 - (vi) the Bid will form part of the Contract.
 - (f) Bidders will not engage in any form of political or other lobbying whatsoever in relation to the Open Call for Bids, including for the purpose of influencing the outcome of the process. Further, no such person (other than as expressly contemplated by this Open Call for Bids) will attempt to communicate in relation to the Open Call for Bids, directly or indirectly, with any representative of the Owner or the Government of Newfoundland and Labrador (GNL) (including any Minister or Deputy Minister, or any Members of the House Assembly, or any employee of the GNL), or any director, officer, employee, agent, advisor, consultant or representative of any of the foregoing, as applicable, for any purpose whatsoever. In the event of any lobbying or communication in contravention of this Section, the Owner in its sole and absolute discretion may at any time, but

INSTRUCTIONS TO BIDDERS

will not be required to, reject any and all bids submitted by that proponent without further consideration or compensation.

11. UNACCEPTABLE BIDS

- (a) Bids not submitted on the Bid Form provided will not be considered.
- (b) Facsimile bids will not be accepted.
- (c) Bids received after the Open Call for Bids Closing time will not be considered.
- (d) Incomplete Bids will be rejected.
- (e) Bids not accompanied by an approved security in the correct amount will be rejected.
- (f) Bids containing qualification or additional clauses to the Bid Form will be rejected.
- (g) Incorrectly prepared Bids may be rejected.

12. AMENDMENTS TO BIDS

- (a) Where a Bidder has submitted a Bid, the Bidder may make changes to the Bid using one of the submission methods specified in the Open Call for Bids for this purpose. Any changes to a Bid must be received before the Submission Deadline.
- (b) A Bid change may be made by letter or by re-submission of a form. All Bid changes made by paper copy must be in writing and signed by a representative of the Bidder with the authority to bind the Bidder. Bid changes must clearly state the name of the Bidder and the number of the Open Call for Bids to which the change relates, and should state the address of the Bidder. The Bidder must indicate those portions of the Bid that have changed from the Bidder's original Bid submission.
- (c) Where a change affects one or more Prices on the Bid Form, the Bidder shall clearly indicate the change to all affected Prices, or resubmit the Bid Form.
- (d) If, in the Owner's opinion, there is any ambiguity about the nature or effect of any change, the Owner may reject such a change and evaluate the Bidder's Bid without regard to the change.

13. WITHDRAWAL OF BIDS

- (a) A Bidder may withdraw a Bid without penalty at any time before the Submission Deadline by giving written notice to the Government of Newfoundland and Labrador for this purpose. A Bid withdrawal must be received at the Submission Location before the Submission Deadline.
- (b) Where a paper Bid has been submitted, a notice of Bid withdrawal must be signed by a representative of the Bidder with the authority

INSTRUCTIONS TO BIDDERS

to bind the Bidder, must clearly state the name of the Bidder and the number of the Open Call for Bids to which the Bid was responding, and should state the address of the Bidder.

- (c) If the Owner receives notice of a Bid withdrawal before the Submission Deadline, the Owner will not consider the Bid during the bid evaluation and will return the Bid to the Bidder only at the request and expense of the Bidder.

14. SUBSTITUTION OF MATERIALS

- (a) Bids shall be based upon using the materials or products as specified without substitution. Where two or more brand names are specified the choice shall be left to the contractor. Where only one brand name is stated there shall be no substitution.
- (b) Where the Specifications include the "or approved equal" clause, substitutions may be proposed provided that:
 - (i) the request for a substitution is made in writing at least fourteen (14) days prior to the bid date;
 - (ii) the request shall clearly define and describe the product for which the substitution is requested;
 - (iii) the substituted article is equivalent to the specified article with regards to design, function, appearance, durability, operation and quality.
- (c) Approval of the substitution by the Owner's Representative shall be in the form of an amendment to the Specifications issued at least five (5) days prior to the Open Call for Bids closing date to all of those contractors listed as having received a copy of the Contract Documents.

15. ACCEPTANCE OF BID

- (a) The Owner will not necessarily accept the lowest or any Bid.
- (b) Upon written acceptance of the Bid within the Open Call for Bids validity period, the Bid Form becomes part of the Contract Documents and the successful bidder becomes the Contractor. The Contractor will be required to execute a formal agreement with the Owner within thirty (30) days of the date of the letter of intent.
- (c) The Contractor shall, within 14 days of receipt of the letter of intent, submit to the Owner a breakdown of the bid to the satisfaction of the Owner.

16. OPENING OF BIDS

- (a) Bids received by the Submission Deadline will be opened publicly at the Submission Location immediately after the Submission Deadline.

INSTRUCTIONS TO BIDDERS

- (b) The Owner will post the bid results on the Government of Newfoundland and Labrador Tendering and Contract's bid results web page immediately after the Submission Deadline.
- (c) Where an Open Call for Bids requires the submission of a bid bond (whether electronic or hard copy) but the bid bond has not been received prior to the Submission Deadline, the corresponding Bid will be rejected.
- (d) All Bids which were received at the time of the public opening will be evaluated after the public opening.
- (e) Anyone may attend the public opening.

Solicitations are currently undertaken in accordance with the Public Procurement Regulations and with applicable Special Measures Orders pursuant to the **Public Health Protection and Promotion Act**. The opening of submissions will be held on the designated date and time with two representatives of the Department of Transportation and Infrastructure Tendering and Contracts Division.

Bidders may to view the opening via a Skype meeting platform. To access the Skype meeting for the opening your organization may be interested in, please email tenderingandcontracts@gov.nl.ca no less than four hours prior to the stated date and time of the opening of submissions. The subject of the email must read 'Interest in Tender (Reference Number) Opening'. The body of the email must include the email of the individual who will be joining the Skype session. Emails requests received less than four hours in advance of the opening shall not be acknowledged. Prior to the opening, an email including a Skype meeting invitation will be sent to the email address indicated in the request.

The following resources are available for organizations who do not currently use the Skype platform:

<http://2016-17.elearnwithnca.co.uk/help/lync/86-installing-skype-for-business-web-app-browser-plug-in>
<https://support.office.com/en-us/article/join-a-skype-for-business-meeting-with-skype-meetings-app-skype-for-business-web-app-4828ad18-ed21-422a-a870-94d676d4b72a>
<https://support.office.com/en-us/article/trouble-installing-the-skype-for-business-web-app-plug-in-958fc5f1-2d6f-42e3-815d-a9516c591274>

17. EVALUATION PROCESS

- (a) Bids that were opened at the public opening and recorded in the Report After Open Call for Bids Call (Unofficial Results) will be reviewed and evaluated by the Owner after the public opening.
- (b) The process of evaluating Bids is as follows:
 - (i) Determine Bid Compliance (Pass/Fail),

INSTRUCTIONS TO BIDDERS

- (ii) Compare Total Prices,
- (c) Determining Bid Compliance (Pass/Fail)
 - (i) The Owner will evaluate all Bids that were opened at the time of public opening to determine whether they comply with the requirements of the Open Call for Bids, including these Bidding Procedures.
 - (ii) Bids which the Owner determines, in its sole discretion, comply with the requirements of the Open Call for Bids will progress to the second step of the evaluation process. The Owner may reject a Bid submission if it is incomplete, incorrect or conditional, or contains additions, deletions, alterations or other irregularities. Bids which the Owner determines do not comply with the requirements of the Open Call for Bids will not progress to the second step of the evaluation and will be rejected.
 - (iii) The Owner may waive irregularities or reject all or any Bids if, in the sole discretion of the Owner.
- (d) Comparing Total Prices
 - (i) The Owner will compare the Total Prices of all compliant Bids to determine the Bid ranking. All compliant Bids will be assigned their respective places in order of lowest Total Price to highest Total Price. The preferred Bidder is the Bidder that submitted the compliant Bid with the lowest Total Price.
 - (ii) Where a Bidder fails to provide a Lump Sum Price, Separate Price, or Unit Price as identified in the Bid Form, the Bid will be rejected.
- (e) The Owner has the right to contact not only any of the references provided by the Bidder, but also any other references identified by the Owner who have had dealings with the Bidder or the Bidder's Subcontractors without prior notice to the Bidder.
- (f) If a preferred Bidder is rejected, the Bidder with the second-lowest Total Price becomes the preferred Bidder, and so on until either a Contract is awarded to a qualified Bidder having submitted a compliant Bid or the Open Call for Bids is cancelled.
- (g) A Bidder will be notified, in writing, if its Bid is rejected.

18. AWARD AND SIGNING OF CONTRACT

- (a) The Owner is under no obligation to award a Contract to a Bidder, even if one or more Bids are determined to be compliant and one or more Bidders are determined to be qualified. Without limiting the generality of the foregoing, the Owner will have no obligation to award a Contract where:
 - (i) there is only one Bid received;
 - (ii) the prices exceed the funds available for the Work;

INSTRUCTIONS TO BIDDERS

- (iii) the prices materially exceed prices for similar work in the past;
 - (iv) the prices materially exceed the Owner's cost to perform the Work, or a significant portion thereof, with its own forces;
 - (v) the prices are unbalanced;
 - (vi) in the sole opinion of the Owner, the interests of the Owner would be best served by not awarding a Contract.
- (b) If no Contract is awarded, the Owner will give written notice to all Bidders, that no Contract award will be made and (where applicable) will post a notice on the Government of Newfoundland and Labrador's online procurement service provider website that the Open Call for Bids has been cancelled and no further Bid information will be released, provided the Bidder has so requested.
- (c) If the Owner decides to award a Contract, it will award the Contract to the qualified Bidder that has submitted a compliant Bid with the lowest Total Price.
- (d) The successful Bidder will be notified in writing that the Bidder has been awarded the Contract, subject to the Bidder complying with the specific conditions precedent to the Contract as set out in the Open Call for Bids or the notification of award.
- (e) The Bidder shall, within ten (10) calendar days after the date on which the notification of award was sent to the Bidder, demonstrate to the Owner that the Bidder has satisfied any conditions precedent to the Contract or in the notification of award and the Owner will execute the Contract and send a copy to the Contractor upon being satisfied that the requirement of this section is being met.

19. FAILURE TO RESPOND TO AWARD NOTIFICATION

- (a) If, within ten (10) calendar days after the date on which the award notification was sent to the Bidder, the Owner has not received all of the following from the Bidder:
 - (i) the Contract, duly signed by the Bidder (if applicable);
 - (ii) a performance bond (if applicable);
 - (iii) a labour and material payment bond (if applicable); and
 - (iv) evidence that the Bidder has satisfied any conditions precedent to the Contract; then the Owner may do one or more of the following:
 - a. where a bid bond was required, claim against the bid bond;
 - b. declare the Bidder ineligible to bid on Open Call for Bids issued by the Owner for a period of up to two (2) years;
 - c. proceed to award the Contract to, another Bidder;
 - d. cancel the Open Call for Bids;

INSTRUCTIONS TO BIDDERS

- e. exercise whatever other remedies are available by law.

20. COMMENCEMENT OF WORK

- (a) Unless otherwise authorized by the Owner, in writing, the Contractor shall not commence any Work until the Contractor has:
 - (i) submitted an approved performance bond (if required);
 - (ii) submitted an approved labour and material payment bond (if required);
 - (iii) submitted confirmation of all required insurances.
 - (iv) submitted a Site Specific Safety Plan acceptable to the Owner;
 - (v) complied with the conditions precedent to the Contract;
 - (vi) confirmed that the Owner has executed the Contract that was signed and submitted by the Contractor and,
 - (vii) attended a pre-construction meeting (if required).

21. TENDERING AND CONTRACTS OFFICE CLOSURE

- (a) In the event the Tendering and Contracts office is closed, any Open Call for Bids that would have closed on that day will be deferred to close at the same time on the next work day that normal hours are resumed.
- (b) Other than as impacted above, bids, amendments to Open Call for Bids, etc., will be accepted at the Tendering and Contracts office on or before the deferred closing time and date. Bids received after this deferred time and date will not be considered.

22. SAFETY TRAINING AND SUPERVISION

- (a) Contractors shall ensure that work covered under these documents conforms, where required, to the following procedures and regulations set out by the Occupational Health and Safety Branch of Service NL or the Explosives Division of Energy, Mines and Resources Canada:
 - (i) Transportation of Dangerous Goods
 - (ii) Navigation of Overhead Wires
 - (iii) Use of Explosives
 - (iv) Working in Confined Spaces
 - (v) Highway Flagging and Signage
 - (vi) Workplace Hazardous Materials Information System
 - (vii) Working with Small Tools/Shop Equipment
 - (viii) First Aid and CPR
 - (ix) Safety Committee

INSTRUCTIONS TO BIDDERS

- (x) CSA Z275.2-92 Occupational Safety Code for Diving Operations
- (xi) Other applicable health or safety procedures or regulations.
- (b) Contractors shall complete the "Safety Training and Supervision Certificate" before construction commences and supply proof of pertinent health and safety training of workers and supervisors.
- (c) On projects where blasting is to be done, the contractor shall file an Emergency Response Assistance Plan with the Explosives Division of Energy, Mines and Resources Canada.

**Newfoundland
Labrador**
GOVERNMENT OF NEWFOUNDLAND AND LABRADOR
Open Call for Bids
Bid Form

Bid for: Owner: Town of Placentia
Project Name: Water System Upgrades
Project Number: 17-GI-20-00050 / 17-SCF-19-00129

To: Deputy Minister
c/o Tendering and Contracts
Department of Transportation and Infrastructure
P.O. Box 8700
St. John's, NL, A1B 4J6

1. Having carefully examined the site of the proposed work and all conditions affecting such, as well as the Contract Documents including the Specifications, all Drawings listed in the Specifications, all Amendments, and the Instructions to Bidders for this project; and hereby acknowledge the requirements of the Instructions to Bidders.

WE, THE UNDERSIGNED, offer to furnish all necessary Labour, materials, superintendence, plant, tools and equipment, and everything else required to perform expeditiously and complete in a satisfactory manner the work for the sum as indicated on Appendix A of this Bid Form.
2. The Work will be substantially performed within 148 working days from the date of notification of award of contract.
3. WE hereby acknowledge receipt of amendments issued related to this procurement.
4. In order for a Bid to be valid, it must be signed by duly authorized officials as indicated in the Instructions to Bidders.

SIGNATURE OF BIDDER

Firm Name: EDWARD COLLINS CONTRACTING LTD.

Address: P.O. Box 51, Jersey Side, NL

Postal Code: A0B 2G0 E-Mail: ecollins76@hotmail.com

Ph # 709-227-5568



Signing Officer

Corporate Seal

Signing Officer



Witnessed by



Schedule of Quantities and Prices

1,964,771.00
294,715.65
2,259,486.65
u
03/15/21

Part A (Addendum 2)
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
01005	<u>Maintain Existing Services</u>				
1	Maintain Existing Water Systems (Contractor to be required to ensure that the Town has a supply of Chlorinated water at all times).	L.S.	Unit	<u>950.00</u>	<u>950.00</u>
01010	<u>Mobilization & Demobilization</u>				
	(not greater than 5% if on the island and 10% if in Labrador, or 15% north of Cartwright if item is sub total on last page)	L.S.	Unit	<u>5000.00</u>	<u>5000.00</u>
01020	<u>Cash Allowances</u>				
1	Contribution in Aid of Hydro	Allow	Unit	<u>\$5,000.00</u>	<u>\$5,000.00</u>
01500	<u>Temporary Facilities</u>				
1	Engineers Site Office	L.S.	Unit	<u>1000.00</u>	<u>1,000.00</u>
01570	<u>Traffic Regulations</u>				
1	Flagpersons Wages	hour	680	<u>28.00</u>	<u>19,040.00</u>
01560	<u>Environmental Requirements</u>				
1	Silt Fence	m	50	<u>1.00</u>	<u>50.00</u>
01580	<u>Project Sign</u>				
1	Project Sign	LS	1	<u>1000.00</u>	<u>1000.00</u>
01710	<u>Reinstatement and Cleaning</u>				
1	Ditching	m	450	<u>10.00</u>	<u>4500.00</u>

Part A (Addendum 2)
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

DIVISION #2
02070 **Sitework, Demolition & Removal**
of Structures

1	Remove and replace section of arch culvert on Harbour Drive to install new watermain	LS	1	<u>1000.00</u>	<u>1000.00</u>
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02111 **Clearing and Grubbing**

1	Clearing	ha	1.2	<u>8000.00</u>	<u>9600.00</u>
2	Grubbing	ha	1.2	<u>8000.00</u>	<u>9600.00</u>

02215 **Site Work & Site Grading**

1	Mass Common Excavation	m ³	750	<u>1.00</u>	<u>750.00</u>
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02223 **Excavation, Trenching and Backfilling**

1	Main Trench Excavation				
1	Rock	m ³	2,300	<u>1.00</u>	<u>2,300.00</u>
2	Common	m ³	11,900	<u>1.00</u>	<u>11,900.00</u>
2	Imported Rock Backfill	m ³	950	<u>80.00</u>	<u>76,000.00</u>
3	Rock Underbedding	m ³	150	<u>80.00</u>	<u>12,000.00</u>
4	Granular Pipe Bedding				
1	Type 3	m ³	4,015	<u>1.00</u>	<u>4,015.00</u>
5	Supply & Placement of Marking Tape				
1	Plastic Tape	m	3,640	<u>2.00</u>	<u>7,280.00</u>

02233 **Selected Granular Base & Sub-base Materials**

1	Class "A" Granular Base	m ²	200	<u>38.00</u>	<u>7,600.00</u>
2	Class "B" Granular Base	m ²	200	<u>38.00</u>	<u>7,600.00</u>

Part A (Addendum 2)
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

02434	<u>Pipe Culverts</u>				
1	Supply and Install 450mm HDPE	m	60	<u>100.00</u>	<u>6000.00</u>
02574	<u>Reshaping & Patching of Asphalt Pavement</u>				
1	Removal of Asphalt	m ²	400	<u>5.00</u>	<u>2000.00</u>
2	Patching of Asphalt	m ²	400	<u>100.00</u>	<u>40,000.00</u>
3	Cutting of Asphalt	m	250	<u>1.00</u>	<u>250.00</u>
02713	<u>Water Mains</u>				
1	Supply & Installation of Water Main				
1	150mm Ø PVC Pipe DR18	m	400	<u>150.00</u>	<u>60,000.00</u>
2	300mm Ø PVC Pipe DR18	m	190	<u>200.00</u>	<u>38,000.00</u>
3	300mm Ø HDPE DR17 Fused Pipe	m	3,050	<u>160.00</u>	<u>488,000.00</u>
2	Supply & Installation of Fitting				
1	150mm dia off 150mm dia tee	each	3	<u>400.00</u>	<u>1,200.00</u>
2	300mm dia off 300mm dia tee	each	2	<u>1,000.00</u>	<u>2,000.00</u>
3	200mm dia to 150 mm dia reducer	each	1	<u>300.00</u>	<u>300.00</u>
4	300mm dia to 150 mm dia reducer	each	1	<u>500.00</u>	<u>500.00</u>
5	150mm dia 90 deg bend	each	6	<u>300.00</u>	<u>1,800.00</u>
6	150mm Ø Sleeve Type Coupling	each	7	<u>250.00</u>	<u>1,750.00</u>
7	200mm Ø Sleeve Type Coupling	each	1	<u>300.00</u>	<u>300.00</u>
8	300mm Ø Sleeve Type Coupling	each	3	<u>500.00</u>	<u>1,500.00</u>
3	Supply & Install Valves including valve boxes				
1	150mm Ø	each	3	<u>2,000.00</u>	<u>6,000.00</u>
2	300mm Ø	each	1	<u>10,000.00</u>	<u>10,000.00</u>
3	300mm Ø (c/w post indicator)	each	6	<u>7,000.00</u>	<u>42,000.00</u>

Part A (Addendum 2)
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

4	Supply and Install New Fire Hydrant	each	1	<u>5,000.00</u>	<u>5,000.00</u>
5	Swabbing of Water Lines	m	555	<u>5.00</u>	<u>2,775.00</u>
6	Flush HDPE Water Line	m	3,050	<u>2.00</u>	<u>6,100.00</u>
7	Locate & Connect to Existing System	each	5	<u>5,000.00</u>	<u>25,000.00</u>
8	Supply and Install Rigid Insulation (thk as identified on the attached drawings)	m ²	6	<u>10.00</u>	<u>60.00</u>
9	Supply & Install Air Release Valves				
1	50mm dia Air Release Valve (ARI-D-090)	each	2	<u>10,000.00</u>	<u>20,000.00</u>
15 10 00	<u>Pressure Reducing Valve Station</u>				
1	Includes the supply, installation and commissioning of the PRV station as detailed in the specifications. Includes all valves, piping, fittings, joint restraints, flow meters, civil work and pre-fabricated enclosure. To include all valves, fittings and joints restraints required to connect to main line. No extra payment will be made for locate and connect to existing piping.	LS	2	<u>115,000.00</u>	<u>230,000.00</u> (K.L.)
15 20 00	<u>Intake at Gull Pond</u>				
1	Supply and Install Timber Crib	LS	1	<u>2,000.00</u>	<u>2,000.00</u>
2	Supply and Install Concrete Pipe Anchors	ea	10	<u>500.00</u>	<u>5,000.00</u>
3	Supply and Install Wedgewire Screen	ea	1	<u>15,000.00</u>	<u>15,000.00</u>
4	300mm HDPE DR17 Intake Pipe	m	30	<u>220.00</u>	<u>6,600.00</u> (K.L.)
5	End of pipe flange fitting to accept new screen	ea	1	<u>500.00</u>	<u>500.00</u>
15 20 00	<u>Discharge into Barron Pond</u>				
1	Supply and Install Concrete Pipe Anchors	ea	10	<u>750.00</u>	<u>7,500.00</u>
2	300mm HDPE DR17 Intake Pipe	m	30	<u>220.00</u>	<u>6,600.00</u>
15 20 00	<u>Intake at Barron Pond</u>				
1	Supply and Install Timber Crib	LS	1	<u>2,000.00</u>	<u>2,000.00</u>
2	Supply and Install Concrete Pipe Anchors	ea	10	<u>500.00</u>	<u>5,000.00</u>

Part A (Addendum 2)
Schedule of Quantities and Prices
(Watermain: 17-GI-20-00050)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

3	Supply and Install Wedgewire Screen	ea	1	15,000. ⁰⁰	15,000. ⁰⁰
4	300mm HDPE DR17 Intake Pipe	m	30	220. ⁰⁰	6,600. ⁰⁰
5	End of pipe flange fitting to accept new screen	ea	1	500. ⁰⁰	500. ⁰⁰
15 20 00	<u>Discharge into Little Barron Pond</u>				
1	Supply and Install Concrete Pipe Anchors	ea	10	750. ⁰⁰	7,500. ⁰⁰
2	300mm HDPE DR17 Intake Pipe	m	30	220. ⁰⁰	6,600. ⁰⁰
15 20 00	<u>Intake at Little Barron Pond</u>				
1	Supply and Install Timber Crib	LS	1	2,000. ⁰⁰	2,000. ⁰⁰
2	Supply and Install Concrete Pipe Anchors	ea	10	500. ⁰⁰	5,000. ⁰⁰
3	Supply and Install Wedgewire Screen	ea	1	15,000. ⁰⁰	15,000. ⁰⁰
4	300mm HDPE DR17 Intake Pipe	m	30	220. ⁰⁰	6,600. ⁰⁰
5	End of pipe flange fitting to accept new screen	ea	1	500. ⁰⁰	500. ⁰⁰
15 20 00	<u>Discharge into Clarkes Pond</u>				
1	Supply and Install Concrete Pipe Anchors	ea	12	750. ⁰⁰	7,500.⁰⁰ 9,000. ⁰⁰
2	300mm HDPE DR17 Intake Pipe	m	30	220. ⁰⁰	6,600. ⁰⁰
15 40 00	<u>Hypo - Chlorination System</u>				
1	The supply, installation and commissioning of a new hypo chlorination system including emergency eye shower unit for the PRV Station as detailed on the drawings and specifications	LS	2	8,000. ⁰⁰	16,000. ⁰⁰
a. Sub-Total:				1,323,820. ⁰⁰	1,315,570.⁰⁰
b. HST @ 15%				198,573. ⁰⁰	197,335.⁰⁰
c. PART A Total:				1,522,393. ⁰⁰	1,512,905.⁰⁰

Handwritten signature
03/15/21

Part B (Addendum 2)
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
<u>01005</u>	<u>Maintain Existing Services</u>				
1	Maintain Existing Water Systems (Contractor to be required to ensure that the Town has a supply of Chlorinated water at all times)	L.S.	Unit	<u>2,000.00</u>	<u>2,000.00</u>
<u>01010</u>	<u>Mobilization & Demobilization</u> (not greater than 5% if on the Island and 10% if a laborer or 15% north of Carwright of item a "sub total" on last page)	L.S.	Unit	<u>5,000.00</u>	<u>5,000.00</u>
<u>01020</u>	<u>Cash Allowances</u>				
1	Contribution in Aid of Hydro	Allow	Unit	<u>\$20,000.00</u>	<u>\$20,000.00</u>
<u>01500</u>	<u>Temporary Facilities</u>				
1	Engineers Site Office	L.S.	Unit	<u>1.00</u>	<u>1.00</u>
<u>01570</u>	<u>Traffic Regulations</u>				
1	Flagpersons Wages	hour	200	<u>28.00</u>	<u>5,600.00</u>
<u>01580</u>	<u>Project Sign</u>				
1	Project Sign	L.S.	1	<u>1,000.00</u>	<u>1,000.00</u>
<u>DIVISION #2</u>					
<u>02070</u>	<u>Sitework, Demolition & Removal of Structures</u>				
1	Removal of existing piping, walls, roof truss, shingles, etc as required to complete the new pumphouse extension. Any materials that are deemed useable are to be turned over to the Town.	L.S.	1	<u>7,500.00</u>	<u>7,500.00</u>
2	Removal of 300mm dia End Cap	ea	1	<u>500.00</u>	<u>500.00</u>
3	Remove existing valve and reconnect piping (outside the pumphouse)	L.S.	1	<u>2,000.00</u>	<u>2,000.00</u>

Part B (Addendum 2)
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

	4	Removal and disposal of AC pipe	m	20	<u>20.00</u>	<u>400.00</u>
02223		<u>Excavation, Trenching and Backfilling</u>				
	1	Main Trench Excavation				
	1	Rock	m ³	200	<u>1.00</u>	<u>200.00</u>
	2	Common	m ²	900	<u>1.00</u>	<u>900.00</u>
	2	Imported Rock Backfill	m ³	150	<u>80.00</u>	<u>12,000.00</u>
	3	Rock Underbedding	m ³	50	<u>80.00</u>	<u>4,000.00</u>
	4	Granular Pipe Bedding				
	1	Type 3	m ³	380	<u>1.00</u>	<u>380.00</u>
	5	Supply & Placement of Marking Tape				
	1	Plastic Tape	m	300	<u>2.00</u>	<u>600.00</u>
02233		<u>Selected Granular Base & Sub-base Materials</u>				
	1	Class "A" Granular Base	m ³	70	<u>38.00</u>	<u>2,660.00</u>
	2	Class "B" Granular Base	m ³	70	<u>38.00</u>	<u>2,660.00</u>
02574		<u>Reshaping & Patching of Asphalt Pavement</u>				
	1	Removal of Asphalt	m ²	50	<u>5.00</u>	<u>250.00</u>
	2	Patching of Asphalt	m ²	50	<u>100.00</u>	<u>5,000.00</u>
	3	Cutting of Asphalt	m	100	<u>1.00</u>	<u>100.00</u>
02713		<u>Water Mains</u>				
	1	Supply & Installation of Water Main				
	1	300mm Ø PVC Pipe DR18	m	300	<u>200.00</u>	<u>60,000.00</u>
	2	Supply & Installation of Fitting				
	1	250mm dia off 250mm dia tee	each	2	<u>600.00</u>	<u>1,200.00</u>

Part B (Addendum 2)
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

	2	300mm dia to 250 mm dia reducer	each	2	<u>750.00</u>	<u>1,500.00</u>
	3	300mm dia 90 deg bend	each	1	<u>750.00</u>	<u>750.00</u>
	4	300mm dia 45 deg bend	each	4	<u>750.00</u>	<u>3,000.00</u>
	5	300mm Ø Sleeve Type Coupling	each	2	<u>500.00</u>	<u>1,000.00</u>
	3	Supply & Install Valves including valve boxes				
	2	250mm Ø	each	3	<u>3050.00</u>	<u>9,150.00</u>
	5	Swabbing of Water Lines	m	300	<u>2.00</u>	<u>600.00</u>
	7	Locate & Connect to Existing System	each	2	<u>5,000.00</u>	<u>10,000.00</u>
		<u>Pumphouse Extension</u>				
<u>06000</u>	1	Includes but not limited to all excavation and backfill required to supply and install the concrete foundation and floor slab. Includes building construction including but not limited to, all interior and exterior finishes. Includes all work within 1.5m perimeter of the building.	LS	1	<u>67,000.00</u>	<u>67,000.00</u>
	2	Includes but not limited to all building mechanical and electrical items. Includes but not limited to lighting, heating, electrical panels, exhaust fans, intake fans electrical upgrades, plumbing and emergency eyewash / shower units.	LS	1	<u>120,000.00</u>	<u>120,000.00</u>
		<u>Pumping / Control System</u>				
<u>15 00 00</u>	1	Includes but not limited to the supply, installation and commissioning of all piping, fittings, valves, P-3 submersible pump assembly, three VFD's, flow meters etc to provide and fully operational system.	LS	1	<u>100,000.00</u>	<u>100,000.00</u>
	2	Includes the supply, installation and commissioning of the pressure reducing solenoid - controlled control valve going to Dunville System as detailed in the specifications.	LS	1	<u>19,000.00</u>	<u>19,000.00</u>
	3	Includes the supply, installation and commissioning of the solenoid - controlled control valve going to Argentina System as detailed in the specifications.	LS	1	<u>15,000.00</u>	<u>15,000.00</u>

Part B (Addendum 2)
Schedule of Quantities and Prices
(Pumphouse Upgrades: 17-SCF-19-00129)

The quantities set out in this schedule are estimated quantities only and are not to be taken as final quantities by the Contractor. The unit prices bid shall include all labour, plant, materials, overhead, duties, and profit and all other obligations and liabilities under the contract. HST is to be applied in accordance with SGC 1.0. Totals shall be determined by multiplying the quantity by the tendered unit price.

- 4 Includes the design, supply, installation and commissioning of the pump system control panel. Includes programming, equipment, level sensors at the Wyse's Pond reservoir and required communication equipment. Minimum requirements for the control system and sequence is outlined in the specifications.

LS

70,000.⁰⁰70,000.⁰⁰15.30.00Gas Chlorination System

- 1 The supply, installation and commissioning of a new gas chlorination system as detailed on the drawings and specifications. Includes, but not limited to, new booster pumps, piping, gauges, valves, fittings and gas detection system.

LS

80,000.⁰⁰80,000.⁰⁰

a. Sub-Total:

640,951.⁰⁰

b. HST @ 15%

96,142.⁶⁵

c. Part B Total:

737,093.⁶⁵**1 PART A TOTAL**1,522,393.⁰⁰~~1,512,915.⁰⁰~~**2 PART B TOTAL**737,093.⁶⁵**3 BID TOTAL** (carry forward to Appendix 'A' of the Bid Form)2,259,486.⁶⁵~~2,249,998.¹⁵~~

M
03/15/21

Tender # MI2764
AMENDMENT NO. 1

Received
[Signature]
(3 PAGES)

Owner: Town of Placentia
Project Name: Water System Upgrades
Project Number: 17-GI-20-00050 / 17-SCF-19-00129
Date Issued: January 25, 2021

1. This Amendment shall form an integral part of the specification to be read in conjunction therewith. This Amendment shall take precedence over all forms of the aforementioned specification with which it may prove to be at variance or may otherwise be qualified in writing by authorized personnel.
2. The General Conditions and all documents issued with this specification shall apply to govern all phases of the work covered by this Amendment.
3. The purpose of this Amendment is to inform bidders of clarifications to the contract documents.

To advise Contractors of the following changes:

1. Section 15 00 00 – Pumping / Control System
 - a. Singer and Cla-Valves are approved valves.
 - b. Siemens and Krohne Flow meters are approved providing they meet the upstream and downstream run distances.
2. Section 15 10 00 – PRV Stations
 - a. 2.4.1 – Flow meter size to be "...75mm (3") flanges..."
 - b. 2.7.2 The size of the enclosure to read "...The enclosure shall be approximately 3.658m x 3.658m."
3. Section 15 20 00 – Intake Screens
 - a. Intake screens by Elgin Separation Solutions is approved.
4. Section 15426 – Gas Chlorination System Title should read Section 15 30 00 Gas Chlorination System.
5. Section 15426 – Gas Chlorination System
 - a. 1.7.1.6 – Replace with "Supply and Installation of four (4) new chlorine valve regulators."
 - b. 1.7.1.7 – Replace with "Supply and Installation of new FEP tubing between chlorine regulators and chlorine gas manifolds."
 - c. Replace 2.6.2: Ejector selection shall be based on the following parameters.

Tender # MI2764
AMENDMENT NO. 2

Owner: Town of Placentia
Project Name: Water System Upgrades
Project Number: 17-GI-20-00050 / 17-SCF-19-00129
Date Issued: January 29, 2021

(1.6)
Received
(11 PAGES)


1. This Amendment shall form an integral part of the specification to be read in conjunction therewith. This Amendment shall take precedence over all forms of the aforementioned specification with which it may prove to be at variance or may otherwise be qualified in writing by authorized personnel.
2. The General Conditions and all documents issued with this specification shall apply to govern all phases of the work covered by this Amendment.
3. The purpose of this Amendment is to inform bidders of clarifications to the contract documents.

To advise Contractors of the following changes:

Clarifications

1. Note 2 on C10,11 And 12 indicates asbestos pipe is present. There is no unit price for the removal of Asbestos pipe in the contract.
 - a. Refer to attached revised unit price table.
2. Item 1005 in Part A and B indicates that the contractor must provide the town with Chlorinated water at all times during construction. This indicate the contractor must set up a temporary chlorination system, who will be responsible to perform the Chlorination test after the system is in place and operational.
 - a. The Town operations will perform chlorination test. Contractor is to work with the Town at all times and make adjustments as required to ensure that chlorine levels are adequate.
3. Can the consultant provide a concrete slab design for the PRV Enclosure?
 - a. Concrete slab to be 100mm thick with 15m rebar at 250 mm on centre each way, 100mm of Class 'A' to be placed under the slab and compacted to 100 % SPDD.
4. Is the piping the same diameter for both PRV's, drawing note indicate PRV #1 not 2?
 - a. Item 9 on drawing C13 of 22 should read:
150mm of 200mm dia Tee (PRV Building #1)
150mm of 150mm dia Tee (PRV Building #2)
5. Is the underground pipe for the PRV PVC or ductile Iron?
 - a. Underground pipe to be PVC pipe.

Tender # M12764

AMENDMENT NO. 3

Owner: Town of Placentia

Project Name: Water System Upgrades

Project Number: 17-GI-20-00050 / 17-SCF-19-00129

Date Issued: February 1, 2021

Received
(2 PAGES)
ZG

1. This Amendment shall form an integral part of the specification to be read in conjunction therewith. This Amendment shall take precedence over all forms of the aforementioned specification with which it may prove to be at variance or may otherwise be qualified in writing by authorized personnel.
2. The General Conditions and all documents issued with this specification shall apply to govern all phases of the work covered by this Amendment.
3. The purpose of this Amendment is to inform bidders of clarifications to the contract documents.

To advise Contractors of the following changes:

Clarifications

1. Note 3&4 on MV-1 indicates magnetic starters to be explosion proof.
 - a. Magnetic starters are to be of standard construction.
2. EF-1 to be complete with explosion proof motor.
3. Louvers located in generator room to remain as is.



PERFORMANCE

No. 532,090

Bond Amount \$1,129,743.33

EDWARD COLLINS CONTRACTING LIMITED as Principal, hereinafter called the Principal, and **WESTERN SURETY COMPANY** a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in all provinces and territories of Canada, as Surety, hereinafter called the Surety, are held and firmly bound unto **TOWN OF PLACENTIA** as Oblige, hereinafter called the Oblige, in the amount of **ONE MILLION ONE HUNDRED AND TWENTY NINE THOUSAND SEVEN HUNDRED AND FORTY THREE** —33/100 DOLLARS (\$1,129,743.33) lawful money of Canada, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal has entered into a written contract with the Oblige, dated **3rd day of March, in the year 2021** for **WATER SYSTEM UPGRADES 17-GI-20-00050 / 17-SCF-19-00129, PLACENTIA, NEWFOUNDLAND AND LABRADOR** including **One(1) year** maintenance from the date of substantial completion hereinafter referred to as the Contract.

The condition of this obligation is such that if the Principal shall promptly and faithfully perform the Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever the Principal shall be, and declared by the Oblige to be, in default under the Contract, the Oblige having performed the Oblige's obligations thereunder, the Surety shall promptly:

- 1) remedy the default, or;
- 2) complete the Contract in accordance with its terms and conditions or;
- 3) obtain a bid or bids for submission to the Oblige for completing the Contract in accordance with its terms and conditions and upon determination by the Oblige and the Surety of the lowest responsible bidder, arrange for a contract between such bidder and the Oblige and make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to pay to complete the Principal's obligations in accordance with the terms and conditions of the Contract and to pay those expenses incurred by the Oblige as a result of the Principal's default relating directly to the performance of the work under the Contract, less the balance of the Contract price; but not exceeding the Bond Amount. The balance of the Contract price is the total amount payable by the Oblige to the Principal under the Contract, less the amount properly paid by the Oblige to the Principal, or;
- 4) pay the Oblige the lesser of (1) the Bond Amount or (2) the Oblige's proposed cost of completion, less the balance of Contract price.

It is a condition of this bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of (1) the date of Substantial Performance of the Contract as defined in the lien legislation where the work under the Contract is taking place, or, if no such definition exists, the date when the work is ready for use or is being used for the purpose intended, or (2) the date on which the Principal is declared in default by the Oblige.

The Surety shall not be liable for a greater sum than the Bond Amount.

No right of action shall accrue on this Bond, to or for the use of, any person or corporation other than the Oblige named herein, or the heirs, executors, administrators or successors of the Oblige.

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond dated **10th day of March, in the year 2021**

SIGNED and SEALED
in the presence of

EDWARD COLLINS CONTRACTING LIMITED
Signed electronically by Principal
Francis Collins
Signature on 2021-03-10 16:58:16 GMT
1974
Francis Collins
Name of person signing

WESTERN SURETY COMPANY
Signed electronically by Surety
Dianne Buckle
Signature on 2021-03-10 16:58:16 GMT
Dianne Buckle, Attorney in Fact
Name of person signing



Copyright 2002
Canadian Construction Documents Committee

(CCDC 221 – 2002 has been approved by the Surety Association of Canada)



LABOUR & MATERIAL PAYMENT BOND (Trustee Form)

Standard Construction Document

DC 222 - 2002

No. 532,090

Bond Amount **\$1,129,743.33**

EDWARD COLLINS CONTRACTING LIMITED as Principal, hereinafter called the Principal, and **WESTERN SURETY COMPANY** a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in all provinces and territories of Canada, as Surety, hereinafter called the Surety, are held and firmly bound unto **TOWN OF PLACENTIA** as Oblige, hereinafter called the Oblige, in the amount of **ONE MILLION ONE HUNDRED AND TWENTY NINE THOUSAND SEVEN HUNDRED AND FORTY THREE** -----**33/100 DOLLARS (\$1,129,743.33)** lawful money of Canada, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal has entered into a written contract with the Oblige, dated **3rd day of March, in the year 2021** for **WATER SYSTEM UPGRADES 17-GI-20-00050 / 17-SCF-19-00129, PLACENTIA, NEWFOUNDLAND AND LABRADOR** in accordance with the Contract Documents submitted, and which are by reference made part hereof and are hereinafter referred to as the Contract.

The Condition of this obligation is such that, if the Principal shall make payment to all Claimants for all labour and material used or reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material, or both, used or reasonably required for use in the performance of the Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Contract provided that a person, firm or corporation who rents equipment to the Principal to be used in the performance of the Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof, shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Contract. The prevailing industrial rental value of equipment shall be determined, insofar as it is practical to do so, by the prevailing rates in the equipment marketplace in which the work is taking place.
2. The Principal and the Surety, hereby jointly and severally agree with the Oblige, as Trustee, that every Claimant who has not been paid as provided for under the terms of its contract with the Principal, before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of its contract with the Principal and have execution thereon. Provided that the Oblige is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants, or any of them, to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Oblige or by joining the Oblige as a party to such proceeding, then such act, action or proceeding, shall be taken on the understanding and basis that the Claimants, or any of them, who take such act, action or proceeding shall indemnify and save harmless the Oblige against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Oblige by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them may use the name of the Oblige to sue on and enforce the provisions of this Bond.
3. It is a condition precedent to the liability of the Surety under this Bond that such Claimant shall have given written notice as hereinafter set forth to each of the Principal, the Surety and the Oblige, stating with substantial accuracy the amount claimed, and that such Claimant shall have brought suit or action in accordance with this Bond, as set out in sub-clauses 3 (b) and 3 (c) below. Accordingly, no suit or action shall be commenced hereunder by any Claimant:
 - a) unless such notice shall be served by mailing the same by registered mail to the Principal, the Surety and the Oblige, at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or Territory in which the subject matter of the Contract is located. Such notice shall be given.
 - i) in respect of any claim for the amount or any portion thereof, required to be held back from the Claimant by the Principal, under either the terms of the Claimant's contract with the Principal, or under the lien Legislation applicable to the Claimant's contract with the Principal, whichever is the greater, within one hundred and twenty (120) days after such Claimant should have been paid in full under the Claimant's contract with the Principal;
 - ii) in respect of any claim other than for the holdback, or portion thereof, referred to above, within one hundred and twenty (120) days after the date upon which such Claimant did, or performed, the last of the work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract with the Principal;
 - b) after the expiration of one (1) year following the date on which the Principal ceased work on the Contract, including work performed under the guarantees provided in the Contract;
 - c) other than in a Court of competent jurisdiction in the Province or Territory in which the work described in the Contract is to be installed or delivered as the case may be and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such Court.
4. The Surety agrees not to take advantage of Article 2365 of the Civil Code of the Province of Quebec in the event that, by an act or an omission of a Claimant, the Surety can no longer be subrogated in the rights, hypothec and privileges of said Claimant.

5. Any material change in the contract between the Principal and the Oblige shall not prejudice the rights or interest of any Claimant under this Bond, who is not instrumental in bringing about or has not caused such change.
6. The amount of this Bond shall be reduced by, and to the extent of any payment or payments made in good faith, and in accordance with the provisions hereof, inclusive of the payment by the Surety of claims made under the applicable lien legislation or legislation relating to legal hypothecs, whether or not such claim is presented under and against this Bond.
7. The Surety shall not be liable for a greater sum than the Bond Amount.

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond dated **10th day of March, in the year 2021**.

SIGNED and SEALED

in the presence of

EDWARD COLLINS CONTRACTING LIMITED
 Signed electronically by Principal
Francis Collins
 on 2021-03-10 18:59:18 GMT
 Signature
 1974
Francis Collins
 Name of person signing

WESTERN SURETY COMPANY
 Signed electronically by Surety
Dianne Buckle
 on 2021-03-10 18:59:18 GMT
 Signature
 Dianne Buckle, Attorney-in-Fact
 Name of person signing

**AGREEMENT BETWEEN OWNER AND CONTRACTOR
for use when a Bid Price forms the
basis of payment and to be used only
with the Contract Documents of the Contract**

THIS AGREEMENT made on the 19th day of March in the year two thousand and twenty one.

BY AND BETWEEN

Town of Placentia

hereinafter called the "Owner"

AND

Edward Collins Contracting Ltd

hereinafter called the "Contractor"

WITNESSETH: that the Owner and Contractor undertake and agree as follows:

ARTICLE 1: THE WORK

The Contractor shall:

- (a) perform all the Work required by the Contract Documents for Town of Placentia – Water System Upgrades. (See Bid Form for Description) which have been signed by both the parties.
- (b) do and fulfil everything indicated by this Agreement, and
- (c) commence the Work by the 5th day of April, 2021 and substantially perform the Work of this Contract as certified by the Owner's Representative by the 10th day of September, 2021.

ARTICLE 2: CONTRACT DOCUMENTS

The following is an exact list of the Contract Documents referred to in Article A-1: (SEE INDEX FOR LIST OF DOCUMENTS AND DRAWINGS). **See Attached**

ARTICLE 3: CONTRACT PRICE

The Owner shall pay to the contractor in lawful money of Canada for the performance of the contract, the amounts determined for each of the items of work completed at the unit price stated in the unit price table, subject to the adjustments provided herein and in the General Conditions of the contract. The quantities contained in the unit price table are approximate only, and the final payment shall be made for the actual quantities that are incorporated in or made necessary by the work covered by the Contract.

THE CONTRACT PRICE IS

\$Two Million Two Hundred and Fifty Nine Thousand Four Hundred and Eighty Six dollars (\$2,259,486.65) (HST INCLUDED) Canadian funds which price shall be subject to adjustments as may be required in accordance with the General Conditions of the Contract.

ARTICLE 4: PAYMENT

- (a) Subject to applicable legislation and, where such legislation does not exist or apply, in accordance with such prescribed regulations or industry practice respecting holdback percentages and in accordance with the provisions of the General Conditions of the Contract, the Owner shall:
 - (1) make monthly payments to the Contractor on account of the Contract Price. The amounts of such payments shall be as certified by the Owner; and
 - (2) upon Substantial Performance of the work as certified by the Owner pay to the contractor any unpaid balance of holdback monies then due; and
 - (3) upon Total Performance of the Work as certified by the Owner pay to the contractor any unpaid balance of the Contract Price then due.
- (b) If the Owner fails to make payments to the Contractor as they become due under the terms of this Contract or in any award by a court, interest at the rate and in the manner specified in GC21-Certificates and Payments, shall become due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.

ARTICLE 5: ADDRESSES FOR NOTICES

All communications in writing between the parties or between them and the Owner shall be deemed to have been received by the addressee if delivered to the individual or to a member of the firm or to an officer of the Corporation for whom they are intended or if sent by post addressed as follows:

The Owner at: Town of Placentia
 P.O. Box 99
 Placentia, NL
 A0B 2V0

The Contractor at: Edward Collins Contracting Ltd
 P.O. Box 51
 Jerseyside, NL
 A0B 2G0

ARTICLE 6: SUCCESSION

The General Conditions of the Contract hereto annexed, and all other aforesaid Contract Documents, are all to be read into and form part of this Agreement and the whole shall constitute the Contract between the parties and subject to law and the provisions of the Contract Documents shall ensure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement under their respective corporate seals and by the hands of their proper officers hereunto duly authorized.

SIGNED, SEALED AND DELIVERED
in the presence of:

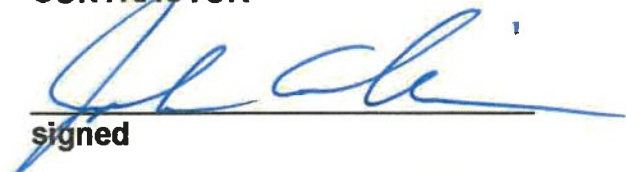
OWNER:

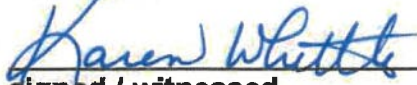


signed
Bernard Pouch
name and title
March 23, 2021
date



CONTRACTOR



signed
Josh Collins - Vice President
name and title


signed / witnessed
Karen Whittle - Office Manager
name and title
March 23, 2021
date

N.B. Where any legal jurisdiction, local practice or client requirement calls for proof of authority to execute this document, proof of such authority in the form of a certified copy of a resolution naming the person or persons in question as authorized to sign the Agreement for and on behalf of the Corporation or Partnership, should be attached.

**GENERAL CONDITIONS
OF UNIT PRICE CONTRACT**

GENERAL CONDITIONS OF CONTRACT

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GENERAL CONDITIONS OF CONTRACT

GC 1 DEFINITIONS

1.1 Contract Documents

The Contract Documents consist of the Instruction to Bidders, executed Agreement, General Conditions of Contract, Supplementary General Conditions of Contract, Specifications, Drawings and such other documents as are listed in Article A-2 of the Agreement, including all amendments thereto incorporated before their execution and subsequent amendments thereto made pursuant to the provisions of the contract or agreed upon between the parties. The Successful Bidder's bid, and any amendments to the Specification issued during the bidding period shall also form part of the Contract Documents.

1.2 Contractor

The Contractor means the person, firm or corporation identified as such in the Agreement. The term Contractor means the Contractor or the Contractor's authorized representative as designated by the Contractor to the Owner in writing.

1.3 Materials and Equipment

The term Materials and Equipment means all materials, machinery, equipment and fixtures forming the completed work as required by the Contract Documents but does not include machinery and equipment used for preparation, fabrication, conveying and erection of the work and normally referred to as construction machinery and equipment.

1.4 Other Contractor

The term Other Contractor means any person, firm or corporation employed by or having a separate contract directly or indirectly with the Owner for work other than that required by the Contract Documents.

1.5 Owner

The Owner is the person or entity identified as such in the Agreement. The term Owner means the Owner or the Owner's authorized representatives as designated by the Owner to the Contractor in writing.

The Owner's Representative for the purposes of administering this construction Contract shall be the designated representative of the Owner, or their consultant.

1.6 Products

The term Products means all material, machinery, equipment and fixtures forming the completed work as required by the Contract Documents but does not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work and normally referred to as construction machinery and equipment.

GENERAL CONDITIONS OF CONTRACT

1.7 Project

The Project is the total construction of which the work performed under the Contract Documents may be the whole or a part.

1.8 Subcontractor

A Subcontractor is a person, firm or corporation having a direct contract with the Contractor to perform a part or parts of the Work included in the Contract, or to supply products worked to a special design according to the Contract Documents, but does not include one who merely supplies products not so worked.

1.9 Substantial Performance

A Contract shall be deemed to be substantially performed

- a) when the work or a substantial part thereof is ready for use or is being used for the purpose intended; and
- b) when the work to be done under the contract is capable of completion or correction at a cost of not more than:
 - (i) three per centum of the first two hundred and fifty thousand dollars (\$250,000) of the contract price,
 - (ii) two per centum of the next two hundred and fifty thousand dollars (\$250,000) of the contract price, and
 - (iii) one per centum of the balance of the contract price.

1.10 Time

- a) The Contract Time is the time stated in Article A-1(c) of the Agreement for Substantial Performance of the Work.
- b) The date of Substantial Performance of the Work is the date certified by the Owner.
- c) The term day, as used in the Contract Documents, shall mean the calendar day.
- d) The term working day means any day observed by the construction industry in the area of the place of building.

1.11 Total Performance

Total Performance shall mean when the Work has been performed to the requirements of the Contract Documents and is so certified by the Owner.

GENERAL CONDITIONS OF CONTRACT

1.12 Work

Work includes the whole of the works, materials, matters and things required to be done, furnished and performed by the Contractor under the Contract.

GC 2 DOCUMENTS

2.1 The Contract Documents shall be signed by the Owner and the Contractor.

2.2 Words which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

2.3 In the event of conflicts between Contract Documents the following shall apply:

- a) Drawings of a later date shall govern.
- b) Figured dimensions shown on the Drawings shall govern even though they may differ from scaled dimensions.
- c) Drawings of larger scale shall govern over those of smaller scale of the same date.
- d) Specifications shall govern over Drawings.
- e) The General Conditions of Contract shall govern over Specifications.
- f) Supplementary General Conditions shall govern over the General Conditions of the Contract.

GC 3 ADDITIONAL INSTRUCTIONS AND SCHEDULE OF WORK

3.1 During the progress of the Work the Owner may furnish to the Contractor such additional instructions as may be necessary to supplement the Contract Documents. All such instructions shall be consistent with the intent of the Contract Documents.

3.2 Additional instructions may include minor changes to the Work which affect neither Contract Price nor the Contract Time.

3.3 Additional instructions may be in the form of drawings, samples, models or written instructions.

3.4 Additional instructions will be issued by the Owner with reasonable promptness and in accordance with any schedule agreed upon.

3.5 The Contractor shall, within thirty (30) days of the signing of this contract provide the Owner with a schedule of work.

GC 4 DOCUMENTS PROVIDED

4.1 The Contractor will be provided, without charge, a reasonable number of Contract Documents or parts thereof as are reasonably necessary for the performance of the Work.

GENERAL CONDITIONS OF CONTRACT

GC 5 DOCUMENTS ON THE SITE

- 5.1 The Contractor shall keep one copy of all current Contract Documents and shop drawings on the site, in good order and available to the Owner and/or their authorized representatives. This requirement shall not be deemed to include the executed Contract Documents.

GC 6 OWNERSHIP OF DOCUMENTS AND MODELS

- 6.1 All Contract documents and copies thereof, and all models are and shall remain the property of the Owner and are not to be used on other work.
- 6.2 Such documents are not to be copied or revised in any manner without the written authorization of the Owner.
- 6.3 Models furnished by the Contractor or the Owner are the property of the Owner.

GC 7 OWNER'S DECISIONS

- 7.1 The Owner, in the first instance, shall decide on questions arising under the Contract Documents and interpret the requirements therein. Such decisions shall be given in writing.
- 7.2 The Contractor shall notify the Owner in writing within five (5) days of receipt of a decision of the Owner referred to in 7.1 should the Contractor hold that a decision by the Owner is in error and/or at variance with the contract Documents. Unless the Contractor fulfills this requirement subsequent claims by the Contractor for extra compensation, arising out of the decision, will not be accepted.
- 7.3 If the question of error and/or variance is not resolved immediately, and the Owner decides that the disputed work shall be carried out, the Contractor shall act according to the Owner's written decision.

Any question of change in Contract Price and/or extension of Contract Time due to such error and/ or variance shall be decided as provided in GC 16 - Settlement of Disputes.

GC 8 DELAY

- 8.1 If it can be clearly shown that the Contractor is delayed in the performance of the work by any act or fault of the Owner or other Contractor, then the Contract Time shall be extended for such reasonable time as the Owner may decide in consultation with the Contractor. The Contractor shall be reimbursed for any costs incurred by the Contractor as a result of such a delay occasioned by the act or fault, provided that it can be clearly shown that

GENERAL CONDITIONS OF CONTRACT

the Contractor's forces cannot work efficiently elsewhere on the project and that the incurred cost is limited to that which could not reasonably have been avoided.

- 8.2 If the Contractor is delayed in the performance of the Work by a Stop Work Order issued by any court or other public authority, and providing that such order was not issued as the result of any act or fault of the Contractor or of any one employed by the Contractor directly or indirectly, then the Contract Time shall be extended for such reasonable time as the Owner may decide, in consultation with the Contractor, and the Contractor shall be reimbursed for any on-site costs incurred by the Contractor as the result of such delay.
- 8.3 If the Contractor is delayed in the performance of the Work by civil disorders, labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized Contractor's Association, of which the Contractor is a member) fire, unusual delay by common carriers or unavoidable casualties or, without limit to any of the foregoing, by any cause of any kind whatsoever beyond the Contractor's control, then the Contract Time shall be extended for such reasonable time as may be decided by the Owner, in consultation with the Contractor, but in no case shall the extension of time be less than the time lost as the result of the event causing the delay, unless such shorter extension of time be agreed to by the Contractor.
- 8.4 No extension shall be made for delay unless written notice of claim is given to the Owner within fourteen (14) days of its commencement, providing that in the case of a continuing cause of delay only one notice shall be necessary.

GC 9 OWNER'S RIGHT TO DO WORK

- 9.1 If the Contractor should neglect to prosecute the Work properly or fail to perform any provisions of the Contract, the Owner may notify the Contractor in writing that the Contractor is in default of the Contractor's contractual obligations and instruct the Contractor to correct the default within five (5) working days of receiving the notice.
- 9.2 If the correction of the default cannot be completed within the five (5) working days specified, the Contractor shall be considered to be in compliance with the Owner's instructions if the Contractor:
- a) commences the correction of the default within the specified time, and
 - b) provides the Owner with an acceptable schedule for such correction, and
 - c) completes the correction in accordance with such schedule.
- 9.3 If the Contractor fails to comply with the provisions 9.1 and 9.2 the Owner may, without prejudice to any other right or remedy the Owner may have, correct such default and may deduct the cost thereof from the payment then or thereafter due the Contractor.

GENERAL CONDITIONS OF CONTRACT

GC 10 OWNER'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

10.1 If the Contractor should be adjudged bankrupt, or makes a general assignment for the benefit of creditors or if a receiver is appointed on account of the Contractor's insolvency, the Owner may, without prejudice to any other right or remedy the Owner may have, by giving the Contractor written notice, terminate the Contract.

10.2 The Owner may notify the Contractor in writing that the Contractor is in default of the Contractor's contractual obligations, if the Contractor.

- a) fails to proceed regularly and diligently with the Work; or
- b) without reasonable cause wholly suspends the carrying out of the Work before the completion thereof, or
- c) refuses or fails to supply sufficient properly skilled workers or proper workmanship, products or construction machinery and equipment for the scheduled performance of the Work within five (5) working days of receiving written notice from the Owner, except in those cases provided in GC 8 - Delay; or
- d) fails to make payments due to the Contractor's Subcontractors, suppliers or workers; or
- e) persistently disregards laws or ordinances, or the Owner's instructions; or
- f) otherwise violates the provisions of the Contract to a substantial degree.

Such written notice by the Owner shall instruct the Contractor to correct the default within five (5) working days from the receipt of the written notice.

10.3 If the correction of the default cannot be completed within the five (5) working days specified, the Contractor shall be considered to be in compliance with the Owner's instructions if the Contractor:

- a) commences the correction of the default within the specified time,
- b) provides the Owner with an acceptance schedule for such correction, and
- c) completes the correction in accordance with such schedule.

10.4 If the Contractor fails to correct the default within the time specified or subsequently agreed upon, the Owner may, without prejudice to any other right or remedy the Owner may have, stop the Work or terminate the Contract.

10.5 If the Owner terminates the Contract under the conditions set out above, the Owner is entitled to:

GENERAL CONDITIONS OF CONTRACT

- a) take possession of the premises and products and utilize the temporary buildings, plants, tools, construction machinery and equipment, goods, materials, intended for, delivered to and placed on or adjacent to the work and may complete the Work by whatever method the Owner may deem expedient but without undue delay or expense;
- b) withhold any further payments to the Contractor until the Work is finished.
- c) upon Total Performance of the Work, charge the Contractor the amount by which the full cost of finishing the Work including compensation to the Owner for the Owner's additional services and a reasonable allowance to cover the cost of any corrections required by GC 31 - Warranty, exceeds the unpaid balance of the Contract Price; or if such cost of finishing the Work is less than the unpaid balance of the Contract Price, pay the Contractor the difference.
- d) on expiry of the warranty period, charge the Contractor the amount by which the cost of corrections under GC 31 - Warranty exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the Contractor the difference.

GC 11 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

- 11.1 If the Owner should be adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the Owner's insolvency, the Contractor may, without prejudices to any other right or remedy the Contractor may have, by giving the Owner written notice, terminate the Contract.
- 11.2 If the Work should be stopped or otherwise delayed for a period of thirty days or more under an order of any court, or other public authority, and providing that such order was not issued as the result of any act or fault of the Contractor or of any one directly or indirectly employed by the Contractor, the Contractor may, without prejudice to any other right or remedy the Contractor may have, by giving the Owner fifteen (15) days written notice, terminate the Contract.
- 11.3 The Contractor may notify the Owner in writing that the Owner is in default of the Owner's contractual obligations if:
 - a) The Owner fails to issue a certificate in accordance with GC 21 - Certificates and Payments;
 - b) The Owner fails to pay to the Contractor when due any amount certified by the Owner and verified by the audit of the Owner.

Such written notice shall advise the Owner that if such default is not corrected within fifteen (15) days from the receipt of the written notice the Contractor may, without prejudice to any other right or remedy the Contractor may have, stop the work and/ or terminate the contract.

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- 11.4 If the Contractor terminates the Contract under the conditions set out above, the Contractor shall be entitled to be paid for all Work performed and for any loss sustained upon products and plant supplied with reasonable overhead, profit and damages.

GC 12 OTHER CONTRACTORS

- 12.1 The Owner reserves the right to let separate contracts in connection with the project of which the Work is part.
- 12.2 The Owner shall co-ordinate the work and insurance coverages of Other Contractors as it affects the Work of this Contract.
- 12.3 The Contractor shall coordinate the Contractor's work with that of Other Contractors and connect as specified or shown in the Contract Documents. Any change in the costs incurred by the Contractor in the planning and performance of such work which was not shown or included in the Contract documents as of the date of signing the Contract, shall be evaluated as provided under GC 19 - Valuation and Certification of Changes in the Work.
- 12.4 The Contractor shall report to the Owner any apparent deficiencies in other Contractor's work which would affect the Work of this Contract immediately when they come to the Contractor's attention and shall confirm such report in writing. Failure by the Contractor to so report shall invalidate any claims against the Owner by reason of the deficiencies of Other Contractor's work except as to those of which the Contractor was not reasonably aware.

GC 13 ASSIGNMENT

- 13.1 The Contractor shall not assign the Contract or any part thereof or any benefit or interest therein or thereunder with/out the written consent of the Owner.

GC 14 SUBCONTRACTORS

- 14.1 The Contractor agrees to preserve and protect the rights of the Owner under the Contract with respect to any work to be performed under subcontract. The Contractor shall:
- a) require the Contractor's Subcontractors to perform their work in accordance with and subject to the terms and conditions of the Contract Documents, and
 - b) be fully responsible to the Owner for acts and omissions of the Contractor's Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.

GENERAL CONDITIONS OF CONTRACT

The Contractor therefore agrees that the Contractor will incorporate all the terms and conditions of the Contract Documents into all Subcontract Agreements the Contractor enters into with the Contractor's Subcontractors.

- 14.2 The Contractor shall employ those Subcontractors proposed by the Contractor in writing and accepted by the Owner prior to the signing of the Contract for such portions of the work as may be designated in the bidding requirements.
- 14.3 The Owner may, for reasonable cause, object to the use of a proposed Subcontractor and require the Contractor to employ another.
- 14.4 In the event that the Owner requires a change from any proposed Subcontractor the Contract Price shall be adjusted by the difference in cost occasioned by such required change.
- 14.5 The Contractor shall not be required to employ as a Subcontractor any person or firm to whom the Contractor may reasonably object.
- 14.6 The Owner may, upon reasonable request and at the Owner's discretion, provide to a Subcontractor information as to the percentage of the Subcontractor's work which has been certified for payment.
- 14.7 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the Owner.

GC 15 EMERGENCIES

- 15.1 The Owner has authority in an emergency to stop the progress of the Work whenever in the Owner's opinion such stoppage may be necessary to ensure the safety of life, or the Work, or neighbouring property. This includes authority to make changes in the Work, and to order, assess and award the cost of such work, extra to the Contract or otherwise, as may in the Owner's opinion be necessary. The Owner shall, within two (2) working days, confirm in writing any such instructions. In such a case if work has been performed under direct order of the Owner, the Contractor shall keep the Contractor's right to claim the value of such work.
- 15.2 Should the Work be stopped by civil pickets, or other disorder, neither the Owner nor the Contractor shall have claim for change in the price of the Contract.

GC 16 SETTLEMENT OF DISPUTES AND CLAIMS

- 16.1 In the case of any dispute or claim arising between the Owner and the Contractor as to their respective rights and obligations under the Contract, either party hereto may give the other written notification of such dispute or claim. The notification of dispute or claim shall be made within fourteen (14) days of the dispute or cause of action arising. If the

GENERAL CONDITIONS OF CONTRACT

dispute or claim cannot be resolved to the satisfaction of both parties, either party may refer the matter to such judicial tribunal as the circumstances require.

16.2 Legal proceedings shall not take place until after the performance or the substantial performance of the disputed work except:

- a) when the dispute concerns a certificate for payment.
- b) where either party can show that the matter in dispute requires immediate consideration while evidence is available.
- c) in the case of legal proceedings, where the action may become prescribed by reason of delay.

GC 17 INDEMNIFICATION

17.1 Except as provided in 17.2, the Contractor shall be liable for, and shall indemnify and hold harmless the Owner against all claims, demands, losses, costs, damages, actions, suits or proceedings, whatsoever arising under any statute or Common Law:

- a) in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the carrying out of the Work; and
- b) in respect of any injury or damage whatsoever to any property, real or personal or any chattel real, insofar as such injury or damage arises out of or in the course of or by reason of the carrying out of the Work.

17.2 The Contractor shall not be liable under 17.1 if the injury, death, loss or damage is due to any act or neglect of the Owner.

GC 18 CHANGES IN THE WORK

18.1 The Owner may make changes by altering, adding to, or deducting from the Work, with the Contract Price and the Contract Time being adjusted accordingly.

18.2 Except as provided in GC 15 - Emergencies, no change shall be made without a written order from the Owner and no claim for an addition or deduction to the Contract Price or change in the Contract Time shall be valid unless so ordered and at the same time valued or agreed to be valued as provided in GC 19 - Valuation and Certification of Changes in the Work.

GC 19 VALUATION AND CERTIFICATION OF CHANGES IN THE WORK

19.1 The value of any change shall be determined in one or more of the following methods:

GENERAL CONDITIONS OF CONTRACT

- a) by unit prices as provided in Article A-3 of the Agreement
- b) by unit prices subsequently agreed upon
- c) by cost and a fixed or percentage fee.

In the case of changes in the Work valued as outlined in 19.1(c), the Contractor shall submit detailed invoices, vouchers and time sheets for all materials and labour to complete the extra work.

When work is performed by the Contractor's own forces the Contractor's markup for overhead shall be ten (10) percent and the Contractor's profit ten (10) percent of the agreed or actual cost of the change. When work is performed by one of the Contractor's Subcontractors, the Subcontractor's markup for overhead shall be ten (10) percent of the agreed or actual cost of the change plus five (5) percent for profit. The Contractor's markup for overhead and profit shall be ten (10) percent of the Subcontractor's total price.

- 19.2 Notwithstanding the provisions of 19.1, in case of changes in the Work, (a) where unit prices are provided in the Contract for work to be done those unit prices shall be used in determining the value of any change and (b) the amount charged for equipment rentals shall be that provided in the Contract and no additional amount shall be paid as markup for overhead or profit for the Contractor or Subcontractor.
- 19.3 When a change in the Work is proposed or required the Contractor shall present to the Owner for approval the Contractor's claim for any change in the Contract Price and/or change in the Contract Time. The Owner shall be satisfied as to the correctness of such claim and, when approved shall issue a written order to the Contractor to proceed with the change. The value of work performed in the change shall be included for payment with the regular certificate for payment.
- 19.4 In the case of changes in the Work to be paid for under methods (b) and (c) of 19. 1, the form of presentation of costs and methods of measurement shall be agreed to by the Owner and Contractor before proceeding with the change. The Contractor shall keep accurate records, as agreed upon, of quantities or costs and present an account of the cost of the change in the Work, together with vouchers where applicable.
- 19.5 If the method of valuation, measurement and the change in Contract Price and/or change in Contract Time cannot be promptly agreed upon, and the change is required to be proceeded with then the Owner shall determine the method of valuation, measurement and the change in Contract Price and/or Contract Time subject to final determination in the manner set out in GC 16 - Settlement of disputes. In this case the Owner shall issue a written authorization for the change setting out the method of valuation and if by lump sum the Owner's valuation of the change in Contract Price and/or Contract Time.
- 19.6 In the case of a dispute in the valuation of a change authorized in the Work pending final determination of such value, the Owner shall certify the value of work performed and include the amount with the regular certificates for payment.

GENERAL CONDITIONS OF CONTRACT

- 19.7 It is intended in all matters referred to above that both the Owner and Contractor shall act promptly.
- 19.8 Credits will be based on the net cost of material and labour or the net difference in unit price quantities.

GC 20 APPLICATION FOR PAYMENT

- 20.1 Applications for payment on account as provided for in Article A-4 may be made monthly as the Work progresses.
- 20.2 Application for payment shall be made monthly on a date to be agreed between the Owner and the Contractor and the amount claimed shall be for the value of work performed and products delivered to the site at that date.
- 20.3 The Contractor shall submit to the Owner, before the first application for payment, a schedule of values of the various parts of the Work, aggregating the total amount of the Contract Price and divided so as to facilitate evaluation of applications for payment.
- 20.4 This schedule shall be made out in such form, and supported by such evidence as to its correctness, as the Owner may reasonably direct, and when approved by the Owner shall be used as the basis for application for payment.
- 20.5 When making application for payment, the Contractor shall submit a statement based upon this schedule. Claims for products delivered to the site but not yet incorporated into the Work shall be supported by such evidence as the Owner may reasonably require to establish the value and delivery of the products.
- 20.3 Applications for release of holdback monies following the Substantial Performance of the Work and the application for final payment shall be made at the time and in the manner set forth in GC 21 - Certificates and Payments.

GC 21 CERTIFICATES AND PAYMENTS

- 21.1 The Owner shall, within ten (10) days of receipt of an application for payment from the Contractor submitted in accordance with GC 20 - Application for Payment, issue a certificate for payment in the amount applied for or such other amount as the Owner shall determine to be properly due. If the Owner amends the application the Owner shall promptly notify the Contractor in writing, giving the Owner's reasons for the amendment.
- 21.2 The Owner shall within twenty-one (21) days of the issuance of a certificate for payment by the Owner, make payment to the Contractor on account, in accordance with the provisions of the Agreement.

GENERAL CONDITIONS OF CONTRACT

- 21.3 If payment is not made by the Owner within sixty (60) days of issuance of a certificate for payment, the Owner will be liable for interest on the amount owing at the rate of 2% per annum from the sixty-first (61st) day to the date of payment.
- 21.4 Notwithstanding any other provisions of this Contract:
- a) If on account of climatic or other conditions reasonably beyond the control of the Contractor there are items of work that cannot be performed, the payment in full for that which has been performed as certified by the Owner shall not be withheld or delayed by the Owner on account thereof, but the Owner may withhold from the Contract Price until the remaining work is finished an amount sufficient to cover the cost to the Owner of performing such remaining work and to adequately protect the Owner from claims.
 - b) Holdbacks will be released on the following conditions:
 - i) a copy of the contract between the Subcontractor and the Contractor, or some other suitable Document satisfactory to the Owner, must be presented to the Owner,
 - ii) the Subcontract is completed without deficiencies;
 - iii) the warranty for the Subcontract will not start until Substantial Performance of the General Contract;
 - iv) the Contractor provides an approved statutory declaration that all monies have been paid to the Subcontractors;
 - v) the Owner will, at that time, release the total amount specified on the Sub-contractor's Contract.
- 21.5 Notwithstanding the provisions of 21.4 (b) and notwithstanding the wording of such certificate the Contractor shall ensure that such work is protected pending the Total Performance of the Contract and be responsible for the correction of any defects in it regardless of whether or not they were apparent when such certificates were issued.
- 21.6 The Owner shall, within ten (10) days of receipt of an application from the Contractor for a Certificate of Substantial Performance, make an inspection and assessment of the work to verify the validity of the application. The Owner shall within seven (7) days of Owner's inspection notify the Contractor of the Owner's approval or disapproval of the application. When the Owner finds the Work to be Substantially Performed the Owner shall issue such a certificate. The date of this certificate shall be the date of Substantial Performance of the Contract. Immediately following the issuance of the Certificate of Substantial Performance, the Owner, in consultation with the Contractor shall establish a reasonable date for the Total Performance of the Contract.
- 21.7 Following the issuance of the Certificate of Substantial Performance and upon receipt from the Contractor of all documentation called for in the Contract Documents the Owner

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shall issue a certificate for payment of holdback monies. The release of holdback monies authorized by this certificate shall become due and payable on the day following the expiration of the Statutory Limitation Period stipulated in the Mechanics' Lien Act applicable to the place of building, providing that no lien or privilege claims against the Work exist and the Contractor has submitted to the Owner a sworn statement that all accounts for labour, subcontracts, products, construction machinery and equipment and any other indebtedness which may have been incurred by the Contractor in the Substantial Performance of the Work and for which the Owner might in any way be held responsible have been paid in full except holdback monies properly retained.

- 21.8 The Owner shall, within ten (10) days of receipt of an application from the Contractor for payment upon Total Performance of the Contract, make an inspection and assessment of the Work to verify the validity of the application. The Owner shall within seven (7) days of the Owner's inspection notify the Contractor of the Owner's approval or disapproval of the application. When the Owner finds the Work to be totally performed to the Owner's satisfaction the Owner shall issue a Certificate of Total Performance and certify for payment the remaining monies due to the Contractor under the Contract less any holdback monies which are required to be retained. The date of this certificate shall be the date of Total Performance of the Contract. The Owner shall, within thirty (30) days of issuance of such certificate, make payment to the Contractor in accordance with the provisions of Article A-4 of the Agreement.
- 21.9 The release of any remaining holdback monies shall become due and payable on the day following the expiration of the Statutory Limitation Period stipulated in the Mechanics' Lien Act applicable to the place of building or where such legislation does not exist or apply in accordance with such other legislation, regulations governing privileges, industry practice or such other provisions which may be agreed to between the parties, provided that no claims against the Work exist and the Contractor has submitted to the Owner a sworn statement that all accounts for labour, Subcontracts, products, construction machinery and equipment and any other indebtedness which may have been incurred by the Contractor in the Total Performance of the Work and for which the Owner might in any way be held responsible, have been paid in full except holdback monies properly retained.
- 21.10 No certificate for payment, or any payment made thereunder, nor any partial or entire use of occupancy of the Work by the Owner shall constitute an acceptance of any work or products not in accordance with the Contract Documents.
- 21.11 The issuance of the Certificate of Total Performance shall constitute a waiver of all claims by the Owner against the Contractor except those previously made in writing and still unsettled, if any, and those arising from the provisions of GC 31 - Warranty, or those arising from negligence on the part of the Contractor.

The acceptance of the Certificate of Total Performance or of the payment due thereunder shall constitute a waiver of all claims by the Contractor against the Owner except those made in writing prior to the Contractor's application for payment upon Total Performance of the Contract and still unsettled, if any.

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21.12 The holdback to be used by the Owner when issuing certificate of payment will be ten (10) percent of the value of the Work completed at the date of the Contractor's claim.

21.13 Notwithstanding the provisions of 21.3 or any other provision of this Contract, the Owner may:

- a) in the event of a claim by the Owner against the Contractor for damages arising out of the performance or non-performance of the Contract, withhold payment of any amount equal to the alleged damages until the liability for damages is established and no amount of interest will be paid on amounts held under this clause;
- b) set-off amounts owing by the Contractor to the Owner,
- c) following the issuance of the Certificate of Substantial Performance, withhold payment of an amount equal to twice the cost, as estimated by the Owner, of remedying deficiencies until the issuance of a Certificate of Total Performance and no amount of interest will be paid on amounts held under this clause.

GC 22 TAXES AND DUTIES

22.1 The Contractor shall pay all government sales taxes, customs duties and excise taxes with respect to the Contract.

Contractors are advised that the Owner is not exempt from the Harmonized Sale Tax (HST). The Owner will pay the HST to the Contractor with each regular progress billing.

22.2 Any increase or decrease in costs to the Contractor due to changes in such taxes and duties after the date of the Agreement and up to the agreed date of completion shall increase or decrease the Contract Price accordingly. The Contractor is to co-operate with the Owner and permit access to books and records in order to establish the amount of such taxes involved.

22.3 The Contractor shall maintain full records of the Contractor's estimates of and actual cost to the Contractor of the Work together with all proper open call for bids, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto, shall make them available to audit and inspection by the Owner, the Auditor General for Newfoundland and Labrador or by persons acting on their behalf, shall allow them to make copies thereof and to take extracts therefrom, and shall furnish them with any information which they may require from time to time in connection with such records.

GC 23 LAWS, NOTICES, PERMITS AND FEES

23.1 The laws of the place of building shall govern the Work.

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- 23.2 The Contractor shall obtain all permits, licenses and certificates and pay all fees required for the performance of the Work which are in force at the date of the Open Call for Bids submission (but this shall not include the obtaining of permanent easements or rights of servitude).
- 23.3 The Contractor shall give all required notices and comply with all laws, ordinances, rules, regulations, codes and order of all authorities having jurisdiction relating to the Work, to the preservation of the public health and construction safety which are or become in force during the performance of the Work.
- 23.4 The Contractor shall not be responsible for verifying that the Contract Documents are in compliance with the applicable laws, ordinances, rules, regulations and codes relating to the Work. If the Contract Documents are at variance therewith, or changes which require modification to the Contract Documents are made to any of the laws, ordinances, rules, regulations and codes by the authorities having jurisdiction subsequent to the date of the Open Call for Bids submission, any resulting change in the cost shall constitute a corresponding change in the Contract Price. The Contractor shall notify the Owner in writing requesting direction immediately any such variance or change is observed by the Contractor.
- 23.5 If the Contractor fails to notify the Owner in writing and obtain the Owner's direction as required in GC 23.4 and performs any work knowing it to be contrary to any laws, ordinances, rules, regulations, codes and orders of any authority having jurisdiction, the Contractor shall be responsible for and shall correct any violations thereof and shall bear all costs, expense and damages, attributable to the Contractor's failure to comply with the Provisions of such laws, ordinances, rules, regulations, codes and orders.
- 23.6 The Contractor may be required to carry the cost of a municipal permit related to performance of the Work. If a municipal permit is requested, the Contractor shall advise the Owner of the request and where directed by the Owner, shall pay for and obtain a permit related to the conduct of the Work and the Owner will issue a change order to allow for payment of the cost of obtaining the permit. Nothing in this clause relieves the Contractor of its obligation to make such filings and to submit such documents and notices with respect to the Work on behalf of the Owner as are otherwise required by the municipality. All other permits are to remain the responsibility of the contractor.

GC 24 PATENT FEES

- 24.1 The Contractor shall pay all royalties and patent license fees required for the performance of the Contract and such royalties or fees shall be deemed to have been included in the contract price. The Contractor shall hold the Owner harmless from and against all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Contractor's performance of the Contract which are attributable to an infringement or an alleged infringement of any patent or invention by the Contractor or anyone for whose acts the Contractor may be liable.

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- 24.2 The Owner shall hold the Contractor harmless against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Contractor's performance of the Contract which are attributable to an infringement or an alleged infringement of any patent or invention in executing anything for the purpose of the Contract, the model, plan or design of which was supplied to the Contractor by the Owner.

GC 25 WORKPLACE HEALTH, SAFETY AND COMPENSATION COMMISSION

- 25.1 Prior to commencing the Work and prior to receiving payment on Substantial and Total Performance of the Work, the Contractor shall provide evidence of compliance with all requirements of the Province of the place of building with respect to worker's compensation including payments due thereunder.
- 25.2 At any time during the term of Contract, when requested by the Owner, the Contractor shall provide such evidence of compliance by the Contractor and any or all of the Contractor's Subcontractors.
- 25.3 Non incorporated companies i.e.: partnerships, sole proprietorships, and independent operators must provide coverage for any employees and personal coverage for the principal(s).

GC 26 LIABILITY INSURANCE

26.1 Comprehensive General Liability Insurance

- a) Without restricting the generality of GC 17 - Indemnification, the Contractor shall provide and maintain, either by way of a separate policy or by an endorsement to their existing policy, Commercial Liability Insurance acceptable to the Owner and subject to limits set out in detail in the Certificate of Insurance inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof.
- b) This insurance shall include as an additional insured Her Majesty the Queen in Right of Newfoundland and Labrador and the Occupant/Operator of the property. Such insurance must have the approval of the Owner and be to the limits, form and amounts specified. The Contractor will not permit any Subcontractor to commence work on this Project until the same insurance requirements have been complied with by the Subcontractor.
- c) The insurance shall also include as Unnamed Insureds the architectural and engineering consultants of the Owner with respect to work performed by the Contractor, but excluding professional liabilities associated with such architectural and engineering consultants.
- d) The Comprehensive General Liability Insurance will not be limited to, but shall include coverage for:

GENERAL CONDITIONS OF CONTRACT

- 1) premises and operations liability
- 2) products or completed operations liability
- 3) blanket contractual liability
- 4) broad form property damage
- 5) cross liability
- 6) elevator and hoist liability
- 7) contingent employer's liability
- 8) personal injury liability
- 9) liability with respect to non-owned licensed vehicles
- 10) shoring, blasting, excavating, underpinning, demolition, pile driving and caisson work, work below ground surface, tunneling and grading as applicable.

26.2 Automobile Liability Insurance

The Contractor shall provide and maintain liability insurance in respect of (i) owned licensed vehicles and (ii) leased vehicles, subject to limits set out in this Contract.

26.3 Aircraft and or Watercraft Liability Insurance

The Contractor shall provide and maintain liability insurance with respect to owned and non-owned aircraft and watercraft, as may be applicable, subject to limits set out in this Contract. Such insurance shall be in the names of the Contractor, Her Majesty the Queen in Right of Newfoundland and Labrador, and the Owner as defined in 26.1(b) and (c) where they have an insurable interest in the use and operation of such aircraft and watercraft.

- 26.4 All insurance policies shall contain an endorsement requiring notification of Her Majesty and the Named Insured, in writing, thirty (30) days prior to cancellation of any policy or material change, except in the event of non-payment where policy conditions dealing with termination will apply.

GC 27 PROPERTY INSURANCE

- 27.1 The Contractor shall provide and maintain property insurance, acceptable to Her Majesty the Queen in the Right of Newfoundland and Labrador, insuring the full value of the Work in the amount of the contract price and the full value as stated of products for incorporation into the work. The insurance shall include as additional insured Her Majesty the Queen in Right of Newfoundland and Labrador.
- 27.2 Such coverage shall be provided for by **either** Broad Form Builders' Risks Policy or an Installation Floater **or** Piers, Wharves, and Docks Rider.
- 27.3 The policies shall insure on a Broad Form basis direct loss or damage subject to any exclusions specified in the Contract. Such coverage shall apply to:

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- a) all products, labour, and supplies of any nature whatsoever, the property of the Insureds or of others for which the Insureds may have assumed responsibility, to be used in or pertaining to the site preparations, demolitions of existing structures, erections and/or fabrication and/or reconstruction and/or repair of the insured project, while on the site or in transit, subject to the exclusion of the property specified.
 - b) the installation, testing and any subsequent use of machinery and equipment including boilers, pressure vessels or vessels under vacuum.
 - c) damage to the Work caused by an accident to and/or the explosion of any boiler(s) or pressure vessel(s) forming part of the work.
 - d) damage to Work caused by earthquake or flooding.

Such coverage shall exclude construction machinery, equipment, temporary structural and other temporary facilities, tools, and supplies used in the construction of the work and which are not expendable under the Contract.

- 27.4 Policies provided shall contain an endorsement requiring notification of Her Majesty and the Named Insured, in writing, thirty (30) days prior to cancellation of any policy or material change of coverage except in the event of non-payment where policy conditions dealing with termination will apply.
- 27.5 All such insurance shall be maintained continuously until the date the Owner issues a Certificate of Substantial Performance. All such insurance shall provide for the Owner to take occupancy of the work or any part thereof during the term of the insurance. Any increase in the cost of this insurance arising out of such occupancy shall be at the Owner's expense.
- 27.6 The policies shall provide that in the event of a loss, payment for damage to the Work shall be made to the Owner and the Contractor as their respective interests may appear. The Contractor shall act on behalf of the Owner and the Contractor for the purpose of adjusting the amount of such loss with the Insurers. On the determination of the extent of the loss, the Contractor shall immediately proceed to restore the Work and shall be entitled to receive from the Owner (in addition to any sum due under the Contract) the amount at which the Owner's interest in the restoration work has been appraised, such amount to be paid as the work of restoration proceeds and in accordance with the Owner's certificates for payment. Damage shall not affect the rights and obligations of either party under the Contract except that the Contractor shall be entitled to such reasonable extension of time for Substantial and Total Performance of the work as the Owner may decide.
- 27.7 The Contractor shall be responsible for any deductible amounts under the policies and for providing such additional insurance as may be required to protect the insureds against loss on items excluded from the policies. Contractors are also advised that the Bid Documents contain a Certificate of Insurance indicating type and limit of liability insurance required for this project. The successful bidder will be required prior to commencement

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of work, to have the Certificate of Insurance completed by the Contractor's insurance company and delivered to the Owner not later than 30 days after the award of the contract.

GC 28 PROTECTION OF WORK AND PROPERTY

- 28.1 The Contractor shall protect the property adjacent to the Project site from damage as the result of the Contractor's operations under the Contract.
- 28.2 The Contractor shall protect the Work and the Owner's property from damage and shall be responsible for any damage which may arise as the result of the Contractor's operations under the Contract except damage which occurs as the result of:
- a) errors in the Contract Documents, and/or
 - b) acts or omissions by the Owner, the Owner's agents, employees or Other Contractors.
- 28.3 Should any damage occur to the Work and/or the Owner's property for which the Contractor is responsible, the Contractor shall make good such damage at the Contractor's own expense or pay all costs incurred by others in making good such damage.
- 28.4 Should any damage occur to the Work and/or the Owner's property for which the Contractor is not responsible as provided in GC 17 the Contractor shall make good such damage to the Work, and, if the Owner so directs to the Owner's property, and the Contract Price and Contract Time shall be adjusted in accordance with GC 18 - Changes in the Work.
- 28.5 The Contractor shall be completely responsible for the safety of the work as it applies to protection of the public and property and the construction of the work. All applicable Codes and Standards for the area and location of the Work shall apply to the project.
- 28.6 Any person not following the stipulated safety regulations shall be dismissed.

GC 29 DAMAGES AND MUTUAL RESPONSIBILITY

- 29.1 If either party to this Contract should suffer damage in any manner because of any wrongful act or neglect of the other party or anyone employed by that party then that party shall be reimbursed by the other party for such damages. The party reimbursing the other party shall be subrogated to the rights of the other party in respect of such wrongful act or neglect if it be that of a third party.
- 29.2 Claims under this GC shall be made in writing to the party liable within reasonable time after the first observance of such damage and not later than the time limits stipulated in GC 21 - Certificates and Payments, and may be adjusted by agreement or in the manner set out in GC 16 - Settlement of Disputes and Claims.

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- 29.3 If the Contractor has caused damage to any Other Contractor on the work, the Contractor agrees upon due notice to settle with such Other Contractor by agreement or arbitration, if the Other Contractor will so settle. If such Other Contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor and may require the Contractor to defend the action at the Contractor's expense. If any final order or judgment against the Owner arises therefrom the Contractor shall pay or satisfy it and pay all costs incurred by the Owner.
- 29.4 If the Contractor becomes liable to pay or satisfy any final order, judgment or award against the Owner then the Contractor, upon undertaking to indemnify the Owner against any and all liability for costs, shall have the right to appeal in the name of the Owner such final order or judgment to any and all courts of competent jurisdiction.

GC 30 BONDS

- 30.1 The Owner shall have the right during the period stated in the Bid Documents for acceptance of the bid to require the Contractor to provide and maintain in good standing until the fulfillment of the Contract, bonds covering the faithful performance of the Contract including the requirements of the Warranty provided for in GC 31 - Warranty, and the payment of all obligations arising under the Contract.
- 30.2 All such bonds shall be issued by a duly incorporated surety company approved by the Owner and authorized to transact a business or surety-ship in the Province of Newfoundland and Labrador.
- 30.3 If bonds are called for in the Bid Documents or instructions to bidders, the costs attributable to providing such bonds shall be included in the bid price.
- 30.4 Should the Owner require the provision of a bond or bonds by the Contractor other than those provided for under 30.3, the Contract Price shall be increased by all costs attributable to providing such bonds.
- 30.5 The Contractor shall promptly provide the Owner with any bonds that are required.

GC 31 WARRANTY

- 31.1 Without restricting any warranty or guarantee implied or stipulated by law the Contractor shall at the Contractor's own expense rectify and make good any defect or fault however caused appearing within a period of one year from the date of Substantial Performance of the Work provided that the Contractor shall not be responsible for any defect or fault resulting from the design of the Work.
- 31.2 The Contractor shall correct and/or pay for any damage to other work resulting from any corrections required under the conditions of 31.1.

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31.3 Neither the Owner's final certificate nor payment thereunder shall relieve the Contractor from the Contractor's responsibility hereunder.

31.4 The Owner shall give the Contractor written notice of observed defects promptly.

GC 32 CONTRACTOR'S RESPONSIBILITIES AND CONTROL OF THE WORK

32.1 The Contractor shall have complete control of the Work except as provided in GC 15 - Emergencies. The Contractor shall effectively direct and supervise the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all parts of the Work under the Contract.

32.2 The Contractor shall have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structural and other temporary facilities and the design and execution of construction methods required in their use. The Contractor shall engage and pay for registered professional engineering personnel skilled in the appropriate discipline to perform these functions where required by law or by the Contract Documents and in all cases where such temporary facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.

32.3 Notwithstanding the provisions of paragraphs 32.1 and 32.2 above, or any provisions to the contrary elsewhere in the Contract Documents where such Contract Documents include designs for temporary structural and other temporary facilities and methods shall be deemed to comprise part of the overall design of the Work and the Contractor shall not be held responsible for that part of the design or the specified method of construction. The Contractor shall, however, be responsible for the execution of such design or specified method of construction in the same manner that the Contractor is responsible for the execution of the Work.

32.4 The Contractor shall carefully examine the Contract Documents and shall promptly report to the Owner any error, inconsistency or omission the Contractor may discover. The Contractor shall not be held liable for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents.

GC 33 SUPERINTENDENCE

33.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Work site at all times while work is being performed.

33.2 The superintendent shall be satisfactory to the Owner and shall not be changed except for good reason and only then after consultation with and agreement by the Owner.

33.3 The superintendent shall represent the Contractor at the Work site. Directions given to the superintendent by the Owner shall be held to have been given to the Contractor.

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Important directions shall be confirmed to the Contractor in writing, other directions will be so confirmed if requested.

GC 34 LABOUR AND PRODUCTS

- 34.1 Unless otherwise stipulated elsewhere in the Contract Documents, the Contractor shall provide and pay for all labour products, tools, construction equipment and machinery, water, heat, light, power, transportation and other facilities and services necessary for the proper performance of the Work.
- 34.2 All products provided shall be new unless otherwise specified in the Contract Documents. Any products which are not specified shall be of a quality best suited to the purpose required and their use subject to the approval of the Owner.
- 34.3 The Contractor shall at all times maintain good order and discipline among the Contractor's employees engaged on the Work and shall not employ on the Work any unfit person nor anyone not skilled in the task assigned to that person.

GC 35 SUBSURFACE CONDITIONS

- 35.1 The Contractor shall promptly notify the Owner in writing if, in the Contractor's opinion, the subsurface conditions at the Project site differ materially from those indicated in the Contract Documents or as may have been represented to the Contractor by the Owner before the time of Open Call for Bids submission.
- 35.2 After prompt investigation, should the Owner determine that conditions do differ materially, the Owner shall issue appropriate instructions for changes in the Work as provided for in GC 18 - Changes in the Work.

GC 36 USE OF PREMISES

- 36.1 The Contractor shall confine the Contractor's apparatus, the storage of products and the operations of the Contractor's workers to limits indicated by laws, ordinances, permits or by directions of the Owner and shall not unreasonably encumber the premises with the Contractor's products.
- 36.2 The Contractor shall not load or permit to be loaded any part of the Work with a mass that will endanger its safety.
- 36.3 The Contractor shall enforce the Owner's instructions regarding signs, advertisements, fires and smoking.
- 36.4 Unless otherwise provided the Contractor shall, at the Contractor's own expense, and without extra cost to the Owner, make suitable provision to accommodate all traffic either

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pedestrian or vehicular, over or around, the project upon which work is being performed, in a manner satisfactory to the Owner.

- 36.5 The Contractor shall provide and maintain at the Contractor's own expense such fences, barriers, signs, lights and security as may be necessary to prevent avoidable accidents to residents or to the public generally.

GC 37 CLEANUP AND FINAL CLEANING OF WORK

- 37.1 The Contractor shall maintain the Work in a tidy condition and free from the accumulation of waste products and debris, other than that caused by the Owner, other Contractors or their employees.
- 37.2 When the Work is Substantially Performed the Contractor shall remove all of the Contractor's surplus products, tools, construction machinery and equipment not required for the performance of the remaining work. The Contractor shall also remove any waste products and debris and leave the Work clean and suitable for occupancy by the Owner unless otherwise specified.
- 37.3 When the Work is Totally Performed, the Contractor shall remove all of the Contractor's surplus Products, tools, construction machinery and equipment. The Contractor shall also remove any waste products and debris, other than that caused by the Owner, other Contractors or their employees.

GC 38 CUTTING AND REMEDIAL WORK

- 38.1 The Contractor shall do all cutting and remedial work that may be required to make the several parts of the Work come together properly.
- 38.2 The Contractor shall co-ordinate the schedule for the Work to ensure that this requirement is kept to a minimum.
- 38.3 Should the Owner or anyone employed by the Owner be responsible for ill-timed work necessitating cutting and/or remedial work shall be valued as provided in GC 19 Valuation and Certification of Changes in the Work and added to the Contract Price.
- 38.4 Cutting and remedial work shall be performed by specialists familiar with the materials affected and shall be performed in a manner to neither damage nor endanger any Work.

GC 39 INSPECTION OF WORK

- 39.1 The Owner and the Owner's authorized representatives shall have access to the Work for inspection wherever it is in preparation or progress. The Contractor shall co-operate to provide reasonable facilities for such access.

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- 39.2 If special tests, inspections or approvals are required by the Contract Documents, the Owner's instructions or the laws or ordinances of the place of building the Contractor shall give the Owner timely notice requesting inspection. Inspection by the Owner shall be made promptly. The Contractor shall arrange inspection by other authorities and shall notify the Owner of the date and time.
- 39.3 If the Contractor covers or permits to be covered any of the Work that is subject to inspection or before any special tests and approvals are completed without the approval of the Owner, the Contractor shall uncover the Work, have the inspection satisfactorily completed and make good the Work at the Contractor's own expense.
- 39.4 Examination of any questioned Work may be ordered by the Owner. If such Work be found in accordance with the Contract the Owner shall pay the cost of examination and replacement, together with the cost of subsequent verification testing. If such Work be found not in accordance with the Contract through the fault of the Contractor, the Contractor shall pay such cost.
- 39.5 The Contractor shall furnish promptly to the Owner two (2) copies of all certificates and inspection reports relating to the Work.

GC 40 REJECTED WORK

- 40.1 Defective Work, whether the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the Contractor, and whether incorporated in the Work or not, which has been rejected by the Owner as failing to conform to the Contract Documents shall be removed promptly from the premises by the Contractor and replaced and/or executed promptly in accordance with the Contract Documents at the Contractor's expense.
- 40.2 Other Contractor's work destroyed or damaged by such removals or replacements shall be made good promptly at the Contractor's expense.
- 40.3 If in the opinion of the Owner it is not expedient to correct defective work not done in accordance with the Contract Documents, the Owner may deduct from the Contract Price the difference in value between the Work as done and that called for by the Contract, the amount of which shall be determined in the first instance by the Owner.

GC 41 SHOP DRAWINGS

- 41.1 The term "shop drawings" means drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data which are to be provided by the Contractor to illustrate details of a portion of the Work.
- 41.2 The Contractor shall arrange for the preparation of clearly identified shop drawings as called for by the Contract Documents or as the Owner may reasonably request.

GENERAL CONDITIONS OF CONTRACT

- 41.3 Prior to Submission to the Owner the Contractor shall review all shop drawings. By this review the Contractor represents that the Contractor has determined and verified all field measurements, field construction criteria, materials, catalogue numbers and similar data or will do so and that the Contractor has checked and coordinated each shop drawing with the requirements of the Work and of the Contract Documents. The Contractor's review of each shop drawing shall be indicated by stamp, date and signature of a responsible person.
- 41.4 The Contractor shall submit shop drawings to the Owner for the Owner's review with reasonable promptness and in orderly sequence so as to cause no delay in the Work or in the Work of Other Contractors. If either the Contractor or the Owner so requests they shall jointly prepare a schedule fixing the dates for submission and return of shop drawings. Shop drawings shall be submitted in the form of a responsible transparency or prints as the Owner may direct. At the time of submission the Contractor shall notify the Owner in writing of any deviations in the shop drawings from the requirements of the Contract Documents.
- 41.5 The Owner will review and return shop drawings in accordance with any schedule agreed upon, or otherwise with reasonable promptness so as to cause no delay. The Owner's review shall be for conformity to the design concept and for general arrangement only and such review shall not relieve the Contractor of responsibility for errors or omissions in the shop drawings or of responsibility for meeting all requirements of the Contract Documents unless a deviation on the shop drawings has been approved in writing by the Owner.
- 41.6 The Contractor shall make any changes in shop drawings which the Owner may require consistent with the Contract Documents and resubmit unless otherwise directed by the Owner. When resubmitting the Contractor shall notify the Owner in writing of any revisions other than those requested by the Owner.

GC 42 SAMPLES

- 42.1 The Contractor shall submit for the Owner's approval such standard manufacturers' samples as the Owner may reasonably require. Samples shall be labelled as to origin and intended use in the Work and shall conform to the requirements of the Contract Documents.
- 42.2 The Contractor shall provide samples of special products, assemblies, or components when so specified. The cost of such samples not specified shall be authorized as an addition to the Contract Price as provided in GC 18 - Changes in the Work.

GC 43 TESTS AND MIX DESIGNS

- 43.1 The Contractor shall furnish to the Owner test results and mix designs as may be requested. The testing company must first be approved by the Owner.

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- 43.2 The cost of tests and mix designs beyond those called for in the Contract Documents or beyond those required by laws, ordinances, rules and regulations relating to the work and the preservation of public health, shall be authorized as an addition to the Contract Price as provided in GC 18 - Changes in the Work.

GC 44 LABOUR

- 44.1 In carrying out the Contractor's duties under this contract, the Contractor should comply with all Provincial and Federal legislation respecting labour and the employment of labour, where applicable, including the labour standards code and shall not operate in conflict with the Human Rights legislation. In the employment of labour, preference should be given to persons normally resident in Newfoundland and Labrador.
- 44.2 The Contractor and Subcontractors shall maintain and keep available for inspection by the Owner, a record of the names and addresses of all workers employed on the Project.
- 44.3 All Work shall be done by workers skilled in their various trades.
- 44.4 There shall be no discrimination in the selection of workers for employment on the project in respect of gender, race, religious views or political affiliation.
- 44.5 The Contractor shall pay fair wages and shall pay rates of wages and allowances to the various classes of labour not less favourable than those prevailing in the area where the Work is being performed.

GC 45 TIME OF ESSENCE

- 45.1 Time is of the essence of the Contract.

GC 46 ASSESSMENT AND DAMAGES FOR LATE COMPLETION

- 46.1 For purposes of this General Condition
- a) The Work shall be deemed to be completed on the date that a Certificate of Substantial Performance referred to in GC21.6 is issued, and
 - b) "Period of delay" means the number of days commencing on the day fixed by the Articles of Agreement for completion of the Work and ending on the day immediately preceding the day on which the Work is completed but does not include any day in which, in the opinion of the Owner, completion of the Work was delayed for reasons beyond the control of the Contractor.
- 46.2 If the Contractor does not complete the Work by the day fixed for its completion by the Articles of Agreement but completes it thereafter, the contractor shall pay the Owner an amount equal to the aggregate of

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- a) all salaries, wages and travelling expenses incurred by Her Majesty in respect of persons overseeing the performance of the Work during the period of delay, and
- b) all other expenses and damages incurred or sustained by Her Majesty during the period of delay as a result of the Work not being completed by the day fixed for its completion.

46.3 Substantial Performance of part of the work shall not relieve the Contractor of their liabilities under this clause.

GC 47 CERTIFICATE OF RECOGNITION FOR CONTRACTS

- 47.1 The Contractor shall within 14 days of award of the contract, and prior to commencement of the Work, provide a Letter of Good Standing stating Certificate of Recognition (COR) certified from the Newfoundland and Labrador Construction Safety Association (NLCSA).
- 47.2 At any time during the term of the Contract, when requested by the Owner, the Contractor shall provide such evidence of compliance by any or all of their Subcontractors.

SUPPLEMENTARY GENERAL CONDITIONS

SGC 1.0 - HARMONIZED SALES TAX

In reference to: GC 22 TAXES AND DUTIES

For a Stipulated Price Contract, all taxes and duties shall be added according to GC 22 of the General Conditions and the HST, payable by the Owner under this contract, shall be deemed to be included in the tendered amount in Clause 1 of the Tender Form. HST is applicable to all municipal projects.

SGC 2.0 - WORK PLACE NL CERTIFICATE

Before entering into a contract the successful bidder is required to submit to the Owner a certificate from the Workplace Health, Safety and Compensation Commission to the effect that the bidder is in good standing with the Commission. The Contractor is required to provide the Owner with a similar certificate before approval of the final payment.

SGC 3.0 - INTEREST ON LATE PAYMENT

In reference to: GC 21 CERTIFICATES & PAYMENTS

In reference to article 21.3, change the interest rate from “2% per annum” to “prime +1% per annum”.

SGC 4.0 - INSURANCE REQUIREMENTS

In reference to: GCs 26, 27 and Insurance Certificate

- (a) The Contractor shall not commence any work until they obtains, at their expense, all required insurances as specified. Such insurance must have the approval of the Owner and be to the limits, form and amounts specified. The Contractor will not permit any Subcontractor to commence work on this Project until the same insurance requirements have been complied with by such subcontractors.
- (b) The Contractor shall provide certification from an Insurance Company, licensed to do business in the Province of Newfoundland & Labrador, or its agent giving the following details of a Comprehensive or General Liability Policy:
 - 1. Company's Name;
 - 2. Policy Number;
 - 3. Minimum limit of \$2,000,000.00 inclusive for all claims for Bodily Injury or Property Damage arising from one accident. Reduced limits for any part of the coverage is not acceptable.

SUPPLEMENTARY GENERAL CONDITIONS

4. A deductible up to a maximum amount of \$5,000.00 will be permitted on blasting and demolition with the Contractor paying the deductible amount of each claim.
 5. The policy shall include the Consultant, Her Majesty the Queen in right of Newfoundland & Labrador and the Owner (where applicable) as additional Insureds and shall also include the Cross Liability Clause.
- (c) The Contractor shall provide certification from an Insurance Company, licensed to do business in the Province of Newfoundland & Labrador, or its agent, giving the following details of a Standard Automobile Policy Liability Coverage:
1. Company's Name;
 2. Policy Number;
 3. Occupation or business described in the policy;
 4. A minimum limit of \$2,000,000.00 inclusive for all claims for Bodily Injury or Property Damage arising from one accident.
 5. Schedule of vehicles or a statement taken from the policy that all vehicles are covered.
- (d) 1. On all applicable structures in the Contract, the Contractor shall provide the original of a "Broad Form Builders' Risk Policy" to the value of the structures. Such insurance may have a deductible clause but amount of deductible shall not exceed \$2,500.00.
2. The interest of the Subcontractors are to be specifically included in the policy and the policy shall contain the following clause:
"Loss, if any, payable to the Owner and the Insured, as their respective interests may appear."
3. The policy is to be written to expire no sooner than the completion date specified in the Contract and shall be extended and kept in force during any Period of Delay.
4. The Contractor further agrees that so much of the money due to them under and by virtue of this Contract as shall be considered necessary by the Owner may be retained by the Owner until all such suits or claims for damages shall have been settled and evidence to that effect furnished to the satisfaction of the Owner.
5. If the Contractor should fail to effect and keep in force the policies referred to, or any other insurance which may be required to effect under the terms of the Contract, the Owner may effect and keep in force any such insurance and pay the premiums necessary for the purpose and from time to time deduct the amount so paid from any payments due to the Contractor to recover the same as a debt due from the Contractor.

SUPPLEMENTARY GENERAL CONDITIONS

SGC 5.0 - TENDER SURETY AND BONDING FOR MATERIALS SUPPLY ONLY CONTRACTS

In reference to: GC 30 BONDS, Add:

- 30.6.1) Bid Security in the amount of 10% of the contract price and Performance Security in the amount of 50% of the contract amount is required on contracts for supply of materials. Labour and Material Payment Security is not required. The Performance Security may be released 30 days after the date of substantial performance of a material supply contract.
- 30.6.2) In lieu of a Performance Bond or Bid Bond, the Minister may, at their sole discretion, approve the acceptance of a certified cheque for 10% of the tendered amount. The cheque will be deposited by the Owner until satisfactory completion of the work including the 30 day Mechanics Lien period, after which this amount will be returned to the contractor with the accrued interest thereon. There will be no limit on the value of a tender for which certified cheques may be used.
- 30.6.3) No bid security or bonding will be required for the supply of vehicles or earth moving equipment.

SGC 6.0 - SUBSTANTIAL PERFORMANCE

In reference to: GC 1 DEFINITIONS, Add the following paragraph to 1.9:

Substantial Performance: where the work or a substantial part thereof is ready for use or is being used for the purpose intended and where the work cannot be completed expeditiously for reasons beyond the control of the contractor, the value of the work to be completed shall be deducted from the contract price in determining substantial performance.

SGC 7.0 - LIQUID ASPHALT COST ADJUSTMENT

- (a) Adjustments will be made to progress estimates to compensate for changes in liquid asphalt prices at time of tender and prices in effect during construction. Increases or decreases in excess of 5% of the Benchmark Tender Price will be paid or deducted accordingly. The governing price will be the average price quoted by local suppliers on the 20th of each month. This adjustment will include any changes in taxes outlined in GC 22.2.

SUPPLEMENTARY GENERAL CONDITIONS

- (b) The benchmark price shall be the average monthly price quoted by local suppliers for the month in which the tender closed. The adjustments shall be computed based on changes in the average monthly price in excess of or less than this benchmark at time of production. The Owner shall then calculate the adjustment to be stated in the Monthly Progress Estimates.
- (c) The liquid asphalt cost adjustment shall be calculated using the quantity of the item added to the progress estimate since the last estimate. In cases where liquid asphalt is included in the price of Asphalt Concrete, the liquid asphalt quantity will be determined using the mix design.

SGC 8.0 - FEDERAL/PROVINCIAL FUNDED PROJECTS

For Federal/Provincial funded projects the following should apply:

- (a) No former Federal public office holder who is not in compliance with the post-employee code for public office holders shall be permitted to benefit on this project.
- (b) No member of the House of Commons or Senate of Canada or the House of Assembly of Newfoundland shall be permitted to benefit on this project.
- (c) Her Majesty the Queen in right of Canada shall be added as an additional named insured in GC 26.1.a and 26.1.b Commercial General Liability Insurance and in GC 27.1 Property Insurance and in SGC 4 Insurance Requirements.

SGC 9.0 - PETROLEUM PRODUCTS COST ADJUSTMENT

Adjustment will be made to progress estimates to compensate for changes in fuel prices at time of tender closing and prices in effect during construction. Increases or decreases in excess of 10% of the Benchmark Tender Price will be paid or deducted accordingly. The governing price will be the price, for the zone in which the majority of the contract is being carried out, established by the Petroleum Products Pricing Commissioner on the 15th of each month and will apply for the period from the 21st of that month to the 20th of the following month. This adjustment will include any changes in taxes outlined in GC 22.2.

The adjustment for fuel cost variation shall apply only to those items given in the accompanying list. For other tender items, there will be no fuel cost adjustments.

The benchmark price shall be the price established by the Petroleum Products Pricing Commissioner at time of tender. The adjustments shall be computed based on changes in the monthly price in excess of or less than this benchmark at time of production. The Owner's Representative shall then calculate the adjustment to be stated in the Monthly Progress Estimate.

SUPPLEMENTARY GENERAL CONDITIONS

For the contract items included in the accompanying list, the fuel cost adjustment shall be calculated using the quantity of the item added to the progress estimate since the last estimate.

The fuel cost adjustment shall be credited to, or debited from, the progress estimate depending on whether the prices during construction are higher than, or less than, the benchmark at time of tender closing.

- a) Mass Excavation Common Material shall include: site work and grading; excavation, trenching and backfilling; and roadway excavation, embankment and compaction.
- (b) Mass Excavation Solid Rock shall also include: Ditching Solid Rock; Quarried Rock; Rock Fill in Place; and Excavation for Foundation Solid Rock.
- (c) If the granular material or asphalt aggregate is produced from a rock quarry source, an additional 1.0 l/t of clear diesel fuel will be added to the quantity shown in the table.

Contract Item	NOMINAL FUEL CONSUMPTION RATE (litres)		
	Clear Diesel Fuel	Furnace Oil	Marked Diesel Fuel
Mass Excavation Common & Imported Common (1)	2.0/m3	N/A	N/A
Mass Excavation Solid Rock (2)	4.0/m3	N/A	N/A
Trench Excavation: Common Material (3)	5.0 l/m3	N/A	N/A
Trench Excavation: Rock (4)	10.0 l/m3	N/A	N/A
Granular Material	1.0/t	N/A	1.0/t
Asphaltic, Base Surface & Levelling Courses (5)	1.0/t	11.0/t	2.0/t

SGC 10.0 - BID FORM

A Working Day shall be defined as the amount of work that a contractor will complete on one day, assuming 10 hour work days, and requiring the services of one inspector. The final contract value must include cost of materials supplied under separate contracts.

The allowable number of Working Hours to complete the project shall be defined by the following table or an interpolation thereof:

SUPPLEMENTARY GENERAL CONDITIONS

Final Contract Value	Working Hours (Days) (for Substantial Performance)
0 to 150,000	225 (22)
500,000	450 (45)
1,000,000	747 (74)
1,500,000	945 (94)
2,000,000	1125 (112)
2,500,000	1224 (122)
3,000,000	1350 (135)
3,500,000	1485 (148)
4,000,000	1575 (157)

Assessment Services Department

MARCH 11 2021

EDWARD COLLINS CONTRACTING LIMITED
EDWARD COLLINS CONTRACTING LTD
P O BOX 51
JERSEYSIDE NL A0B 2G0

Clearance Letter Confirmation Number: 0596790

TO: TOWN OF PLACENTIA

RE: EDWARD COLLINS CONTRACTING LIMITED
T/A EDWARD COLLINS CONTRACTING LTD

Request Purpose: Contract Work – Current Year

This confirms that the above referenced employer is in good standing with WorkplaceNL as of today's date for contract work. This clearance is provided for the purposes of Section 120 of the *Workplace Health, Safety and Compensation Act* only, which indicates that a person using a contractor or subcontractor to perform work may be responsible for unpaid assessments of the contractor or subcontractor.

This clearance letter expires 45 days from the date of issue. If the contract work has not been completed by that date, we recommend that you request another clearance letter to protect your business from any potential assessment liability related to this employer.

If you have any questions, please call us at 709.778.2902 or you may use our toll free number 1.800.563.9000 (ext. 2902) if calling within Newfoundland and Labrador.

Sincerely,

Assessment Services Department

To alter this document constitutes fraud

WL1

N L C S A



NEWFOUNDLAND
& LABRADOR
CONSTRUCTION
SAFETY
ASSOCIATION

Letter of Good Standing

Certificate of Recognition™ Program

November 4, 2020

Edward Collins Contracting Limited

P.O. Box 51

Jerseyside, NL, A0B 2G0

Based upon a review of NLCSA records

Edward Collins Contracting Limited

is an active participant in the Certificate of Recognition™ (COR™) Program. This letter is issued to the above noted company based on information available as of the date listed above. The current state of the company is noted below.

Commencement Date: **October 23, 1997**

Expiry Date: **October 25, 2021**

Certificate of Recognition™



Audit Pending



Note: NLCSA's records are compiled from information gathered during a firm's participation in NLCSA programs, which information is believed to be correct. This letter is based on information currently available to the NLCSA, and is not certified or warranted for accuracy. NLCSA assumes no responsibility or liability for the information contained in this letter.

To alter this document constitutes fraud.



NLCSA Representative

80 GLENCOE DRIVE, DONOVAN'S INDUSTRIAL PARK, MOUNT PEARL, NL A1N 4S9

T: 709 739 7000 F: 709 739 7001 TOLL FREE 1 888 681 SAFE (7233)

INFO@NLCSA.COM WWW.NLCSA.COM

CERTIFICATE OF INSURANCE

DESCRIPTION & LOCATION OF WORK: Town of Placentia – Water System Upgrades - 17-GI-20-00050 / 17-SCF-19-00129				
PROJECT NO: 17-GI-20-00050 / 17-SCF-19-00129		AWARD DATE: March 3 rd , 2021		VALUE: \$2,300,000 (Excl HST)
INSURER: Northbridge General Insurance Corporation (<i>Section 1.1 – Section 2A - Section 3</i>)				
INSURER ADDRESS: 1801 Hollis Street, Suite 900, Halifax, NS B3J 3N4				
BROKER: AON Reed Stenhouse Inc.				
BROKER ADDRESS: 125 Kelsey Drive, Suite 100, St. John's, NL A1B 0L2				
INSURED NAME OF CONTRACTOR: Edward Collins Contracting Ltd.				
CONTRACTOR ADDRESS: P O Box 51, Jerseyside, NL A0B 2G0				
ADDITIONAL INSURED (Excluding Automobile Liability Policy) ✓ The OWNER: Town of Placentia ✓ "Her Majesty the Queen in Right of the Province of NL as represented by the Minister of Transportation & Infrastructure. Dept. of Transportation & Infrastructure, P.O. Box 8700, St. John's, NL., A1B 4J6, Attn: Tendering & Contracts ✓ The Occupant/Operator of the Property: ✓ Project Consultants of the OWNER: Meridian Engineering Inc. (excluding professional liabilities)				
This document certifies that the following policies of insurance and indicated coverage are at present in force subject to the terms, conditions and exclusions as contained therein covering the operations of the insured in connection with the above noted contract made between the named insured and the Owner.				
POLICY TYPE	NUMBER	INCEPTION DATE	EXPIRY DATE Y/M/D	LIMITS OF LIABILITY
1.1 COMMERCIAL GENERAL LIABILITY or 1.2 WRAP-UP LIABILITY (Including where indicated) A. BLASTING B. PILE DRIVING OR CAISSON WORK C. REMOVAL OR WEAKENING OF SUPPORT	CBC 0912261	2020/08/15	2021/08/15	\$2,000,000 Minimum
2A. BUILDERS' RISK "BROAD FORM" or 2B. INSTALLATION FLOATER "BROAD FORM" or 2C. PIERS, WHARVES, & DOCKS RIDER	TBA	2021/04/05	2021/11/05	\$2,300,000.00
3. AUTOMOBILE LIABILITY INSURANCE	CBC 0912261	2020/08/15	2021/08/15	\$2,000,000 Minimum
4. AIRCRAFT AND/OR WATERCRAFT WATERCRAFT LIABILITY (IF APPLICABLE)	Not required			\$2,000,000 Minimum
5. AIRPORT CONTRACTORS LIABILITY	Not required			\$5,000,000.00 Minimum
6. ENVIRONMENTAL IMPAIRMENT LIABILITY	Not required			
The Insurer will endeavour to notify the Owner and Her Majesty, as defined above, in writing, thirty (30) days prior to cancellation, termination or material change of any policy.				
NAME OF INSURER'S OFFICER or AUTHORIZED REPRESENTATIVE : Dianne Buckle	SIGNATURE: <i>Aon Reed Stenhouse Inc</i>		Date: March 17 th , 2021	
			Tel.: 709-739-1040	
			Email: dianne.buckle@aon.ca	
Issuance of this certificate shall not limit or restrict the right of the Owner to request at any time duplicate certified copies of said insurance policies.				

CONSTRUCTION SCHEDULE FORM

		MONTHS				APRIL				MAY				JUNE				JULY				AUG.				SEPT			
ITEM	DESCRIPTION	WEEK				1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4
1	MOB TO SITE																												
2	INSTALL W.L FROM HWY 100 - PUMPHOUSE EXT.																												
3	BUILD EXTENSION ON EXISTING PUMPHOUSE																												
4	INSTALL EQUIPMENT IN PUMPHOUSE																												
5	INSTALL W.L HWY 100 NEAR CHURCH & DANVILLE																												
6	INSTALL W.L HWY 100 ABOVE TRAILER PARK																												
7	CONNECT TO W.L FOR PRV BUILDING HWY 100 N.E.M.T.P.																												
8	CONNECT TO W.L FOR PRV BUILDING OFF LOWER ROAD,																												
9	INSTALL W.L ON HARDEN DRIVE																												
10	INSTALL PRV BUILDING & EQUIPMENT HWY 100 N.E.M.T.P.																												
11	INSTALL PRV BUILDING & EQUIPMENT OFF LOWER ROAD,																												
12	CONNECT GULL POND - CLARK'S POND.																												
13	ASPHALT PATCHING.																												
14	CLEAN-UP																												
15	DEMOL.																												

PERMIT TO CONSTRUCT

Pursuant to the *Water Resources Act*, SNL 2002 cW-4.01, specifically Section(s) 37, 39, 48

Date: **JANUARY 06, 2021**

File No: **844.073.001A**
Permit No: **WS11546-2021**

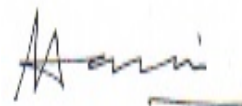
Permit Holder: **Town of Placentia**
PO Box 99
Placentia NL A0B 2Y0
mgreene@placentia.ca

Attention: **Ms. Mary Greene**

Re: **Placentia - Water System Upgrades**

Permission is hereby given for : **the installation of 490 m of 300 mm PVC watermain, 400 m of 150 mm PVC watermain, an extension to existing Clarke's Pond Pump house to service the Dunville area to include new submersible pumps, VFDs, flowmeters, gas chlorination system, two new PRV stations in the Dunville distribution system with hypochlorination systems, the interconnection of Gull Pond-Barron Pond-Little Barron Pond-Clarke's Pond to include stainless steel wedge wire screens, intake pipes, 3050 m of 300 mm HDPE watermain, and all related appurtenances as described in the drawings and specification titled, "Town of Placentia Water System Upgrades" as received from Meridian Engineering Inc. on October 6, 2020; 17-GI-20-00050/17-SCF-19-00129.**

- This Permit does not release the Permit Holder from the obligation to obtain appropriate approvals from other concerned municipal, provincial and federal agencies.
- The Permit Holder must obtain the approval of the Crown Lands Administration Division if the project is being carried out on Crown Land.
- This Permit is subject to the terms and conditions indicated in Appendices A and B (attached).
- It should be noted that prior to any significant changes in the design or installation of the proposed works, or in event of changes in ownership or management of the project, an amendment to this Permit must be obtained from the Department of Environment, Climate Change and Municipalities under Section 49 of the *Water Resources Act*.



(for) MINISTER

APPENDIX A
Terms and Conditions for Permit

Water & Sewer General

1. Water pumped from excavations or work areas, or any runoff or effluent directed out of work sites, must have silt and turbidity removed by settling ponds, filtration, or other suitable treatment before discharging to a body of water. Effluent discharged into receiving waters must comply with the *Environmental Control Water and Sewage Regulations, 2003*.
2. All operations must be carried out in a manner that prevents damage to land, vegetation, and watercourses, and which prevents pollution of bodies of water.
3. Any areas adversely affected by this project must be restored to a state that resembles local natural conditions. Further remedial measures to mitigate environmental impacts on water resources can and will be specified, if considered necessary in the opinion of this Department.
4. All waste materials resulting from this project must be disposed of at a site approved by the Department of Digital Government and Service NL.
5. The works proposed must satisfy the requirements of the latest applicable codes and standards, and be consistent with or otherwise address the design criteria set out in this Department's publication *Guidelines for the Design, Construction, and Operation of Water and Sewerage Systems, 2005*, and as amended from time to time.
6. The work must be undertaken in strict compliance with the submitted documents and the latest version of the *Municipal Water, Sewer and Roads Master Construction Specifications*. A copy of all documents, including the *Municipal Water, Sewer and Roads Master Construction Specifications* must be available for viewing at the construction site office at all times.
7. Liaison is to be maintained with the Environmental Scientist representing the Drinking Water and Wastewater Section of this Department, during the construction and operation of the project. They shall be notified of the pre-construction and post-construction meetings so that they may attend, if deemed necessary. They can be reached at telephone (709) 729-2558 .
8. Officials of this Department may visit the project from time to time to ensure that work is carried out within the provisions of this Permit, and is not creating any environmental hazard.
9. Any changes in the approved works, or works other than those specified in the application, must be submitted, in writing, to this Department, and approved, in the form of an Amendment to this Permit, prior to any work.
10. Copies of this Permit, as well as any subsequent Amendments, must be provided to the contractor(s) who will be carrying out these works, and to the engineer's site representative.
11. The attached Completion Report (Appendix C) for Permit No. 11546 must be completed and returned to this Department upon completion of the approved works. Pictures must be submitted along with the completion report, showing the project site prior to and after development.
12. This Permit is valid for two years from the date of issue. Work must be completed by that date or the application and approval procedure must be repeated.
13. The drinking water and wastewater system shall be operated and maintained in accordance with the Permit to Operate issued by this Department.

14. Management of stormwater is the responsibility of the municipality or LSD. Stormwater management should focus on ensuring that the post-development stormwater runoff rate will be equal to or less than the pre-development runoff rate. Any stormwater runoff has the potential to contribute to flooding downstream which may have liability issues for the municipality or LSD if not managed properly.
15. The Owner must update any drawings maintained of the drinking water or wastewater system to reflect the modification or replacement of the works, where applicable.

Water Systems

16. Wherever possible, water distribution system layouts should be designed to eliminate dead-end sections. Where dead-end mains cannot be avoided, they should be provided with a fire hydrant, blow off, or other acceptable measures taken to prevent problems associated with stagnation.
17. Under no circumstances shall sewage be permitted to enter the waterline trench during or after construction.
18. All new waterlines and appurtenances shall be hydrostatically tested in accordance with the *Municipal Water, Sewer and Roads Specifications*.
19. All components, lubricants and chemicals provided shall be compatible for use with drinking water and shall meet the requirements of ANSI/NSF 60 Drinking Water Treatment Chemical Standard and ANSI/NSF 61 Drinking Water and System Component Standard and any other standard applicable to potable water.
20. Backflow prevention devices should/must be installed on service connections where there is a high risk of contamination of the potable water supply.
21. Drains in valve chambers shall be equipped with a backwater valve and screening to prevent the entry of insects, birds, and rodents.
22. All new lines and appurtenances must be disinfected by an approved method described in the latest edition of the AWWA C651 Standard for Disinfecting Watermains and using only chlorine products that meet the NSF 60 standard.
23. After final flushing and before the new water main is commissioned into service, bacteriological sampling must be conducted as per the latest edition of the AWWA C651 Standard for Disinfecting Watermains. Two acceptable options are available: (1) two consecutive sets of bacteriological samples, taken at least 16 hours apart, must be collected and tested for bacteriological quality, or (2) following a 16 hour rest period two consecutive sets of samples, taken 15 minutes apart, must be collected and tested for bacteriological quality. Sets of samples shall be collected for every 366 m of new water main including the end of the main line and the end of each branch line. These sampling locations shall be determined by the engineer. **A copy of test results must be submitted to this Department (Water Resources Management Division) before the new watermain is placed into service.** In the event of any bacteria detected in the sample results, flushing and re-sampling may be attempted or the disinfection process will need to be repeated until results for two consecutive sets of samples are bacteria free. Where necessary, this Department should be contacted to determine provisions for the disposal of heavily chlorinated water.
24. For the purpose of disinfecting new or upgraded watermains, connection may only be made to the existing watermain provided a valve is installed that maintains a water tight seal. This valve may be operated to flush the new water extension before disinfection and post disinfection provided adequate measures and procedures are followed to avoid a backflow and contamination of the existing system.
25. The additional maximum demand for water exerted by consumers who are serviced by this project must not result in an exceedance of the available yield of the water source, maximum rated capacity of the water distribution system, or drinking water treatment plant as specified in the Permit to Operate.

26. Drain lines from air release/vacuum valves shall not discharge at the bottom of the chamber next to the floor drain unless there is an air gap on the line to prevent any possibility of backsiphonage of chamber water back into the potable water system. The air gap shall be located at a location on the line just above the crown of the watermain. If an air gap is not possible in this area, the drain line shall be shortened so it discharges higher than the crown of the watermain.
27. Additional water services resulting from this project will not adversely affect the distribution system's ability to maintain a minimum pressure of 140 kPa (20 psi) at ground level at all points in the distribution system under maximum day demand plus fire flow conditions.
28. The existing watermain that is being taken out of service must be permanently disconnected so as not to create a cross-connection with the town's water distribution system.

Chlorination

29. A backflow prevention device, in this case a hose connection vacuum breaker, non removable, meeting or exceeding CSA 64.2, shall be attached to any hose bibb connection, to prevent the possibility of contaminants entering the potable water distribution system due to back-siphonage.
30. The upgrading of the existing chlorination facility must be carried out in such a way as there will be minimal interruption of the water supply and chlorination system. In this regard, water consumers and the Regional Office of the Department of Digital Government and Service NL shall be kept informed and appropriate action taken to address any potential or encountered problems.
31. An emergency shower and eye wash station that is in compliance with ANSI Z358.1-2014 and meets the requirements of the appropriate Safety Data Sheet (SDS) shall be installed in a convenient location(s) within each facility.
32. The door of the chlorination (chlorine gas) room must open outward, and must be equipped with approved panic hardware. This door shall have mounted on its exterior, a sign **warning** of the presence of chlorine gas.
33. The chlorine gas room/building/storage area must be equipped with a chlorine gas leak detection device. The device shall control an audible alarm, and an alarm light located above the entrance door to the chlorine room.
34. The exhaust fan in the chlorine gas room must be capable of providing one complete air exchange per minute, and the air intake duct shall extend to within 150 mm of the floor. A manual control switch for the fan shall be provided at the entrance and in an adjoining room.
35. The chlorination (chlorine gas) room and the adjoining room(s) shall be separated by an air tight wall in order to protect personnel and equipment in the adjoining room in the event of a chlorine gas leak. A clear air tight viewing window shall be installed in this wall to allow for visual inspection of the chlorine gas room and chlorine gas storage room.
36. Self-contained breathing apparatus or respiratory air-pac protection equipment shall be provided for the chlorine gas facility. The equipment shall be wall-mounted in convenient locations, but not inside any room where chlorine gas is used or stored. The unit shall use compressed air, have at least 30 minute capacity, and be compatible with the units used by the regional fire department. The Town of Placentia shall ensure that the air cylinder is purged and refilled on a regular basis to ensure its safe operation, and shall ensure that the operator(s) is trained in the use of the breathing apparatus.
37. A Chlorine Institute 'Kit A' should be provided for the chlorine gas facility in order that emergency leak repairs may be made to the chlorine gas cylinders when necessary. The Kit should be stored near the emergency breathing apparatus, and not in the same room as the chlorine gas cylinders.
38. The vacuum regulator vents must be vented to a safe location where personnel will not be endangered from the escaping chlorine gas. They shall not under any circumstance be vented in the vicinity of an exit door or through an unheated space (ie. attic).

39. The chlorination facility shall be located in a fenced enclosure to minimize vandalism and endangerment to the general public in case of a chlorine leak.
40. Floor drains in the chlorine equipment room or the chlorine gas cylinder storage room must discharge to a separate sump outside the building and shall not be connected to other internal or external drainage systems.
41. The chlorinator and chlorine vacuum lines shall not be located on an outside wall to prevent exposure to low temperatures.
42. A wind sock or flag shall be mounted on the roof of the building to indicate wind direction in case of a major chlorine gas leak resulting in the chlorine gas having to be vented to the outside.
43. The injector for the chlorination system shall be located as close as possible to the diffuser (preferably attached) in order to minimize the pressurized chlorine solution line. The chlorine injection lance shall be installed in the pipe so that the chlorine solution is being injected within the flow of water to ensure appropriate mixing.
44. The hypochlorination system shall be set-up such that chlorine is injected in the line from the source prior to any other connection to that line with the exception of the raw water sampling tap. Also, in this regard the chlorinated water shall enter one end of the chlorine contact tank and exit out of the opposite end to allow for maximum contact time and mixing and to avoid potential short circuiting.
45. Storage tank and pressure tank drain lines and overflows shall not be directly connected to the building floor drain, but shall be separated from the floor drain by an appropriately sized air gap. Drain lines from the storage tank and pressure tanks shall be protected from back-siphonage or back-pressure by an appropriate backflow prevention device.
46. A sample tap shall be provided so that water samples can be obtained from the raw water source and from an appropriate location after chlorination. Taps used shall be of the smooth-nosed type without interior or exterior threads and shall not have a screen, aerator or other such appurtenance.
47. The sodium hypochlorite shall be stored in a dark cool area to minimize loss of strength of the solution. In this regard a storage cabinet should be provided and shall be located away from any direct heat and light sources.
48. Personal protective equipment such as goggles and rubber gloves suitable for handling sodium hypochlorite must be provided.
49. Portable equipment must be provided for measuring chlorine residuals. The equipment shall have digital display readout, enable measurement of chlorine residuals to the nearest 0.02 mg/L, and shall be of a type approved by this Department.

Miscellaneous

50. The Permit Holder must prevent erosion of drainage ditches, streams or other natural bodies of water by installing rip-rap and/or sodding.
51. This project involves the handling and/or dealing with asbestos cement pipe from certain portions of the work area. Any removal, handling or transport and disposal of asbestos must be carried out in accordance with the Asbestos Abatement Regulations 1998 under the Occupational Health and Safety Act. For further information, contact a Hazardous Materials Officer with the Department of Digital Government and Service NL, Occupational Health & Safety Division at (709) 729-5536 or 729-7037.
52. All drains and vents shall be equipped with screens to prevent the entry of insects, birds and rodents.
53. The ends of drains and overflows shall be located so as to prevent erosion. Where necessary, concrete or similar splash plates shall be located below the end of the overflow, and the immediate surrounding area shall be filled to a depth of 10 cm with 19 mm minus stone to prevent ponding.

54. Council is advised to apply to the Water Resource Management Division of this Department, for protection of the expanded watershed area to include Gull Pond.

Water & Sewer Installation

55. Where the horizontal separation between watermain (including hydrant leads and drains) and gravity sanitary sewers is less than 3.0 metres, the watermain shall be laid in a separate trench, or on an undisturbed earth shelf located on one side of the sanitary sewer and at such an elevation that the invert of the watermain shall be a minimum of 450 mm above the crown of the sanitary sewer and 300 mm horizontally from the sanitary sewer measured edge to edge.
56. Watermain (including hydrant leads) crossing gravity sanitary sewers should be laid to provide a minimum vertical distance of 450 mm between the outside of the watermain and the outside of the sanitary sewer. This should be the case where the watermain is either above or below the sanitary sewer with preference to the watermain located above the sanitary sewer. At crossings, above or below, one full length of water pipe shall be located so both joints will be as far from the sanitary sewer as possible. Special structural support for the water and/or sewer pipes may be required.

SCADA- PtC

57. The SCADA system shall not be on the same network as other business or municipal computing systems.
58. The SCADA system shall not be located below the level of any water storage basin used in the treatment process or any large diameter pipes.
59. SCADA systems which have network connectivity must have anti-virus applications installed.
60. The computer/master terminal unit containing the SCADA system master database and interface must be kept in a separate server room that can be locked.
61. Multiple firewalls must be installed on the SCADA system if remote access/login is allowed.
62. A spare computer must be provided that contains a backup copy of the SCADA system master database and interface.

Intake

63. A water supply intake may be placed in Gull Pond, Barron Pond and Little Barron Pond as part of the water supply system for the Town of Placentia .
64. The intake and discharge pipes shall consist of 300 mm diameter HDPE pipe and stainless steel wedge wire screened intake structures.
65. Pipe zone cutoff walls or other means must be installed to prevent lowering of the water table due to groundwater flow through the porous pipe zone material.
66. Where pumping is used to bypass flow, cofferdams must be installed both above and below areas of construction. The Permit Holder must provide pumps with sufficient capacity to prevent washout of cofferdams.
67. Cofferdams must be properly designed and constructed of suitable materials to prevent leakage and to resist loss of any material as a result of erosion. Cofferdams must be removed upon completion of their intended function. All material must be removed carefully to prevent disturbance of the water body and to prevent water quality degradation.
68. Close cut clearing and disposal must be undertaken around the perimeter of the water supply reservoir to an elevation not less than 200 mm above the proposed high water mark. Special care should be exercised to minimize siltation and erosion problems at the new shore wash area.

69. The intake must be fitted with a removable mesh screen or a trash rack.
70. Intake ports must be located above the bottom of the stream, lake or impoundment, but at sufficient depth to be kept submerged at low water levels and below ice level. The intake structure must not draw air.
71. Adequate protection must be provided against clogging by sediment, debris, ice, frazil ice, wind, floatation and wave pressure.

PPWSA General

72. All persons working on this project must be informed that they are within a Protected Public Water Supply Area, and must be made aware of all conditions of this Permit. A copy of this Permit must be on site during operations.
73. All waste material is to be collected in refuse containers, and disposed of at an approved waste disposal site outside the Protected Public Water Supply Area in accordance with the *Environmental Protection Act, SNL 2002 cE-14.2*.
74. Equipment storage, maintenance facilities associated with this project, and all maintenance other than emergency repairs must not be located/carried out within the Protected Public Water Supply Area.
75. The Department reserves the right to require that the Permit Holder follow, and cover all costs incurred by the Permit Holder or this department, associated with any water quality monitoring program that may be ordered by the Minister for the purpose of ensuring that the water quality is maintained within acceptable guidelines.
76. Officials of the Department and the appropriate Municipal Authority, Operator, or Watershed Management Committee may visit the site to ensure compliance with this Permit.
77. The felling or disposing of trees, parts of trees, sawdust, bark, logging debris or slash into a water body or upon the frozen surface of a water body is strictly prohibited.
78. Treated wood shall not be used in a water body, within 150m of an intake pond or within 50m of other bodies of water measured from the high water mark. The use of creosote treated wood anywhere within the Protected Public Water Supply Area is strictly prohibited.
79. The Permit Holder must inspect the site daily during active construction, and any water quality impairment related problems are to be reported immediately to the WRMD Drinking Water Section Environmental Scientist at (709)729-4817 .
80. Any changes in water quality resulting directly from this project, rendering the water unsuitable as a public water supply, are the responsibility of the Permit Holder. The Minister may order the Permit Holder to provide an alternate source of potable water to the affected community until water quality returns to an accepted level.
81. All vehicles and equipment must be in good working order with no leaking fuel, oil, or other harmful substances that could impair water quality.
82. All stationary motorized equipment and associated fuel tanks shall have metal trays, absorbent pads or impervious liners under them to catch and contain in excess of 110 % of the aggregate volume of any fuel, lubricant and oil.
83. Drainage from roads and other disturbed areas into any body of water must first be discharged into a settling pond, a vegetated area or pass through a sedimentation fence where all suspended material can settle out before draining into any body of water.
84. For any clearing inside buffer zones: no ground disturbance (no disturbance to the root mat, no grubbing, or removal of soil) shall take place in the buffer zones. The Permit Holder is to ensure that the appropriate best practices are employed to prevent any detrimental effects that could impact water quality. Where possible, work in buffer zones shall be completed when the ground is frozen.

85. Where permits, licences, approvals or authorizations are issued by multiple governments departments or agencies, in the case of similar conditions, the more stringent of the those shall prevail; in the case of conflicting conditions, the Permit Holder shall seek clarification and direction in writing from each of the respective departments or agencies.
86. The Permit Holder is required to ensure that adequate sanitary (bathroom) facilities are available or provided on site.
87. The issuance of this permit does not guarantee, nor set precedent, that additional or similar permits or amendments will be issued in this or any other Protected Public Water Supply Area for additional or similar activity or development.

Fuel Storage

88. There shall be no bulk fuel storage associated with this project within the protected water supply area. Fuel shall be brought to the operating area in no more than two (2), 205 litre barrels or one (1) 500 litre slip tank. Refueling sites shall be located at least 150 metres from any water body or wetland. The Permit Holder is hereby informed that fuel storage and handling requires a separate approval under the *Storage and Handling of Gasoline and Associated Products Regulations*, CNR 775/96.
89. A complete oil spill clean-up kit must be on site at all times when gasoline or fuel powered equipment is being used or refueled. The kit must contain the following:
 - Fire pump and 100 metres of hose
 - Two hand operated fuel pumps
 - Six recovery containers such as empty 205 litre drums
 - Four shovels
 - Two pick axes
 - Ten metres of containment boom
 - Twenty-five absorbent pads
 - One hundred litres of loose absorbent material
90. Any spills of gasoline, fuel or oil, regardless of volume, shall be reported immediately to the WRMD Drinking Water Environmental Scientist at (709)729-4817. Furthermore, all spills in excess of 70 litres shall be reported immediately to the 24 hour spill report line at 1-800-563-9089.
91. Contaminated snow and soil must be removed from the site and disposed of at an approved location outside the protected public water supply area, in accordance with the *Environmental Protection Act, SNL 2002 cE-14.2*.
92. Refueling sites shall be located at least 150 metres from any water body or wetland.
93. It is the responsibility of the Municipality to apply for protection of a new public drinking water source if necessary.

Infilling

94. The constructed works must be inspected regularly so that action can be taken to undertake repairs as required.
95. Fill material must be obtained from an approved quarry site. It must not be taken from beaches or streams, and must not be dredged from a body of water.
96. The natural course of any stream must not be altered.
97. Infilling must not cause increased water elevation upstream or increase flow velocity downstream of the site. Reduction of the natural cross sectional area of any watercourse is not permitted.
98. Infilling must not disrupt the established surface drainage pattern of the area.

99. Infilling must not cause increased water elevation upstream or increase flow velocity downstream of the site.
100. Before infilling, any vegetation and topsoil must be completely removed and under no circumstances shall it be used as fill material. Topsoil must be stored and reused in final landscaping of the infilled area.

Dredging/Debris Removal

101. Alteration of the natural minimum streamflow is not permitted in order to preserve aquatic life.
102. Dredging activity must only be carried out during periods when wind, wave and tide conditions minimize the dispersion of silt and sediment from the work site.
103. A water quality monitoring program is not required at this time. However, the Department reserves the right to require that the Permit Holder sample, analyse, and submit results of water quality tests, for the purpose of ensuring that the water quality is maintained within acceptable guidelines. All analyses must be undertaken by a CALA accredited laboratory.
104. The area to be dredged must be enclosed and isolated from the rest of the body of water through the use of a filter fabric curtain or similar method.
105. Dredged material must be disposed of in accordance with the regional Service NL Centre of the Department of Service NL. The Department of Service NL may require samples to be submitted for testing and analysis.

Water Intake

106. The installation of the water supply pipe must comply with the manufacturers specifications, particularly with regard to pipe zone bedding material, degree of compaction, and maximum - minimum pipe cover for design loadings.

APPENDIX B

Special Terms and Conditions for Permit

1. The Permit Holder and its agent(s), subcontractor(s), and consultant(s) shall keep all systems and works in good condition and repair and in accordance with all laws, by-laws, directions, rules and regulations of any governmental authority. The Permit Holder or its agent(s), subcontractor(s), or consultant(s) shall immediately notify the Minister if any problem arises which may threaten the structural stability of the systems and works, endanger public safety and/or the environment or adversely affect others and/or any body of water either in or outside the said Project areas. The Permit Holder and its agent(s), subcontractor(s), and consultant(s) shall be responsible for all damages suffered by the Minister and Government resulting from any defect in the systems and works, operational deficiencies/inadequacies, or structural failure.
2. The Permit Holder and its agent(s), subcontractor(s), and consultant(s) shall operate the said Project and its systems and works in a manner which does not cause any water related and/or environmental problems, including but not limited to problems of erosion, deposition, flooding, and deterioration of water quality and groundwater depletion, in or outside the said Project areas. The Permit Holder and its agent(s), subcontractor(s), and consultant(s) shall be responsible for any and all damages associated with these problems caused as a result of changes, deficiencies, and inadequacies in the operational procedures by the Permit Holder or its agent(s), subcontractor(s), or consultant(s).
3. If the Permit Holder or its agent(s), subcontractor(s), or consultant(s) fails to perform, fulfil, or observe any of the terms and conditions, or provisions of this Permit, as determined by this Department, the Minister may, without notice, amend, modify, suspend or cancel this Permit in accordance with the *Water Resources Act*.
4. The Permit Holder and its agent(s), subcontractor(s), and consultant(s) indemnify and hold the Minister and Government harmless against any and all liabilities, losses, claims, demands, damages or expenses including legal expenses of any nature whatsoever whether arising in tort, contract, statute, trust or otherwise resulting directly or indirectly from granting this Permit, systems and works in or outside the said Project areas, or any act or omission of the Permit Holder or its agent(s), subcontractor(s), or consultant(s) in or outside the said Project areas, or arising out of a breach or non-performance of any of the terms and conditions, or provisions of this Permit by the Permit Holder or its agent(s), subcontractor(s), or consultant(s).
5. This Permit is subject to all provisions of the *Water Resources Act* and any regulations in effect either at the date of this Permit or hereafter made pursuant thereto or any other relevant legislation enacted by the Province of Newfoundland and Labrador in the future.
6. This Permit shall be construed and interpreted in accordance with the laws of the Province of Newfoundland and Labrador.

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Appendix C - Completion Report

Pursuant to the *Water Resources Act*, SNL 2002 cW-4.01, specifically Section(s) 37, 39, 48

Date: **JANUARY 06, 2021**

File No: **844.073.001A**
Permit No: **WS11546-2021**

Permit Holder: **Town of Placentia**
PO Box 99
Placentia NL A0B 2Y0
mgreene@placentia.ca

Attention: **Ms. Mary Greene**

Re: **Placentia - Water System Upgrades**

Permission was given for : the installation of 490 m of 300 mm PVC watermain, 400 m of 150 mm PVC watermain, an extension to existing Clarke's Pond Pump house to service the Dunville area to include new submersible pumps, VFDs, flowmeters, gas chlorination system, two new PRV stations in the Dunville distribution system with hypochlorination systems, the interconnection of Gull Pond-Barron Pond-Little Barron Pond-Clarke's Pond to include stainless steel wedge wire screens, intake pipes, 3050 m of 300 mm HDPE watermain, and all related appurtenances as described in the drawings and specification titled, "Town of Placentia Water System Upgrades" as received from Meridian Engineering Inc. on October 6, 2020; 17-GI-20-00050/17-SCF-19-00129.

I (the Permit Holder named above or agent authorized to represent the Permit Holder) do hereby certify that the project described above was completed in accordance with the plans and specifications submitted to the Department of Environment, Climate Change and Municipalities and that the work was carried out in strict compliance with the terms and conditions of the Permit issued for this project.

Date: _____ Signature: _____

This completion report must be completed and forwarded to the following address upon completion of the approved work.

Department of Environment, Climate Change and Municipalities
Water Resources Management Division
PO Box 8700
St. John's NL A1B 4J6

TECHNICAL SPECIFICATIONS

PART 1 GENERAL**1.1 RELATED SECTIONS**

- .1 Section 04 05 12 - Masonry Mortar and Grout.
- .2 Section 04 05 19 - Masonry Anchorage and Reinforcing.
- .3 Section 04 05 23 - Masonry Accessories.
- .4 Section 04 22 00 - Concrete Unit Masonry.

1.2 REFERENCES

- .1 Canadian Standards Association (CSA International).
 - .1 CSA-A165 Series, Standards on Concrete Masonry Units.
 - .2 CSA A179, Mortar and Grout for Unit Masonry.
 - .3 CSA-A371, Masonry Construction for Buildings.
- .2 International Masonry Industry All-Weather Council (IMIAC).
 - .1 Recommended Practices and Guide Specification for Cold Weather Masonry Construction.

1.3 SUBMITTALS

- .1 Product Data.
 - .1 Submit manufacturer's printed product literature, specifications and data, including product characteristics, performance criteria, limitations and colors.
- .2 Submit two copies of Workplace Hazardous Materials Information System (WHMIS) - Material Safety Data Sheets (MSDS).
- .3 Shop drawings.
 - .1 Submit shop drawings per Municipal Master Specification
- .4 Manufacturer's Instructions.
 - .1 Submit manufacturer's installation instructions.

1.4 QUALITY ASSURANCE

- .1 Submit laboratory test reports certifying compliance of masonry units and mortar ingredients with specification requirements.

- .2 Submit certified test reports showing compliance with specified performance characteristics and physical properties.
- .3 Qualifications:
 - .1 Manufacturer: minimum five (5) years experience in manufacturing components similar to or exceeding requirements of project.
 - .2 Installer: experienced in performing work of this section who has specialized in installation of work similar to that required for this project.

1.5 DELIVERY, STORAGE, AND HANDLING

- .1 Deliver materials to job site in dry condition.
- .2 Keep materials dry until use except where wetting of bricks is specified
- .3 Store under waterproof cover on pallets or plank platforms held off ground by means of plank or timber skids.
- .4 Replace defective or damaged materials with new.

1.6 SITE CONDITIONS

- .1 Cold weather requirements.
 - .1 In accordance with CSA-A371 and as outlined below.
 - .1 Maintain temperature of mortar between 5°C and 50°C until batch is used or becomes stable.
 - .2 Maintain ambient temperature of masonry work and its constituent materials between 5°C and 50°C and protect site from exposure to wind.
 - .3 Maintain temperature of masonry above 0°C for minimum of 3 days, after mortar is installed.
 - .4 Preheat unheated wall sections in enclosure for minimum 72 hours about 10°C, before applying mortar.
- .2 Hot weather requirements.
 - .1 In accordance with CSA-A371 and as outlined below.
 - .1 Protect freshly laid masonry from drying too rapidly, by means of waterproof, non-staining coverings.
 - .2 Keep masonry dry using waterproof, non-staining coverings that extend over walls and down sides sufficient to protect walls from wind driven rain, until masonry work is completed and protected by flashings or other permanent construction.

- .3 Protect masonry and other work from marking and other damage. Protect completed work from mortar droppings. Use non-staining coverings.
- .4 Provide temporary bracing of masonry work during and after erection until permanent lateral support is in place.

PART 2 **PRODUCTS**

2.1 **MATERIALS**

- .1 Masonry materials are specified in related Sections indicated in 1.1.

PART 3 **EXECUTION**

3.1 **MANUFACTURER'S INSTRUCTIONS**

- .1 Compliance: comply with manufacturer's written data, including product technical bulletins, product catalogue installation instructions, product carton installation instructions, and data sheets.

3.2 **PREPARATION**

- .1 Provide temporary bracing and support of masonry work during and after erection until permanent lateral support is in place.
- .2 Bracing approved by Owner's Representative.
- .3 Establish and protect lines, levels, and coursing.
- .4 Protect adjacent materials from damage and disfiguration.

3.3 **INSTALLATION**

- .1 Do masonry work in accordance with CSA-A371, except where specified otherwise.
- .2 Build masonry plumb, level, and true to line, with vertical joints in alignment respecting construction tolerances permitted by CAN/CSA-A371.
- .3 Layout coursing and bond to achieve correct coursing heights, and continuity of bond above and below openings, with minimum of cutting.

3.4 CONSTRUCTION

- .1 Exposed masonry:
 - .1 Remove chipped, cracked, and otherwise damaged units, in accordance with CSA A-165, in exposed masonry and replace with undamaged units.
- .2 Jointing:
 - .1 Allow joints to set just enough to remove excess water, then tool with round jointer to provide smooth, joints true to line, compressed, uniformly concave joints where concave joints are indicated.
 - .2 Strike flush joints concealed in walls and joints in walls to receive plaster, tile, insulation, or other applied material except paint or similar thin finish coating.
- .3 Cutting:
 - .1 Cut out for electrical switches, outlet boxes, and other recessed or built-in objects.
 - .2 Make cuts straight, clean, and free from uneven edges.
- .4 Building-In:
 - .1 Build in items required to be built into masonry.
 - .2 Prevent displacement of built-in items during construction. Check plumb, location and alignment frequently, as work progresses.
 - .3 Brace door jambs to maintain plumb. Fill spaces between jambs and masonry with mortar.
- .5 Wetting of bricks:
 - .1 Except in cold weather, wet bricks having an initial rate of absorption exceeding 1 g/minute/1000 mm²: wet to uniform degree of saturation, 3 to 24 hours before laying, and do not lay until surface dry.
 - .2 Wet tops of walls built of bricks qualifying for wetting, when recommencing work on such walls.
- .6 Support of loads:
 - .1 Use 30 MPa concrete where concrete fill is used in lieu of solid units.
 - .2 Use grout to CSA A179, where grout is used in lieu of solid units.
 - .3 Install building paper below voids to be filled with grout; keep paper 25 mm back from faces of units.
- .7 Provision for movement:

- .1 Leave 3 mm space below shelf angles.
- .2 Leave 6 mm space between top of non-load bearing walls and partitions and structural elements. Do not use wedges.
- .3 Built masonry to tie in with stabilizers, with provision for vertical movement.
- .8 Loose steel lintels:
 - .1 Install loose steel lintels. Centre over opening width.
- .9 Control joints:
 - .1 Construct continuous control joints where indicated or detailed.
- .10 Expansion joints:
 - .1 Build-in continuous expansion joints where indicated or detailed.

3.5 SITE TOLERANCES

- .1 Tolerances in notes to CSA-A371 apply.

3.6 FIELD QUALITY CONTROL

- .1 Inspection and testing will be carried out by Testing Laboratory designated by Owner's Representative.
- .2 Provide Certificate of Field Quality Inspection and testing to Owner's Representative for inclusion in Commissioning Manual.

3.7 CLEANING

- .1 Perform cleaning after installation to remove construction and accumulated environmental dirt.
- .2 Upon completion of installation, remove surplus materials, rubbish, tools and equipment barriers.

3.8 PROTECTION

- .1 Temporary Bracing and Supports:
 - .1 Provide temporary bracing and supports of masonry work during and after erection until permanent lateral support is in place.
 - .2 Provide confirmation to Owner's Representative that temporary bracing and support has been designed by professional engineer.
 - .3 Brace masonry walls as necessary to resist wind pressure and lateral forces during construction.

.2 Moisture Protection:

- .1 Keep masonry dry using waterproof, nonstaining coverings that extend over walls and down sides sufficient to protect walls from wind driven rain, until completed and protected by flashing or other permanent construction.
- .2 Cover completed and partially completed work not enclosed or sheltered with waterproof covering at end of each work day. Anchor securely in position.
- .3 Air Temperature Protection: protect completed masonry as per Part 1 article Site Conditions.

END OF SECTION

PART 1 GENERAL**1.1 RELATED SECTIONS**

- .1 Section 04 05 00 - Common Work Results for Masonry.

1.2 REFERENCES

- .1 Canadian Standards Association (CSA)
 - .1 CAN/CSA-A23.1/A23.2, Concrete Materials and Methods of Concrete Construction/Methods of Test and Standard Practices for Concrete.
 - .2 CSA A179, Mortar and Grout for Unit Masonry.
 - .3 CAN/CSA A371, Masonry Construction for Buildings.
 - .4 CAN/CSA-A3000, Cementitious Materials Compendium; CAN/CSA-A3002, Masonry and Mortar Cement.

1.3 SUBMITTALS

- .1 Product Data:
 - .1 Submit manufacturer's printed product literature, specifications and data sheet including product characteristics, performance criteria, and limitations.
 - .2 Submit copy of WHMIS MSDS Material Safety Data Sheets. Indicate VOC's mortar, grout, parging, colour additives and admixtures, expressed as grams per litre (g/L).
- .2 Manufacturer's Instructions:
 - .1 Submit manufacturer's installation instructions.

1.4 QUALITY ASSURANCE

- .1 Submit test reports showing compliance with specified performance characteristics and physical properties.

1.5 DELIVERY, STORAGE AND HANDLING

- .1 Deliver prepackaged, dry-blended mortar mix to project site in labelled plastic-lined bags each bearing name and address of manufacturer, production codes or batch numbers, and color or formula numbers.
- .2 Maintain mortar, grout and packaged materials clean, dry, and protected against dampness, freezing, traffic and contamination by foreign materials.

1.6 SITE CONDITIONS

- .1 Ambient Conditions: maintain materials and surrounding air temperature to:
 - .1 Minimum 5 degrees C prior to, during, and 48 hours after completion of masonry work.
 - .2 Maximum 32 degrees C prior to, during, and 48 hours after completion of masonry work.

PART 2 PRODUCTS**2.1 MATERIALS**

- .1 Use same brands of materials and source of aggregate for entire project.
- .2 Cement:
 - .1 Portland Cement: to CAN/CSA-A3000. Use VOC products to limits listed in Section 01 35 21 - LEED® Requirements.
 - .2 Masonry Cement: to CAN/CSA-A3002 and CAN/CSA A179.
 - .3 Mortar Cement: to CAN/CSA-A3002 and CAN/CSA A179.
 - .4 Packaged Dry Combined Materials for mortar: to CAN/CSA A179, using gray color cement.
- .3 Aggregate: supplied by one supplier.
 - .1 Fine Aggregate: to CAN/CSA A179, natural sand.
 - .2 Course Aggregate: to CAN/CSA A179.
- .4 Water: clean and potable.

2.2 COLOR ADDITIVES

- .1 Use coloring admixture not exceeding 10% of cement content by mass, or integrally colored masonry cement, to produce colored mortar to match approved sample. Admixtures to be approved prior to use. Use in accordance with the specific manufacturer's recommendations. Mortar color sample as selected from manufacturer's standard color range.
- .2 White mortar: use white masonry cement to produce mortar type specified.

2.3 MORTAR MIXES

- .1 Mortar for exterior masonry above grade:
 - .1 Loadbearing: Type S based on proportion specifications.

- .2 Non-Loadbearing: Type N based on proportion specifications.
- .2 Mortar for interior masonry:
 - .1 Loadbearing: Type S based on proportion specifications.
 - .2 Non-Loadbearing: Type N based on proportion specifications.
- .3 Mortar for Parapet walls, chimneys, unprotected walls: Type S based on proportion specifications.
- .4 Pointing Mortar: CAN/CSA A179, Type N using property specification with maximum 2 percent ammonium stearate or calcium stearate per cement weight.
- .5 Stain Resistant Pointing Mortar: one part Portland cement, 1/8 part hydrated lime, and two parts graded (80 mesh) aggregate, proportioned by volume. Add aluminum tristearate, calcium stearate, or ammonium stearate to 2 percent of Portland cement by weight.
- .6 Mortar for Glass Block Masonry: CAN/CSA A179, Type S, using the property specification.
- .7 Pointing Mortar for Glass Block Masonry: CAN/CSA A179, Type S, using the property specification; with maximum 2 percent ammonium stearate or calcium stearate per cement weight.
- .8 Parging mortar: Type N to CAN/CSA A179.
- .9 Mortar for foundation walls, manholes, sewers, pavements, walks, patios and other exterior masonry at or below grade: Type M based on proportion specifications.
- .10 Following applies regardless of mortar types and uses specified above:
 - .1 Mortar for calcium silicate brick and concrete brick: Type N based on proportion specifications.
 - .2 Mortar for stonework: Type N based on proportion specifications.
 - .3 Mortar for grouted reinforced masonry: Type S based on proportion specifications.

2.4 MORTAR MIXING

- .1 Add mortar color in accordance with manufacturer's instructions. Provide uniformity of mix and coloration.
- .2 Use a batch type mixer in accordance with CAN/CSA A179.
- .3 Pointing mortar: prehydrate pointing mortar by mixing ingredients dry, then mix again adding just enough water to produce damp unworkable mix that

will retain its form when pressed into ball. Allow to stand for not less than 1 hour no more than 2 hours then remix with sufficient water to produce mortar of proper consistency for pointing.

- .4 Re-temper mortar only within two hours of mixing, when water is lost by evaporation.
- .5 Use mortar within 2 hours after mixing at temperatures of 32 degrees C, or 2-1/2 hours at temperatures under 5 degrees C.

2.5 GROUT MIXES

- .1 Bond Beams: minimum grout mix 10 to 12.5 MPa strength at 28 days or as otherwise indicated on drawings; 200-250 mm slump; mixed in accordance with CAN/CSA A179.
- .2 Lintels: minimum grout mix 10 to 12.5 MPa strength at 28 days or as otherwise indicated on drawings; 200-250 mm slump; mixed in accordance with CAN/CSA A179.
- .3 Grout: minimum compressive strength of 12.5 MPa at 28 days or as otherwise indicated on drawings. Maximum aggregate size and grout slump: CAN/CSA A179.

2.6 GROUT MIXING

- .1 Mix grout ingredients in quantities needed for immediate use in accordance with CAN/CSA A179.
- .2 Add admixtures in accordance with manufacturer's instructions; mix uniformly.
- .3 Do not use calcium chloride or chloride based admixtures.

PART 3 EXECUTION

3.1 EXAMINATION

- .1 Verify that conditions of substrate are acceptable for masonry installation in accordance with manufacturer's written instructions.
- .2 Visually inspect substrate in presence of Owner's Representative.
- .3 Inform Owner's Representative of unacceptable conditions immediately upon discovery.

- .4 Proceed with installation only after unacceptable conditions have been remedied and after receipt of written approval to proceed from Owner's Representative.

3.2 MANUFACTURER'S INSTRUCTIONS

- .1 Compliance: comply with manufacturer's written data, including product technical bulletins, product catalogue installation instructions, product carton installation instructions, and data sheets.

3.3 CONSTRUCTION

- .1 Do masonry mortar and grout work in accordance with CSA A179, except where specified otherwise.
- .2 Apply parging in uniform coating of thickness indicated.

3.4 MIXING

- .1 All pointing mortar can be mixed using a regular paddle mixer. Only electric motor mixers are permissible. Mixers run on hydrocarbons are not permitted, due to fumes. Mixing by hand must be pre-approved by the Owner's Representative.
- .2 Clean all mixing boards and mechanical mixing machine between batches.
- .3 Mortar must be weaker than the units it is binding.
- .4 Contractor to appoint one individual to mix mortar, for duration of project. In the event that this individual must be changed, mortar mixing must cease until the new individual is trained, and mortar mix is tested.

3.5 MORTAR PLACEMENT

- .1 Install mortar to manufacturer's instructions.
- .2 Install mortar to requirements of CAN/CSA A179.
- .3 Remove excess mortar from grout spaces.

3.6 GROUT PLACEMENT

- .1 Install grout in accordance with manufacturer's instructions.
- .2 Install grout in accordance with CAN/CSA A179.
- .3 Work grout into masonry cores and cavities to eliminate voids.

- .4 Do not install grout in lifts greater than 400 mm, without consolidating grout by rodding.
- .5 Do not displace reinforcement while placing grout.

3.7 CLEANING

- .1 Upon completion of installation, remove surplus materials, rubbish, tools and equipment barriers.
- .2 Remove droppings and splashings using clean sponge and water.
- .3 Clean masonry with low pressure clean water and soft natural bristle brush.

END OF SECTION

PART 1 **GENERAL****1.1** **RELATED SECTIONS**

- .1 Section 04 05 00 - Common Work Results for Masonry.
- .2 Section 04 05 12 - Masonry Mortar and Grout.
- .3 Section 04 05 23 - Masonry Accessories.
- .4 Section 04 22 00 - Concrete Unit Masonry.

1.2 **REFERENCES**

- .1 Canadian Standards Association (CSA International).
 - .1 CSA-A23.1/A23.2, Concrete Materials and Methods of Concrete Construction/Methods of Test and Standard Practices for Concrete.
 - .2 CSA-A370, Connectors for Masonry.
 - .3 CSA-A371, Masonry Construction for Buildings.
 - .4 CSA G30.18, Carbon Steel Bars for Concrete Reinforcement.
 - .5 CSA S304.1, Design of Masonry Structures.
 - .6 CSA A179, Mortar and Grout For Unit Masonry.
 - .7 CSA W186, Welding of Reinforcing Bars in Reinforced Concrete Construction.
- .2 Reinforcing Steel Institute of Canada (RSIC).
 - .1 Reinforcing Steel Manual of Standard Practice.

1.3 **SUBMITTALS**

- .1 Product Data:
 - .1 Submit manufacturer's printed product literature, specifications and data sheet.
 - .2 Submit two copies of WHMIS MSDS - Material Safety Data Sheets. Indicate VOC's for epoxy coatings and galvanized protective coatings and touch-up products illustrating products to be incorporated into project for specified products.
- .2 Shop Drawings:

- .1 Shop drawings consist of bar bending details, lists and placing drawings. Provide shop drawings detailing bar bending details, anchorage details, lists and placing drawings.
 - .2 On placing drawings, indicate sizes, spacing, location and quantities of reinforcement and connectors.
 - .3 Indicate on shop drawings, bar bending details, lists, quantities of reinforcement, sizes, spacings, locations of reinforcement and mechanical splices if approved by Owner's Representative, with identifying code marks to permit correct placement without reference to structural drawings. Indicate sizes, spacings and locations of chairs, spacers and hangers. Prepare reinforcement drawings in accordance with Reinforcing Steel Manual of Standard Practice - by Reinforcing Steel Institute of Canada. ANSI/ACI 315 and ACI 315R, Manual of Engineering and Placing Drawings for Reinforced Concrete Structure.
- .3 Manufacturer's Instructions:
- .1 Submit manufacturer's installation instructions.

1.4 SITE MEASUREMENTS

- .1 Make site measurements necessary to ensure proper fit of members.

PART 2 PRODUCTS

2.1 MATERIALS

- .1 Bar reinforcement: to CSA-A371, and CAN/CSA G30.18, Grade 400.
- .2 Wire reinforcement: to CSA-A371, and CSA S304.1, two wire ladder or truss type, galvanized.
- .3 Ties:
 - .1 For metal stud or wood stud and masonry construction: to CSA-A370 and CSA-S304, 1.6 mm thick side mounting, stainless steel flat plate, c/w 5.8 mm ø holes for veneer tire wire attachment, 4.76 mm ø veneer ties with polyethylene insulation supports. Total length of flat plate to suit stud width, sheathing, air space and insulation.
 - .2 For cast-in-place concrete and masonry construction: to CSA-A370 and CSA-S304, 1.6 mm thick stainless steel L-Plate, c/w 5.8 mm ø holes for veneer tire wire attachment, 4.76 mm ø veneer ties with polyethylene insulation supports.

- .3 For concrete block and masonry construction: to CSA-A370 and CSA-S304, 1.6 mm thick stainless steel connector plate, c/w 5.8 mm ø holes for veneer tire wire attachment, 4.76 mm ø veneer ties with polyethylene insulation supports. Total length of connector plate to suit block width, air space and insulation.
- .4 Corrosion protection for wire reinforcement: to CSA S304.1, galvanized to CSA S304.1 and CSA-A370.

2.2 FABRICATION

- .1 Fabricate reinforcing in accordance with CSA-A23.1/A23.2 and Reinforcing Steel Manual of Standard Practice by the Reinforcing Steel Institute of Canada.
- .2 Fabricate connectors in accordance with CSA-A370.
- .3 Obtain Owner's Representative's approval for locations of reinforcement splices other than shown on placing drawings.
- .4 Upon approval of Owner's Representative, weld reinforcement in accordance with CSA W186.
- .5 Ship reinforcement and connectors, clearly identified in accordance with drawings.

2.3 SOURCE QUALITY CONTROL

- .1 Upon request, provide Owner's Representative with certified copy of mill test report of reinforcement steel and connectors, showing physical and chemical analysis.
- .2 Upon request inform Owner's Representative of proposed source of material to be supplied.

PART 3 EXECUTION

3.1 MANUFACTURER'S INSTRUCTIONS

- .1 Compliance: comply with manufacturer's written data, including product technical bulletins, product catalogue installation instructions, product carton installation instructions, and data sheets.

3.2 GENERAL

- .1 Supply and install masonry connectors and reinforcement in accordance with CSA-A370, CSA-A371, CSA-A23.1/A23.2, and CSA-S304.1, unless indicated otherwise.
- .2 Prior to placing concrete, mortar, obtain Owner's Representative's approval of placement of reinforcement and connectors.
- .3 Supply and install additional reinforcement to masonry as indicated.

3.3 BONDING AND TYING

- .1 Bond walls of two or more wythes using metal connectors in accordance with CSA S304.1, CSA-A371, and as indicated.
- .2 Tie masonry veneer to backing in accordance with NBC, CSA-S304.1, CSA-A371, and as indicated.

3.4 REINFORCED LINTELS AND BOND BEAMS

- .1 Reinforce masonry lintels and bond beams as indicated.
- .2 Place and grout reinforcement in accordance with CSA-S304.1, CSA-A371 and CSA-A179.
- .3 Support and position reinforcing bars in accordance with CAN/CSA A371.

3.5 GROUTING

- .1 Grout masonry in accordance with CSA-S304.1, CSA-A371 and CSA-A179, and as indicated.

3.6 ANCHORS

- .1 Supply and install metal anchors as indicated.

3.7 LATERAL SUPPORT AND ANCHORAGE

- .1 Supply and install lateral support and anchorage in accordance with CSA-S304.1 and as indicated.

3.8 MOVEMENT JOINTS

- .1 Reinforcement will not be continuous across movement joints unless otherwise indicated.

3.9 FIELD BENDING

- .1 Do not field bend reinforcement and connectors except where indicated or authorized by Owner's Representative.
- .2 When field bending is authorized, bend without heat, applying a slow and steady pressure.
- .3 Replace bars and connectors which develop cracks or splits.

3.10 FIELD TOUCH-UP

- .1 Touch up damaged and cut ends of epoxy coated or galvanized reinforcement steel and connectors with compatible finish to provide continuous coating.

3.11 CLEANING

- .1 Upon completion of installation, remove surplus materials, rubbish, tools and equipment barriers.

END OF SECTION

PART 1 **GENERAL****1.1** **RELATED SECTIONS**

- .1 Section 04 05 00 - Common Work Results for Masonry.
- .2 Section 04 05 19 - Masonry Anchorage and Reinforcing.
- .3 Municipal Master Specification

1.2 **REFERENCES**

- .1 American Society for Testing and Materials, (ASTM).
 - .1 ASTM D2240, Standard Test Method for Rubber Property - Durometer Hardness.
- .2 Canadian Standards Association (CSA)
 - .1 CSA-A371, Masonry Construction for Buildings.

1.3 **SUBMITTALS**

- .1 Product Data:
 - .1 Submit manufacturer's printed product literature, specifications and data including product characteristics, performance criteria, and limitations.
 - .2 Submit two copies of WHMIS MSDS - Material Safety Data. Indicate VOC's for joint fillers and lap adhesives.
- .2 Manufacturer's Instructions:
 - .1 Submit manufacturer's installation instructions.

1.4 **DELIVERY, STORAGE AND HANDLING**

- .1 Keep fillers and adhesives dry, protected against dampness, and freezing.
- .2 Store packaged materials off ground and in accordance with manufacturer's written instructions.

PART 2 **PRODUCTS****2.1** **MATERIALS**

- .1 Control joint filler: purpose-made elastomer 70 durometer hardness to ASTM D2240 of size and shape indicated. Use VOC products to limits listed in Section 01 35 21 - LEED® Requirements.

- .2 Lap adhesive: recommended by masonry flashing manufacturer. Use VOC products to limits listed in Section 01 35 21 - LEED® Requirements.
- .3 Weep hole vents: purpose-made PVC.
- .4 Cavity Wall Flashing:
 - .1 Self adhering SBS rubberized asphalt compound integrally laminated to cross-laminated polyethylene film, minimum thickness 1.0 mm.
 - .2 Primer: as per manufacturer's recommendation.
- .5 Trash mortar diverters: shaped and sized to suit cavity spaces.

PART 3 **EXECUTION**

3.1 **MANUFACTURER'S INSTRUCTIONS**

- .1 Compliance: comply with manufacturer's written data, including product technical bulletins, product catalogue installation instructions, product carton installation instructions, and data sheets.

3.2 **INSTALLATION**

- .1 Install continuous control joint fillers in control joints at locations indicated on drawings.
- .2 Lap adhesive: apply adhesive to flashing lap joints.
- .3 Reglets: install reglets at locations indicated on drawings.
- .4 Install weep hole vents in vertical joints immediately over flashings, in exterior wythes of cavity wall and masonry veneer wall construction, at maximum horizontal spacing of 600 mm on centre.
- .5 Trash mortar diverters: install purpose made diverters in cavities where indicated and as directed, size and shape to suit purpose and function.

3.3 **CONSTRUCTION**

- .1 Build in flashings in masonry in accordance with CSA-A371 as follows:
 - .1 Install flashings under exterior masonry bearing on foundation walls, slabs, shelf angles, and steel angles over openings. Install flashings under weep hole courses and as indicated.
 - .2 In cavity walls and veneered walls, carry flashings from front edge of masonry, under outer wythe, then up backing not less than 300 mm, and as follows:

- .1 For masonry backing embed flashing 25 mm in joint.
- .2 For concrete backing, insert flashing into reglets.
- .3 For wood frame backing, staple flashing to walls behind sheathing paper.
- .4 For gypsum board backing, bond to wall using manufacturer's recommended adhesive.
- .3 Lap joints 150 mm and seal with adhesive.
- .2 Form flashing (end dams) at lintels, sills and wall ends to prevent water from travelling horizontally past flashing ends.

3.4 CLEANING

- .1 Upon completion of installation, remove surplus materials, rubbish, tools and equipment barriers.

END OF SECTION

PART 1 GENERAL**1.1 RELATED SECTIONS**

- .1 Section 04 05 00 - Common Work Results for Masonry.
- .2 Section 04 05 12 - Masonry Mortar and Grout.
- .3 Section 04 05 19 - Masonry Anchorage and Reinforcing.
- .4 Section 04 05 23 - Masonry Accessories.

1.2 REFERENCES

- .1 Canadian Standards Association (CSA)
 - .1 CAN/CSA A165 SERIES, CSA Standards on Concrete Masonry Units, covers: A165.1, A165.2, A165.3.
 - .2 CAN/CSA A371, Masonry Construction for Buildings.
 - .3 CSA S304.1, Design of Masonry Structures.
- .2 Underwriters' Laboratories of Canada (ULC).
 - .1 CAN/ULC-S101, Standard Methods of Fire Endurance Tests of Building Construction and Materials.

1.3 SUBMITTALS

- .1 Product Data
 - .1 Submit manufacturer's printed product Literature, specifications and data sheet illustrating products to be incorporated into project for specified products.
- .2 Samples
 - .1 Two of each type of concrete masonry unit specified.
- .3 Manufacturer's Instructions
 - .1 Submit manufacturer's installation instructions.

1.4 QUALITY ASSURANCE

- .1 Test reports: certified test reports showing compliance with specified performance characteristics and physical properties.
- .2 Certificates: product certificates signed by manufacturer certifying materials comply with specified performance characteristics and criteria

1.5 QUALIFICATIONS

- .1 Manufacturer: company specializing in manufacturing products of this section with minimum 10 years experience.
- .2 Design structural installations under direct supervision of Professional Engineer experienced in structural design of concrete masonry installation and registered in the Province of Newfoundland and Labrador.

1.6 DELIVERY, STORAGE AND HANDLING

- .1 Delivery and Acceptance Requirements: deliver materials to site in original factory packaging, labelled with manufacturer's name and address.
 - .1 Offload concrete unit masonry packages using equipment that will not damage the surfaces.
 - .2 Do not use brick tongs to move or handle masonry.
- .2 Storage and Handling Requirements:
 - .1 Store materials off ground, in dry location and in accordance with manufacturer's recommendations in clean, dry, well-ventilated area.
 - .2 Do not double stack cubes of concrete unit masonry.
 - .3 Cover masonry units with non-staining waterproof membrane covering.
 - .4 Allow air circulation around units.
 - .5 Installation of wet or stained masonry units is prohibited.
 - .6 Keep concrete unit masonry in individual cardboard packaging provided by manufacturer until units are ready to be installed.
 - .7 Store and protect concrete unit masonry from nicks, scratched, and blemishes.
 - .8 Replace defective or damaged materials with new.

PART 2 PRODUCTS**2.1 MATERIALS**

- .1 Standard concrete block units: to CAN/CSA-A165, Series (CAN/CSA-A165.1)
 - .1 Classification: H/10/A/M
 - .2 Size: modular.

2.2 ACCESSORIES

- .1 Reinforcement: to Section 04 05 19 - Masonry Anchorage and Reinforcing.
- .2 Connectors: to Section 04 05 19 - Masonry Anchorage and Reinforcing.
- .3 Flashing: to Section 04 05 23 - Masonry Accessories.
- .4 Mortar and mortar mixes: to Section 04 05 12 - Masonry Mortar and Grout.
- .5 Grout and grout mixes: to Section 04 05 12 - Masonry Mortar and Grout.

2.3 CLEANING COMPOUNDS

- .1 Compatible with substrate and acceptable to masonry manufacturer for use on products.
- .2 Cleaning compounds compatible with concrete unit masonry and in accordance with manufacturer's written recommendations and instructions.

2.4 TOLERANCES

- .1 Tolerances for standard concrete unit masonry tolerances in accordance with CAN/CSA A165.1, supplemented as follows:
 - .1 Maximum variation between units within specific job lot not to exceed 2.0 mm.
 - .2 No parallel edge length, width or height dimension for individual unit to differ by more than 2.0 mm.
 - .3 Out of square tolerance not to exceed 2.0 mm.

PART 3 EXECUTION**3.1 INSTALLATION**

- .1 Concrete block units.
 - .1 Bond: running
 - .2 Coursing height: 200 mm for one block and one joint
 - .3 Jointing: concave where exposed or where paint or other finish coating is specified
- .2 Special Shapes:

- .1 Install special units to form corners, returns, offsets, reveals and indents without cut ends being exposed and without losing bond or module.
- .2 Install reinforced concrete block lintels over openings in masonry where steel or reinforced concrete lintels are not indicated.
- .3 End bearing: not less than 200 mm.

3.2 CONSTRUCTION

- .1 Cull out masonry units, in accordance with CAN/CSA A165 and approved range of color samples, with chips, cracks, broken corners, excessive color and texture variation.
- .2 Build in miscellaneous items such as bearing plates, steel angles, bolts, anchors, inserts, sleeves and conduits.
- .3 Construct masonry walls using running bond unless otherwise noted.
- .4 Fit masonry closely against electrical and plumbing outlets so collars, plates and covers overlap and conceal cuts.
- .5 Install movement joints and keep free of mortar where indicated.
- .6 Hollow Units: spread mortar setting bed from outside edge of face shells. Gauge amount of mortar on top and end of unit to create full joints, equivalent to shell thickness. Avoid excess mortar.
- .7 Solid Units: apply mortar over entire vertical and horizontal surfaces. Avoid bridging of airspace between brick veneer and backup wall with mortar.
- .8 Ensure compacted head joints. Use full or face-shell joint as indicated.
- .9 Tamp units firmly into place.
- .10 Do not adjust masonry units after mortar has set. Where resetting of masonry is required, remove, clean and reset units in new mortar.
- .11 Tool exposed joints concave; strike concealed joints flush.
- .12 After mortar has achieved initial set up, tool joints.
- .13 Do not interrupt bond below or above openings.

3.3 CLEANING

- .1 Standard block: Allow mortar droppings on masonry to partially dry then remove by means of trowel, followed by rubbing lightly with small piece of block and finally by brushing.
- .2 Upon completion of installation remove surplus materials, rubbish, tools and equipment barriers.

3.4 PROTECTION

- .1 Brace and protect concrete unit masonry in accordance with Section 04 05 00 - Common Work Results for Masonry.

END OF SECTION

PART 1 **GENERAL****1.1** **DESCRIPTION**

- .1 This Section specifies the requirements for the supply of all labour and materials to complete rough carpentry work as indicated on the drawings and specified herein.

1.2 **RELATED SECTIONS**

- .1 Section 07 92 00 - Joint Sealants.

1.3 **REFERENCES**

- .1 American Society for Testing and Materials (ASTM)
 - .1 ASTM A123/A123M, Standard Specification for Zinc (Hot-Dip Galvanized) Coatings on Iron and Steel Products.
 - .2 ASTM A653/A653M, Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process.
- .2 Canadian General Standards Board (CGSB).
- .3 Canadian Standards Association (CSA)
 - .1 CSA B111, Wire Nails, Spikes and Staples.
 - .2 CSA 0112.9, Evaluation of Adhesives for Structural Wood Products (Exterior Exposure).
 - .3 CSA O121, Douglas Fir Plywood.
 - .4 CAN/CSA-O141, Softwood Lumber.
 - .5 CSA O151, Canadian Softwood Plywood.
 - .6 CAN/CSA-O325.0, Construction Sheathing.
- .4 National Lumber Grades Authority (NLGA)
 - .1 Standard Grading Rules for Canadian Lumber.

1.4 **QUALITY ASSURANCE**

- .1 Lumber identification: by grade stamp of an agency certified by Canadian Lumber Standards Accreditation Board.
- .2 Plywood, particleboard, OSB and wood based composite panels in accordance with CSA and ANSI standards.

1.5 SUBMITTALS

- .1 Submit proof of compatibility between Alkaline Copper Quaternary (ACQ) pressure treated lumber and fasteners to be utilized.

PART 2 PRODUCTS**2.1 FRAMING AND LUMBER MATERIALS**

- .1 Lumber: unless specified otherwise, softwood, No. 1 or No. 2 grade, S4S, moisture content 19% (S-dry) or less in accordance with following standards:
 - .1 CAN/CSA-O141.
 - .2 NLGA Standard Grading Rules for Canadian Lumber.
- .2 Framing and board lumber: in accordance with NBC.
- .3 Furring, blocking, nailing strips, grounds, rough bucks, fascia backing and sleepers:
 - .1 Board sizes: "Standard" or better grade.
 - .2 Dimension sizes: "Standard" light framing or better grade.
 - .3 Post and timbers sizes: "Standard" or better grade.
- .4 Plywood: Exterior sheathing plywood shall be good D grade, Douglas Fir Plywood, conforming to CSA Standards 0121-M1978 (R2003).
- .5 Pressure treated material to be Alkaline Copper Quaternary (ACQ).

2.2 ACCESSORIES

- .1 Nails, spikes and staples: to CSA B111.
- .2 Bolts: 12.5 mm diameter unless indicated otherwise, complete with nuts and washers.
- .3 Proprietary fasteners: toggle bolts, expansion shields and lag bolts, screws and lead or inorganic fibre plugs, explosive actuated fastening devices, recommended for purpose by manufacturer.
- .4 Joist hangers: minimum 1 mm thick sheet steel, galvanized ZF001 coating designation.

2.3 FASTENER FINISHES

- .1 Galvanizing: to ASTM A123/A123M, ASTM A653, use galvanized fasteners for exterior work, interior highly humid areas and fire-retardant treated lumber.

2.4 WOOD PRESERVATIVE

- .1 Surface-applied wood preservative: clear or copper naphthenate or 5% pentachlorophenol solution, water repellent preservative.

PART 3 EXECUTION**3.1 PREPARATION**

- .1 Treat cut surfaces of material with wood preservative, before installation.
- .2 Apply preservative by dipping, or by brush to completely saturate and maintain wet film on surface for minimum 3 minute soak on lumber and one minute soak on plywood.
- .3 Re-treat surfaces exposed by cutting, trimming or boring with liberal brush application of preservative before installation.

3.2 INSTALLATION

- .1 Comply with requirements of NBC latest edition, Part 9 supplemented by following paragraphs.
- .2 Install members true to line, levels and elevations, square and plumb.
- .3 Construct continuous members from pieces of longest practical length.
- .4 Install spanning members with "crown-edge" up.
- .5 Select exposed framing for appearance. Install lumber and panel materials so that grade-marks and other defacing marks are concealed or are removed by sanding where materials are left exposed.

3.3 ERECTION

- .1 Frame, anchor, fasten, tie and brace members to provide necessary strength and rigidity.
- .2 Install furring and blocking as required to space-out and support surface applied cabinets, siding and other work as indicated.

- .3 Install members true to line, levels and elevations. Set plumb. Space uniformly.
- .4 Countersink bolts where necessary to provide clearance for other work.
- .5 Construct backboards for mounting electrical equipment where indicated consisting of 19 mm sanded plywood on 25 mm x 75 mm strapping around perimeter and at maximum 300 mm on centre.
- .6 All work shall be performed in accordance with details shown on the Drawings.

END OF SECTION

PART 1 **GENERAL****1.1** **DESCRIPTION**

- .1 Procedures for the pre - fabrication of wooden roof truss with lumber.

1.2 **RELATED SECTIONS**

- .1 Rough Carpentry - Section 06100

1.3 **REFERENCES**

- .1 Fabricate wood trusses in accordance with CAN3-086-M80 except where specified elsewhere.
- .2 CSA S307-M1980 Load Test Procedure for Wood Trusses for Houses and Small Buildings.
- .3 National Lumber Grades Authority (NLGA)
 - .1 Standard Grading Rules for Canadian Lumber.

1.4 **Design Criteria**

- .1 Design roof trusses, bracing, bridging and connectors in accordance with CAN3-086-M80, to safely carry live loads as indicated.

1.5 **Shop Drawings**

- .1 Submit shop drawings in accordance with Section 01340 and bearing stamp of qualified Engineer registered in the Province of Newfoundland.
- .2 Indicate species, sizes and stress grades of lumber used as truss members. Show pitch, span, camber configuration and spacing of trusses. Indicate connector types, thicknesses, sizes, locations and design value. Show bearing details.
- .3 Submit stress diagram indicating design load on each truss member, special loads, allowable stress increase and deflection limits.
- .4 Submit print-out of computer design.
- .5 Indicate arrangement of webs or other members to accommodate ducts and other specialities.

1.6 Delivery and Storage

- .1 Store trusses on job site in accordance with manufacturer's instructions. Provide bearing supports and bracing to prevent bending or overturning of trusses during transit and storage.

1.7 QUALITY ASSURANCE

- .1 Lumber identification: by grade stamp of an agency certified by Canadian Lumber Standards Accreditation Board.
- .2 Plywood, particleboard, OSB and wood based composite panels in accordance with CSA and ANSI standards.

1.8 SUBMITTALS

- .1 Submit proof of compatibility between Alkaline Copper Quaternary (ACQ) pressure treated lumber and fasteners to be utilized.

PART 2 PRODUCTS**2.1 Materials**

- .1 Lumber species and grade to CSA 0141-2005, S4S, with maximum moisture content of 19% at time of fabrication.
- .2 Framing and board lumber: in accordance with NBC.
- .3 Furring, blocking, nailing strips, grounds, rough bucks, fascia backing and sleepers:
 - .1 Board sizes: "Standard" or better grade.
 - .2 Dimension sizes: "Standard" light framing or better grade.
 - .3 Post and timbers sizes: "Standard" or better grade.
- .4 Fastenings to CAN3-086-M80.

2.2 Fabrication

- .1 Fabricate wood trusses in accordance with approved shop drawings.
- .2 Cut truss members to accurate length, angle, and size to assure tight joints for finished trusses.
- .3 Assemble truss members in design configuration by securing tightly in jogs or with clamps.
- .4 Provide for design camber when positioning truss members.

- .5 Connect members using metal connector plates.

2.3 ACCESSORIES

- .1 Nails, spikes and staples: to CSA B111.
- .2 Bolts: 12.5 mm diameter unless indicated otherwise, complete with nuts and washers.
- .3 Proprietary fasteners: toggle bolts, expansion shields and lag bolts, screws and lead or inorganic fibre plugs, explosive actuated fastening devices, recommended for purpose by manufacturer.
- .4 Joist hangers: minimum 1 mm thick sheet steel, galvanized ZF001 coating designation.

2.4 FASTENER FINISHES

- .1 Galvanizing: to ASTM A123/A123M, ASTM A653, use galvanized fasteners for exterior work, interior highly humid areas and fire-retardant treated lumber.

PART 3 EXECUTION

3.1 PREPARATION

- .1 Lifting points, as indicated, shall be used to hoist trusses into position.
- .2 Exercise care to prevent out-of-plane bending of trusses.
- .3 Install temporary horizontal and cross bracing to hold trusses plumb and in safe condition until permanent bracing is installed.
- .4 Install permanent bracing and related components prior to application of loads of trusses.
- .5 Trusses with loose connector plates are not acceptable.
- .6 Restrict construction loads to prevent overstressing of truss members.
- .7 Do not cut or remove any truss materials.

END OF SECTION

PART 1 **GENERAL****1.1** **RELATED SECTIONS**

- .1 Section 09 91 23 - Interior Painting.

1.2 **REFERENCES**

- .1 American National Standards Institute (ANSI)
 - .1 ANSI A208.1, Particleboard.
 - .2 ANSI A208.2, Medium Density Fibreboard (MDF).
 - .3 ANSI/HPVA HP-1, American National Standard for Hardwood and Decorative Plywood.
- .2 Architectural Woodwork Manufacturers Association of Canada (AWMAC) and Architectural Woodwork Institute (AWI)
 - .1 Architectural Woodwork Quality Standards, 1st edition.
- .3 Canadian General Standards Board (CGSB)
 - .1 CAN/CGSB-11.3, Hardboard.
- .4 Canadian Standards Association (CSA)
 - .1 CSA B111, Wire Nails, Spikes and Staples.
 - .2 CSA O121, Douglas Fir Plywood.
 - .3 CAN/CSA O141, Softwood Lumber.
 - .4 CSA O151, Canadian Softwood Plywood.
 - .5 CSA O153, Poplar Plywood.
- .5 National Lumber Grades Authority (NLGA)
 - .1 Standard Grading Rules for Canadian Lumber.

1.3 **QUALITY ASSURANCE**

- .1 Lumber by grade stamp of agency certified by Canadian Lumber Standards Accreditation Board (CLSAB).
- .2 Plywood, particleboard, OSB and wood based composite panels to CSA and ANSI standards.
- .3 Wood fire rated frames and panels: listed and labelled by an organization accredited by Standards Council of Canada to CAN4-S104 and CAN/ULC-S105.

1.4 SUBMITTALS

- .1 Indicate details of construction, profiles, jointing, fastening and other related details.
- .2 Indicate materials, thicknesses, finishes and hardware.

1.5 DELIVERY, STORAGE, AND HANDLING

- .1 Deliver, handle, store and protect materials in accordance with manufacture's recommendations.
- .2 Protect materials against dampness during and after delivery.
- .3 Store materials in ventilated areas, protected from extreme changes of temperature or humidity.

PART 2 PRODUCTS**2.1 LUMBER MATERIAL**

- .1 Softwood lumber: unless specified otherwise, S4S, moisture content 19% or less in accordance with following standards:
 - .1 CAN/CSA-O141.
 - .2 NLGA Standard Grading Rules for Canadian Lumber.
 - .3 AWMAC custom premium grade, moisture content as specified.
- .2 Machine stress-rated lumber is acceptable.
- .3 Hardwood lumber: moisture content 10 % or less in accordance with following standards:
 - .1 National Hardwood Lumber Association (NHLA).
 - .2 AWMAC custom grade, moisture content as specified.

2.2 PANEL MATERIAL

- .1 Panel materials to be urea-formaldehyde free.
- .2 Douglas fir plywood (DFP): to CSA O121, standard construction.
- .3 Canadian softwood plywood (CSP): to CSA O151, standard construction.
- .4 Hardwood plywood: to ANSI/HPVA HP-1.
- .5 Poplar plywood (PP): to CSA O153, standard construction.
- .6 Hardboard: to CAN/CGSB-11.3.

- .7 Medium density fibreboard (MDF): to ANSI A208.2, density 640-800 kg/m³.

2.3 ACCESSORIES

- .1 Nails and staples: to CSA B111; galvanized to CAN/CSA-G164 for exterior work, interior humid areas and for treated lumber; plain finish elsewhere.
- .2 Wood screws: plain, type and size to suit application.
- .3 Splines: wood
- .4 Adhesive: recommended by manufacturer.
- .5 Use least toxic sealants, adhesives, sealers, and finishes necessary to comply with requirements of this section.

PART 3 EXECUTION

3.1 INSTALLATION

- .1 Do finish carpentry to Quality Standards of the Architectural Woodwork Manufacturers Association of Canada (AWMAC), except where specified otherwise.
- .2 Scribe and cut as required, fit to abutting walls, and surfaces, fit properly into recesses and to accommodate piping, columns, fixtures, outlets, or other projecting, intersecting or penetrating objects.
- .3 Form joints to conceal shrinkage.

3.2 CONSTRUCTION

- .1 Fastening.
 - .1 Position items of finished carpentry work accurately, level, plumb, true and fasten or anchor securely.
 - .2 Design and select fasteners to suit size and nature of components being joined. Use proprietary devices as recommended by manufacturer.
 - .3 Set finishing nails to receive filler. Where screws are used to secure members, countersink screw in round cleanly cut hole and plug with wood plug to match material being secured.
 - .4 Replace items of finish carpentry with damage to wood surfaces including hammer and other bruises.
- .2 Shelving.

- .1 Install shelving on shelf brackets, where indicated.

END OF SECTION

PART 1 GENERAL**1.1 SECTION INCLUDES**

- .1 Materials and installation for asphalt for use as dampproofing.

1.2 REFERENCES

- .1 Canadian General Standards Board (CGSB)
 - .1 CAN/CGSB 37.2, Emulsified Asphalt, Mineral-Colloid Type, Unfilled, for Dampproofing and Waterproofing and for Roof Coatings.
 - .2 CAN/CGSB 37.3, Application of Emulsified Asphalts for Dampproofing or Waterproofing.
 - .3 CAN/CGSB 37.5, Cutback Asphalt Plastic Cement.
 - .4 CGSB 37-GP-9Ma, Primer, Asphalt, Unfilled, for Asphalt Roofing, Dampproofing and Waterproofing.
 - .5 CGSB 37-GP-11M, Application of Cutback Asphalt Plastic Cement.
 - .6 CAN/CGSB 37.16, Filled, Cutback, Asphalt for Dampproofing and Waterproofing.
 - .7 CGSB 37-GP-36M, Application for Filled Cutback Asphalts for Dampproofing and Waterproofing.
- .2 National Research Council Canada (NRC)/Institute for Research in Construction (IRC)
 - .1 Canadian Construction Materials Centre (CCMC)

1.3 PRODUCT DATA

- .1 Submit product data sheets for bituminous dampproofing products. Including:
 - .1 Product characteristics.
 - .2 Performance criteria.
 - .3 Application methods.
 - .4 Limitations.
- .2 Manufacturer's Instructions: Provide to indicate special handling criteria, installation sequence, cleaning procedures.

1.4 DELIVERY, STORAGE AND HANDLING

- .1 Provide and maintain dry, off-ground weatherproof storage.

- .2 Store materials on supports to prevent deformation.
- .3 Remove only in quantities required for same day use.
- .4 Store materials in accordance with manufacturer's written instructions.

1.5 PROJECT/SITE ENVIRONMENTAL REQUIREMENTS

- .1 Temperature, relative humidity, moisture content.
 - .1 Apply damp proofing materials only when surfaces and ambient temperatures are within manufacturers' prescribed limits.
 - .2 Do not proceed with work when wind chill effect would tend to set bitumen before proper curing takes place.
 - .3 Maintain air temperature and substrate temperature at dampproofing installation area above 5°C for 24 hours before, during and 24 hours after installation.
 - .4 Do not apply dampproofing in wet weather.
- .2 Safety: Comply with requirements of Workplace Hazardous Materials Information System (WHMIS) regarding use, handling, storage, and disposal of asphalt, sealing compounds, primers and caulking materials.
- .3 Ventilation:
 - .1 Ventilate enclosed spaces.
 - .2 Provide continuous ventilation during and after dampproofing application. Run ventilation system 24 hours per day during installation; provide continuous Ventilation for 3 days after completion of dampproofing installation.

PART 2 PRODUCTS

2.1 MATERIALS

- .1 For application and curing at temperatures above 5 degrees C: waterproof emulsion, mineral colloid emulsifier type to CAN/CGSB 37.2.
 - .1 Package label or bill of lading for bulk hot liquid asphalt must indicate type, flash point, equiviscous temperature range and final blowing temperature.
- .2 For applications and curing at temperatures above 0 degrees C but below 5 degrees C: solvent type waterproofing and dampproofing compound of selected asphalts and fibers to CAN/CGSB 37.16.
 - .1 Package label or bill of lading for bulk hot liquid asphalt must indicate type, flash point, equiviscous temperature range and final blowing temperature.

- .3 Primer for applications at temperatures above 0 degrees C but below 5 degrees C: asphalt/solvent cutback to CAN/CGSB 37.9.
- .4 Sealing compound: plastic cutback asphalt cement to CAN/CGSB-37.5. C.

PART 3 **EXECUTION**

3.1 **WORKMANSHIP**

- .1 Keep hot asphalt:
 - .1 Below its flash point.
 - .2 At or below its final blowing temperature.
 - .3 Within its equiviscous temperature range at place of application.

3.2 **PREPARATION**

- .1 Before applying dampproofing:
 - .1 Seal exterior joints between foundation walls and footings, joints between concrete floor slab and foundation and around penetrations through dampproofing with sealing compound.

3.3 **APPLICATION**

- .1 Do dampproofing in accordance with CAN/CGSB 37.3 and CGSB 37-GP-36M except where specified otherwise.
- .2 Do sealing work in accordance with CGSB 37-GP-11M except where specified otherwise.
- .3 Do priming of surface in accordance with CGSB 37-GP-15M except where specified otherwise.
- .4 Apply primer.

3.4 **SCHEDULE**

- .1 Apply continuous, uniform coating to entire exterior faces of foundation walls from 50 mm below finished grade level to and including tops of foundation wall footings.
- .2 Apply continuous, uniform coating to exterior side of foundation walls enclosing rooms below finished grade. Include exterior portion of interior walls where floors in adjacent rooms are at different elevations.

- .3 Apply two additional coats of dampproofing to vertical corners and construction joints for a minimum width of 230 mm on each side, and all around and for 230 mm along pipes passing through walls.

END OF SECTION

PART 1 **GENERAL****1.1** **RELATED SECTIONS**

- .1 Section 06 10 00 – Rough Carpentry.
- .2 Section 07 26 00 - Vapour Retarders.

1.2 **REFERENCES**

- .1 American Society for Testing and Materials International, (ASTM).
 - .1 ASTM C1289, Standard Specification for Faced Rigid Cellular Polyisocyanurate Thermal Insulation Board.
- .2 Canadian Gas Association (CGA)
 - .1 CAN/CGA-B149.1, Natural Gas and Propane Installation Code Handbook.
 - .2 CAN/CGA-B149.2, Propane Storage and Handling Code.
- .3 Canadian General Standards Board (CGSB).
 - .1 CGSB 71-GP-24M, Adhesive, Flexible, for Bonding Cellular polystyrene Insulation.
- .4 Underwriters Laboratories of Canada (ULC).
 - .1 CAN/ULC-S701, Standard for Thermal Insulation, Polystyrene, Boards and Pipe Coverings.
 - .2 CAN/ULC-S702, Standard for Thermal Insulation, Mineral Fibre, for Buildings.
 - .3 CAN/ULC-S704, Standard for Thermal Insulation Polyurethane and Polyisocyanurate, Boards, Faced.

1.3 **SUBMITTALS**

- .1 Product Data:
 - .1 Submit manufacturer's printed product literature, specifications and data.
 - .2 Submit two copies of WHMIS MSDS - Material Safety Data Sheets. Indicate VOC's insulation products and adhesives.
- .2 Manufacturer's Instructions:
 - .1 Submit manufacturer's installation instructions.

1.4 QUALITY ASSURANCE

- .1 Provide certificate of quality compliance from insulation manufacturer.

PART 2 PRODUCTS**2.1 INSULATION**

- .1 Extruded polystyrene (XPS): for use below grade and exterior walls; to CAN/ULC S701 Type 3, RSI 0.88 per 25 mm, total thickness as indicated on drawings.
- .2 Mineral fibre board: to CAN/ULC-S702, Type 2, semi-rigid, density 17.6 kg/m², flexible spinbonded olefin facing, RSI 0.70 per 25 mm, total thickness as indicated on drawings.
- .3 Insulation types not indicated on drawings to be expanded polystyrene (EPS), Type 2 as a default, to CAN/ULC-S701 Type 2, shiplapped edges, RSI 0.70 per 25 mm.

2.2 ADHESIVE

- .1 Adhesive suitable for bonding polystyrene and mineral fibre insulation to substrates as indicated.

2.3 ACCESSORIES

- .1 Insulation clips: impale type, perforated 50 x 50 mm cold rolled carbon steel 0.8 mm thick, spindle of 2.5 mm diameter annealed steel, length to suit insulation, 25 mm diameter washers of self locking type.
- .2 Joint sealing tape: air resistant pressure sensitive adhesive tape as recommended by insulation manufacturer.

PART 3 EXECUTION**3.1 MANUFACTURER'S INSTRUCTIONS**

- .1 Compliance: comply with manufacturer's written data, including product technical bulletins, product catalogue installation instructions, product carton installation instructions and data sheets.

3.2 WORKMANSHIP

- .1 Install insulation after building substrate materials are dry.

- .2 Install insulation to maintain continuity of thermal protection to building elements and spaces.
- .3 Fit insulation tight around electrical boxes, plumbing and heating pipes and ducts, around exterior doors and windows and other protrusions.
- .4 Keep insulation minimum 75 mm from heat emitting devices such as recessed light fixtures, and CAN/CGA-B149.1 and CAN/CGA-B149.2 type B and L vents.
- .5 Cut and trim insulation neatly to fit spaces. Butt joints tightly, offset vertical joints. Use only insulation boards free from chipped or broken edges. Use largest possible dimensions to reduce number of joints.
- .6 Offset both vertical and horizontal joints in multiple layer applications.
- .7 Do not enclose insulation until it has been inspected and approved by Owner's Representative.

3.3 EXAMINATION

- .1 Examine substrates and immediately inform Owner's Representative in writing of defects.
- .2 Prior to commencement of work ensure:
 - .1 Substrates are firm, straight, smooth, dry, free of snow, ice or frost, and clean of dust and debris.

3.4 RIGID INSULATION INSTALLATION

- .1 Apply adhesive to insulation board in accordance with manufacturer's recommendations.
- .2 Imbed insulation boards into vapour barrier type adhesive, applied as specified, prior to skinning of adhesive.
- .3 In addition to adhesive install mineral fibre insulation boards with insulation clips and disk, 2 per 600 x 1200 mm board minimum, fit boards tight, cut off fastener spindle 3 mm beyond disk.
- .4 Leave insulation board joints unbonded over line of expansion and control joints. Bond a continuous 150 mm wide 0.15 mm modified bituminous membrane over expansion and control joints using compatible adhesive and primer before application of insulation.
- .5 Carefully inspect for continuity of air barrier prior to placement of insulation.

3.5 PERIMETER FOUNDATION INSULATION

- .1 Exterior application: extend boards vertically below bottom of finish floor slab to depth as indicated on drawings. Install on exterior face of perimeter foundation wall with adhesive.

3.6 CLEANING

- .1 Upon completion of installation, remove surplus materials, rubbish, tools and equipment barriers.

END OF SECTION

PART 1 **GENERAL****1.1** **RELATED SECTIONS**

- .1 Section 06 10 00 – Rough Carpentry.
- .2 Section 07 26 00 - Vapour Retarders.

1.2 **REFERENCES**

- .1 American Society for Testing and Materials, (ASTM).
 - .1 ASTM C553, Specification for Mineral Fibre Blanket Thermal Insulation for Commercial and Industrial Applications.
 - .2 ASTM C665, Specification for Mineral-Fiber Blanket Thermal Insulation for Light Frame Construction and Manufactured Housing.
 - .3 ASTM C1320, Standard Practice for Installation of Mineral Fiber Batt and Blanket Thermal Insulation for Light Frame Construction.
 - .4 ASTM E84, Test Method for Surface Burning Characteristics of Building Materials.
- .2 Canadian Gas Association (CGA)
 - .1 CAN/CGA-B149.1, Natural Gas and Propane Installation Code Handbook.
 - .2 CAN/CGA-B149.2, Propane Storage and Handling Code.
- .3 Canadian Standards Association (CSA International).
 - .1 CSA B111, Wire Nails, Spikes and Staples.
- .4 Underwriters Laboratories of Canada (ULC).
 - .1 CAN/ULC-S702, Standard for Mineral Fibre Insulation.

1.3 **SUBMITTALS**

- .1 Product Data:
 - .1 Submit manufacturer's printed product literature, specifications and data sheet.
- .2 Manufacturer's Instructions:
 - .1 Submit manufacturer's installation instructions.

PART 2 **PRODUCTS****2.1** **INSULATION**

- .1 Thermal batt and blanket mineral fibre:
 - .1 Unfaced glass fiber thermal insulation to ASTM C665 Type I, thickness and RSI value as indicated on drawings.
 - .2 Semi-rigid mineral wool batt insulation to CSA/ULC-S702, made from basalt rock and slag, thickness and RSI value as indicated on drawings.

PART 3 **EXECUTION****3.1** **MANUFACTURER'S INSTRUCTIONS**

- .1 Compliance: comply with manufacturer's written data, including product technical bulletins, product catalogue installation instructions, product carton installation instructions, and data sheets.

3.2 **INSULATION INSTALLATION**

- .1 Install insulation to maintain continuity of thermal protection to building elements and spaces and for sound attenuation as noted on drawings.
- .2 Fit insulation closely around electrical boxes, pipes, ducts, frames and other objects in or passing through insulation.
- .3 Do not compress insulation to fit into spaces.
- .4 Keep insulation minimum 75 mm from heat emitting devices such as recessed light fixtures, and minimum 50 mm from sidewalls and CAN/CGA-B149.1 and CAN/CGA-B149.2 Type B and L vents.
- .5 Do not enclose insulation until it has been inspected and approved by Owner's Representative.

3.3 **CLEANING**

- .1 Upon completion of installation, remove surplus materials, rubbish, tools and equipment barriers.

END OF SECTION

PART 1 **GENERAL****1.1** **RELATED SECTIONS**

- .1 Section 06 10 00 – Rough Carpentry.
- Section 07 92 00 – Joint Sealant.

1.2 **REFERENCES**

- .1 Canadian General Standards Board (CGSB)
 - .1 CAN/CGSB-51.34, Vapour Barrier, Polyethylene Sheet, for Use in Building Construction.
- .2 Underwriters Laboratories Canada (ULC)
 - .1 CAN/ULC S102, Method of Test for Surface Burning Characteristics of Building Materials and Assemblies.

1.3 **SUBMITTALS**

- .1 Submit manufacturer's printed product literature, specifications and datasheet and include:
 - .1 Product characteristics.
 - .2 Performance criteria.
 - .3 Limitations.
- .2 Quality assurance submittals:
 - .1 Certificates: submit certificates certifying that materials comply with specified performance characteristics and physical properties.
 - .2 Instructions: submit manufacturer's installation instructions and comply with written recommendations or specifications, including product technical bulletins, handling, storage and installation instructions, and datasheet.

PART 2 **PRODUCTS****2.1** **SHEET VAPOUR RETARDER**

- .1 Polyethylene film: to CAN/CGSB-51.34, 0.15mm thick with a water vapour permeance of not greater than 45 ng/(P·s·m²), flame spread rating of less than 150 to CAN/ULC S102.

2.2 ACCESSORIES

- .1 Joint sealing tape: air resistant pressure sensitive adhesive tape, type recommended by vapour barrier manufacturer, 50 mm wide for lap joints and perimeter seals, 25 mm wide elsewhere.
- .2 Sealant: compatible with vapour retarder, recommended by vapour retarder manufacturer, to Section 07 92 00 - Joint Sealants.
- .3 Staples: minimum 6 mm leg.
- .4 Moulded box vapour barrier: factory-moulded polyethylene box for use with recessed electric switch and outlet device boxes.

PART 3 EXECUTION**3.1 INSTALLATION**

- .1 Ensure services are installed and inspected prior to installation of retarder.
- .2 Install sheet vapour retarder on warm side of exterior wall and ceiling space assemblies prior to installation of gypsum board to form continuous retarder.
- .3 Install Sheet Vapour retarder under stone cover in crawl space to form continuous retarder.
- .4 Use sheets of largest practical size to minimize joints.
- .5 Inspect for continuity. Repair punctures and tears with sealing tape before work is concealed.

3.2 EXTERIOR SURFACE OPENINGS

- .1 Cut sheet vapour retarder to form openings and ensure material is lapped and sealed to frame.

3.3 PERIMETER SEALS

- .1 Seal perimeter of sheet vapour barrier as follows:
 - .1 Apply continuous bead of sealant to substrate at perimeter of sheets.
 - .2 Lap sheet over sealant and press into sealant bead.
 - .3 Install staples through lapped sheets at sealant bead into wood substrate.

- .4 Ensure that no gaps exist in sealant bead. Smooth out folds and ripples occurring in sheet over sealant.

3.4 LAP JOINT SEALS

- .1 Seal lap joints of sheet vapour barrier as follows:
 - .1 Attach first sheet to substrate.
 - .2 Apply continuous bead of sealant over solid backing at joint.
 - .3 Lap adjoining sheet minimum 150 mm and press into sealant bead.
 - .4 Install staples through lapped sheets at sealant bead into wood substrate.
 - .5 Ensure that no gaps exist in sealant bead. Smooth out folds and ripples occurring in sheet over sealant.

3.5 ELECTRICAL BOXES

- .1 Seal electrical switch and outlet device boxes that penetrate vapour barrier as follows:
 - .1 Install moulded box vapour barrier or wrap boxes with film sheet providing minimum 300 mm perimeter lap flange.
 - .2 Apply sealant to seal edges of flange to main vapour barrier and seal wiring penetrations through box cover.

3.6 CLEANING

- .1 Upon completion and verification of performance of installation, remove surplus materials, excess materials, rubbish, tools and equipment.

END OF SECTION

PART 1 **GENERAL****1.1** **SECTION INCLUDES**

- .1 Materials and installation methods providing primary air/vapour barrier materials and assemblies.
- .2 Air/vapour barrier materials to provide continuous seal between components of building envelope and building penetrations.

1.2 **RELATED SECTIONS**

- .1 Section 01 45 00 - Quality Control.
- .2 Section 01 51 00 - Temporary Utilities.
- .3 Section 01 61 00 - Common Product Requirements.
- .4 Section 07 92 00 - Joint Sealants.

1.3 **REFERENCES**

- .1 Canadian General Standards Board (CGSB)
 - .1 CAN/CGSB-19.13M, Sealing Compound, One Component, Elastomeric Chemical Curing.
 - .2 CAN/CGSB-19.18M, Sealing Compound, One Component, Silicone Base Solvent Curing.
 - .3 CAN/CGSB-19.24M, Multi-Component, Chemical Curing Sealing Compound.
 - .4 CGSB 19-GP-14M, Sealing Compound, One Component, Butyl-Polyisobutylene Polymer Base, Solvent Curing.
- .2 National Building Code of Canada (NBCC)
 - .1 NBCC, Part 5 - Environmental Separation
- .3 Sealant and Waterproofers Institute - Sealant and Caulking Guide Specification.

1.4 **SUBMITTALS**

- .1 Submit manufacturer's product data sheets.
- .2 Submit manufacturer's installation instructions.

1.5 QUALITY ASSURANCE

- .1 Perform Work in accordance with Sealant and Waterproofer's Institute - Sealant and Caulking Guide Specification requirements for materials and installation.
- .2 Perform Work in accordance with National Air Barrier Association - Professional Contractor Quality Assurance Program and requirements for materials and installation.
- .3 Manufacturer's Representative:
 - .1 Inspect substrate prior to commencement of work, twice during application of membrane and at commissioning to ascertain that air/vapour barrier system is installed according to membrane manufacturer's most current published specifications and details.
 - .2 Provide technical assistance to applicator and assist where required in correct installation of membrane.
 - .3 Provide certificate of quality compliance upon satisfactory completion of installation.
- .4 Maintain one copy of documents on site.

1.6 QUALIFICATIONS

- .1 Applicator: Company specializing in performing work of this section with minimum 5 years documented experience with installation of air/vapour barrier systems. Complete installation must be approved by the material manufacturer.
- .2 Applicator: Company who is currently licensed by certifying organization must maintain their license throughout the duration of the project.

1.7 DELIVERY, STORAGE AND HANDLING

- .1 Deliver, store and handle materials in accordance with manufacturer's written instructions. Deliver membrane materials in factory wrapped packaging indicating name of manufacturer and product.
- .2 Avoid spillage. Immediately notify Owner's Representative if spillage occurs and start clean up procedures.
- .3 Clean spills and leave area as it was prior to spill.
- .4 Store roll materials on end in original packaging.

- .5 Store primers at temperatures of 5°C and above to facilitate handling. Keep solvent away from open flame and excessive heat.

1.8 PROJECT ENVIRONMENTAL REQUIREMENTS

- .1 Do not install solvent curing sealants or vapour release adhesive materials in enclosed spaces without ventilation.
- .2 Ventilate enclosed spaces in accordance with Division 1 of Master Municipal master Specifications.
- .3 Maintain temperature and humidity recommended by materials manufacturers before, during and after installation.

1.9 WARRANTY

- .1 Provide a written warranty for work of this section from Manufacturer for failure due to defective materials and from contractor for failure due to defective installation workmanship for ten (10) years respectively from the date of Substantial Completion.
- .2 Include coverage of installed sealant and sheet materials which fail to achieve air tight and watertight seal, exhibit loss of adhesion or cohesion or do not cure.

PART 2 PRODUCTS

2.1 SHEET MEMBRANE AIR BARRIER (TYPE 1)

- .1 Sheet Seal: Self-Adhesive bitumen laminated to high-density polyethylene film, nominal total thickness of 1.0 mm.
 - .1 Membrane Physical Properties
 - .1 Application min 5°C
 - .2 Service Temperature -40°C to 70°
 - .3 Elongation min 200%
 - .4 Tensile strength min 2.4 Mpa
 - .5 Puncture Resistance min 178 N
 - .6 Water vapour transmission 2.8mg/Pa.s.m² (0.05 perms)
 - .7 Moisture Absorption 0.1%
 - .8 Air Leakage at 75 Pa 0.02L/Sm²
 - .9 Air Leakage of the 3000 Pa test No change

- .2 Sheet Seal: Self-Adhered Elastomeric Film Air Vapour Barrier Membrane with high tack acrylic adhesive, nominal total thickness of 0.25 mm. Primer not required on most construction surfaces.
- .1 Membrane Physical Properties
- | | | |
|----|---------------------------------|---------------------------------------|
| .1 | Application | min -18° C |
| .2 | Service Temperature | -40° C to 80° C |
| .3 | Elongation | ASTM D882 – min 700% |
| .4 | Tensile Strength | min 12 Mpa |
| .5 | Water Vapour Transmission | 8 ng/Pa.s.m ² (0.14 perms) |
| .6 | Moisture Absorption | 0.1% |
| .7 | Air Leakage at 75 Pa | 0.01 L/Sm ² |
| .8 | Air Leakage of the 3000 Pa Test | No Change |

2.2 LIQUID MEMBRANE AIR/VAPOUR BARRIER (TYPE 2)

- .1 Single component, liquid applied, water-based, polymer-modified air barrier providing a seamless, elastomeric membrane when cured, wet film thickness 1.53 mm, cured film thickness 1.15 mm.
- .2 Liquid membrane Air/Vapour physical properties:
- | | | |
|----|-------------------------------|---------------------------|
| .1 | Application Temperature: min. | 4° C |
| .2 | Service Temperature: | -29° C to 49° C |
| .3 | Elongation: | 1500% |
| .4 | Tensile Strength: | 0.10 MPa |
| .5 | Water Vapour Permeance: | 0.03 perms |
| .6 | Air Leakage at 75 Pa: | < 0.02 L/s/m ² |

2.3 EXTERIOR WALL SHEATHING PAPER

- .1 Spunbonded olefin type coated impregnated sheathing paper to CAN/CGSB-51.32 single ply, as indicated.

2.4 SEALANTS

- .1 Sealants in accordance with Section 07 92 00 - Joint Sealants.
- .2 Primer: recommended by sealant manufacturer.

2.5 SCHEDULE

- .1 Type 1 Air Barrier: for installation on any solid surface.
- .2 Type 2 Air Barrier: for installation on masonry or concrete surfaces.

PART 3 **EXECUTION****3.1** **EXAMINATION**

- .1 Verify that surfaces and conditions are ready to accept the Work of this section.
- .2 Ensure all surfaces are clean, dry, sound, smooth, continuous and comply with air barrier manufacturer's requirements.
- .3 Report any unsatisfactory conditions to the Owner's Representative in writing.
- .4 Do not start work until deficiencies have been corrected.

3.2 **PREPARATION**

- .1 Remove loose or foreign matter which might impair adhesion of materials.
- .2 Ensure all substrates are clean of oil or excess dust; all masonry joints struck flush, and open joints filled; and all concrete surfaces free of large voids, spalled areas or sharp protrusions.
- .3 Ensure all substrates are free of surface moisture prior to application of membrane and primer.
- .4 Ensure metal closures are free of sharp edges and burrs.
- .5 Prime substrate surfaces to receive adhesive and sealants in accordance with manufacturer's instructions.

3.3 **INSTALLATION (SHEET MEMBRANE)**

- .1 Install materials in accordance with manufacturer's instructions.
- .2 Over the properly prepared substrate surface apply primer, as per manufacturer's recommendations, with a roller and allow drying to a tacky surface. Prime only area to be covered in a working day. Re-prime area not covered with membrane within 24 hours.
- .3 After primer has dried, using a hand roller firmly press the entire membrane onto the primed surface, in strict accordance with membrane manufacturer's written instructions.

- .4 Ensure complete coverage of and adhesion of all substrates to receive membrane, including wall penetrations. Co-operate with other trades to ensure continuity of membrane.
- .5 Overlap membrane 50mm and carefully smooth out with a roller to ensure full continuous bond throughout overlaps without fissures or fishmouthing.
- .6 It is important that a complete air seal be achieved. Be responsible for the completeness of membrane wherever it is not specifically detailed. Consult with Owner's Representative if there is any doubt as to the integrity of membrane, whether detailed or not.
- .7 In order to ensure a complete seal, seal membrane to all penetrations in an approved manner.
- .8 Apply a trowelled bead of mastic to all terminations of the membrane at the end of a day's work.
- .9 Do not enclose membrane until it has been inspected and approved by Owner's Representative. Inform Owner's Representative two (2) working days prior to required inspection.

3.4 INSTALLATION (LIQUID MEMBRANE AIR/VAPOUR BARRIER)

- .1 Install materials in accordance with manufacturer's instructions.
- .2 Prepare surfaces ensuring they are clean, structurally sound and smooth. Patch all cracks, small voids, irregularities and small deformities with manufacturer approved patch material.
- .3 Apply minimum 150 mm wide self-adhering air barrier strip between joints of dissimilar building materials.
- .4 Apply liquid membrane to substrate by spraying or nap roller as per manufacturer's instructions.
- .5 Ensure complete coverage of and adhesion of all substrates to receive liquid membrane, including wall penetrations. Co-operate with other trades to ensure continuity of membrane.
- .6 It is important that a complete air seal be achieved. Be responsible for the completeness of liquid membrane wherever it is not specifically detailed. Consult with Owner's Representative if there is any doubt as to the integrity of the liquid membrane, whether detailed or not.

- .7 In order to ensure a complete seal, seal liquid membrane to all penetrations in an approved manner.
- .8 Do not enclose membrane until it has been inspected and approved by Owner's Representative. Inform Owner's Representative two (2) working days prior to required inspection.

3.5 INSTALLATION (LIQUID MEMBRANE VAPOUR PERMEABLE AIR BARRIER)

- .1 Install materials in accordance with manufacturer's instructions.
- .2 Prepare surfaces ensuring they are clean, structurally sound and smooth. Patch all cracks, small voids, irregularities and small deformities with manufacturer approved patch material.
- .3 Joints in exterior sheeting of 6.4 mm or greater to be covered with tape or filled with mastic caulking compound prior to application of liquid membrane as per manufacturer's recommendations.
- .4 Apply minimum 150 mm wide self-adhering air barrier strip between joints of dissimilar building materials.
- .5 Apply liquid membrane to substrate by spraying or roller as per manufacturer's instructions.
- .6 Ensure complete coverage of and adhesion of all substrates to receive liquid membrane, including wall penetrations. Co-operate with other trades to ensure continuity of membrane.
- .7 It is important that a complete air seal be achieved. Be responsible for the completeness of liquid membrane wherever it is not specifically detailed. Consult with Owner's Representative if there is any doubt as to the integrity of the liquid membrane, whether detailed or not.
- .8 In order to ensure a complete seal, seal liquid membrane to all penetrations in an approved manner.
- .9 Do not enclose membrane until it has been inspected and approved by Owner's Representative. Inform Owner's Representative two (2) working days prior to required inspection.

3.6 PROTECTION OF WORK

- .1 Protect finished Work in accordance with Section 01 61 00 - Common Product Requirements.

- .2 Do not permit adjacent work to damage work of this section.
- .3 Ensure finished Work is protected from climatic conditions.

3.7 INSPECTION

- .1 Carefully inspect for continuity of air barrier prior to placement of insulation.
- .2 Repair all deficient membrane areas.
- .3 Misaligned or inadequately lapped seams, punctures or other damage must be repaired with a patch of air barrier membrane extending 50mm in all directions from edge of damaged areas.
- .4 Cover membrane immediately after Owner's Representative's inspection to protect from damage by other trades.

3.8 TESTING

- .1 Air leakage testing as directed by Owner's Representative and paid for by contractor will be performed by professional testing agency for the locations selected at random for penetrations, laps, corners, etc.
- .2 Testing will be witnessed by Owner's Representative and test reports will be signed by tester, site representative and contractor.
- .3 Inform Owner's Representative two (2) working days prior to required testing.

END OF SECTION

PART 1 **GENERAL****1.1** **SECTION INCLUDES**

- .1 Materials, removal and installation of fiberglass-reinforced asphalt shingles and roll roofing.

1.2 **RELATED SECTIONS**

- .1 Section 07 62 00 – Sheet Metal Flashing and Trim.

1.3 **REFERENCES**

- .1 Canadian General Standards Board (CGSB).
 - .1 CAN/CGSB-37.4, Fibrated, Cutback Asphalt, Lap Cement for Asphalt Roofing.
 - .2 CAN/CGSB-37.5, Cutback Asphalt Plastic Cement.
 - .3 CAN/CGSB-51.32, Sheathing, Membrane, Breather Type.
 - .4 CAN/CGSB-51.34, Vapour Barrier Polyethylene Sheet, for Use in Building Construction.
- .2 Canadian Roofing Contractors' Association (CRCA).
 - .1 CRCA Roofing Specification Manual.
- .3 Canadian Standards Association (CSA).
 - .1 CAN/CSA-A123.1/A123.5, Asphalt Shingles Made From Organic Felt and Surfaced With Mineral Granules/Asphalt Shingles Made From Glass Felt and Surfaced With Mineral Granules.
 - .2 CSA A123.2, Asphalt-Coated Roofing Sheets.
 - .3 CAN/CSA-A123.3, Asphalt Saturated Organic Roofing Felt.
 - .4 CAN3-A123.51, Asphalt Shingle Application on Roof Slopes 1:3 and Steeper.
 - .5 CAN3-A123.52, Asphalt Shingle Application on Roof Slopes 1:6 to Less Than 1:3.
 - .6 CSA B111, Wire Nails, Spikes and Staples.
- .4 National Research Council Canada (NRC)/Institute for Research in Construction (IRC) - Canadian Construction Materials Centre (CCMC).
 - .1 CCMC, Registry of Product Evaluations.

1.4 EXTRA MATERIALS

- .1 Provide maintenance materials in accordance Closeout Submittals.
- .2 All unused shingles remain property of owner.

1.5 SUBMITTALS

- .1 Manufacturer's Instructions: Provide to indicate special handling criteria, installation sequence, cleaning procedures.
- .2 Submit product data sheets for asphalt shingles. Include:
 - .1 Product characteristics.
 - .2 Performance criteria.
 - .3 Installation instructions.
 - .4 Limitations.
 - .5 Colour and finish.
- .3 Submit duplicate samples of full size specified shingles.

1.6 DELIVERY, STORAGE AND HANDLING

- .1 Provide and maintain dry, off-ground weatherproof storage.
- .2 Remove only in quantities required for same day use.

1.7 WASTE MANAGEMENT AND DISPOSAL

- .1 Place materials defined as hazardous or toxic in designated containers.
- .2 Ensure emptied containers are sealed and stored safely for disposal away from children.
- .3 Use the least toxic sealants, and adhesives necessary to comply with requirements of this section.
- .4 Close and seal tightly. Remove from site and dispose of all packaging materials at appropriate recycling facilities.
- .5 Place used hazardous sealant tubes and adhesive containers in areas designated for hazardous materials.

1.8 WARRANTY

- .1 Provide a written guarantee, signed and issued in the name of the owner, stating the fiberglass-reinforced asphalt shingles shall remain free from

defects in materials and workmanship for a period of twenty five (25) years from the date of Substantial Completion.

PART 2 **PRODUCTS**

2.1 **MATERIALS**

- .1 Fiberglass-reinforced asphalt shingles: to CSA A123.1/A123.5.
 - .1 Type: self-seal, standard, pattern rectangular
 - .2 Mass: minimum 33 kg/3m²
 - .3 Colours: to match existing
- .2 Roofing underlayment: self-adhesive, non-woven glass fibre matt coated with SBS modified bitumen, minimum thickness 1.8 mm, bottom surface release film, top surface sanded.
- .3 Continuous Ridge Vent: minimum 285 mm wide durable, copolymer plastic ridge vent, providing minimum 357 cm²/m net free vent area, capable of accepting fiberglass-reinforced asphalt shingle cap over for shingle finish.
- .4 Cement: Plastic cement: to CAN/CGSB-37.5.
- .5 Nails: to CSA B111, of galvanized steel, sufficient length to penetrate 19 mm into deck.

PART 3 **EXECUTION**

3.1 **REMOVAL OF EXISTING ROOFING**

- .1 Remove existing roofing, flashings and underlay, and expose sheathing or shingle lath of roof.
- .2 Withdraw existing shingle and flashing nails, set those which break off. Leave surfaces free from dirt and loose material.
- .3 Owner's Representative to inspect roof sheathing. Take up, cut out, portion of sheathing boards affected by fungal or insect attack as directed on site by Owner's Representative.
- .4 Replace cut out portions of sheathing or lath with sheathing of equal sectional dimensions, and specified grade. Seat each end of board on rafter/truss, with 25mm bearing, and secure to rafter/truss.

3.2 APPLICATION

- .1 Do fiberglass-reinforced asphalt shingle work in accordance with CAN3-A123.51/CAN3-A123.52, NBC/CRCA Specification, except where specified otherwise.
- .2 Install layer of self-adhesive roof underlayment over the entire roof area.
- .3 Install drip edge along eaves, overhanging 12 mm, with minimum 50 mm flange extending onto roof decking. Nail to deck at 400 mm oc.
- .4 Install bottom step flashing (soaker base flashing) interleaved between shingles at vertical junctions.
- .5 Install fiberglass-reinforced asphalt shingles on roof slopes 1:3 and steeper in accordance with CAN3-A123.51 supplemented as follows:
- .6 Install fiberglass-reinforced asphalt shingles on roof slopes 1:6 to less than 1:3 in accordance with CAN3-A123.52 supplemented as follows.

3.3 PROTECTION

- .1 Protect installed products and components from damage during construction.
- .2 Repair damage to adjacent materials caused by asphalt shingles installation.

END OF SECTION

PART 1 **GENERAL****1.1** **RELATED SECTIONS**

- .1 Section 06 10 00 – Rough Carpentry.
- .2 Section 07 92 00 – Joint Sealants.

1.2 **REFERENCES**

- .1 The Aluminum Association Inc. (AA)
 - .1 Aluminum Sheet Metal Work in Building Construction.
 - .2 AA DAF45, Designation System for Aluminum Finishes.
- .2 American Society for Testing and Materials (ASTM International)
 - .1 ASTM A653/A653M, Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process.
 - .2 ASTM A792/A792M, Standard Specification for Steel Sheet, 55% Aluminum-Zinc Alloy-Coated by the Hot-Dip Process.
 - .3 ASTM D523, Standard Test Method for Specular Gloss.
 - .4 ASTM D822, Standard Practice for Filtered Open-Flame Carbon-Arc Exposures of Paint and Related Coatings.
- .3 Canadian General Standards Board (CGBS)
 - .1 CAN/CGSB-37.5, Cutback Asphalt Plastic Cement.
- .4 Canadian Roofing Contractors Association (CRCA)
 - .1 Roofing Specifications Manual.
- .5 Canadian Standards Association (CSA International)
 - .1 CSA A123.3, Asphalt Saturated Organic Roofing Felt.
 - .2 CSA B111, Wire Nails, Spikes and Staples.

1.3 **SAMPLES**

- .1 Submit duplicate 50 x 50 mm samples of each type of sheet metal material, colour and finish.

PART 2 **PRODUCTS****2.1** **SHEET METAL MATERIALS**

- .1 Aluminum-zinc alloy coated steel sheet: to ASTM A792/A792M, commercial quality, grade 33 with AZ150 coating, regular spangle surface, 0.70 mm base metal thickness. Pre-painted to CGSB –GP-71.

2.2 **PREFINISHED STEEL SHEET**

- .1 Prefinished sheet with factory applied polyvinylidene fluoride.
 - .1 Class F1S
 - .2 Colour as selected by Owner's Representative from manufacturer's standard range.
 - .3 Specular gloss: 30 units +/- 5 in accordance with ASTM D523.
 - .4 Coating thickness: not less than 22 micrometres.
 - .5 Resistance to accelerated weathering for caulk rating of 8, colour fade 5 units or less and erosion rate less than 20 % to ASTM D822 as follows:
 - .1 Outdoor exposure period 2500 hours.
 - .2 Humidity resistance exposure period 5000 hours.

2.3 **ACCESSORIES**

- .1 Isolation coating: alkali resistant bituminous paint.
- .2 Plastic cement: to CAN/CGSB 37.5.
- .3 Underlay for metal flashing: No. 15 perforated asphalt felt to CSA A123.3.
- .4 Sealants: Section 07 92 00 – Joint Sealants.
- .5 Cleats: of same material, and temper as sheet metal, minimum 50 mm wide. Thickness same as sheet metal being secured.
- .6 Fasteners: of same material as sheet metal, to CSA B111, ring thread flat head roofing nails of length and thickness suitable for metal flashing application.
- .7 Washers: of same material as sheet metal, 1 mm thick with rubber packings.
- .8 Touch-up paint: as recommended by prefinished material manufacturer.

2.4 FABRICATION

- .1 Fabricate metal flashings and other sheet metal work in accordance with applicable CRCA 'FL' series details as indicated.
- .2 Fabricate aluminum flashings and other sheet aluminum work in accordance with Aluminum Association Aluminum Sheet Metal Work in Building Construction.
- .3 Form pieces in 2400 mm maximum lengths. Make allowance for expansion at joints.
- .4 Hem exposed edges on underside 12 mm. Mitre and seal corners with sealant.
- .5 Form sections square, true and accurate to size, free from distortion and other defects detrimental to appearance or performance.
- .6 Apply isolation coating to metal surfaces to be embedded in concrete or mortar.

2.5 METAL FLASHINGS

- .1 Form flashings, copings and fascias to profiles indicated of 0.60 mm thick prefinished steel.

PART 3 EXECUTION**3.1 INSTALLATION**

- .1 Install sheet metal work in accordance with CRCA FL series details and as detailed.
- .2 Use concealed fastenings except where approved before installation.
- .3 Provide underlay under sheet metal. Secure in place and lap joints 100 mm.
- .4 Counterflash bituminous flashings at intersections of roof with vertical surfaces and curbs. Flash joints using S-lock forming tight fit over hook strips, as detailed.
- .5 Lock end joints and caulk with sealant.

END OF SECTION

PART 1 GENERAL**1.1 SECTION INCLUDES**

- .1 Materials, preparation and application for caulking and sealants.

1.2 REFERENCES

- .1 American Society for Testing and Materials International, (ASTM)
 - .1 ASTM C321, Standard Test Method for Bond Strength of Chemical-Resistant Mortars.
 - .2 ASTM C834, Standard Specification for Latex Sealants.
 - .3 ASTM C882, Standard Test Method for Bond Strength of Epoxy-Resin Systems Used with Concrete by Slant Shear.
 - .4 ASTM C919, Standard Practice for Use of Sealants in Acoustical Applications.
 - .5 ASTM C920, Standard Specification for Elastomeric Joint Sealants.
 - .6 ASTM C1330, Standard Specification for Cylindrical Sealant Backing for use with Cold Liquid Applied Sealants.
- .2 Canadian General Standards Board (CGSB)
 - .1 CAN/CGSB-19.21, Sealing and Bedding Compound Acoustical.
- .3 Department of Justice Canada (Jus)
 - .1 Canadian Environmental Protection Act (CEPA).
- .4 Health Canada/Workplace Hazardous Materials Information System (WHMIS)
 - .1 Material Safety Data Sheets (MSDS).
- .5 Transport Canada (TC)
 - .1 Transportation of Dangerous Goods Act (TDGA).

1.3 SUBMITTALS

- .1 Manufacturer's product to describe.
 - .1 Caulking compound.
 - .2 Primers.
 - .3 Sealing compound, each type, including compatibility when different sealants are in contact with each other.
 - .4 Installation instructions, surface preparation and product limitations.
- .2 Submit samples of each type of material and colour.

- .3 Cured samples of exposed sealants for each color where required to match adjacent material.
- .4 Manufacturers' instructions to include installation instructions for each product used.

1.4 QUALITY ASSURANCE

- .1 Manufacturer Qualifications: company engaged in the manufacturing of products specified in this section with a minimum of ten (10) years documented experience.
- .2 Applicator Qualifications: Experienced installer equipped and trained for application of joint sealant required for this project with record of successful completion of projects of similar scope.
 - .1 Applicator to be approved by sealant manufacturer.

1.5 FIELD ADHESION/COHESION TESTS

- .1 Test Frequency:
 - .1 Perform a field test each type of sealant and substrate combination, for all interior and exterior sealants associated with the building envelope.
 - .2 Perform three (3) additional tests for each failed test.
- .2 Locate test joints as directed by Owner's Representative. Tests to be performed in the presence of the Owner's Representative and/or manufacturer's representative.
- .3 Test joint sealants by hand-pull method #1. Record test results in Field Adhesion/Cohesion Test Form.
 - .1 Test Method #1:
 - .1 Make a knife cut horizontally from one side of the joint to the other.
 - .2 Make two (2) vertical cuts (from the horizontal cut) approximately 75 mm long on each side of the joint.
 - .3 Pry out flap created from cuts.
 - .4 Firmly grasp flap and slowly pull at 90° from sealant plane.
 - .5 Pull flap until adhesive or cohesive failure occurs.
 - .1 Adhesive failure will be evidenced by the sealant pulling off clean from the substrate.
 - .2 Cohesion failure will be evidenced by the sealant ripping or failing within itself, leaving well-adhered sealant to the substrate.

(Cohesive failure is considered a positive result).

- .4 Inspect joints for:
 - .1 Complete fill,
 - .2 Absence of voids,
 - .3 Primer,
 - .4 Proper width/depth ratio, and
 - .5 Back up material.
- .5 Repair sealants pulled in test area by applying new sealants following same procedures used to original seal joints.
- .6 Contractor shall repair test areas at no additional cost to the Owner.

1.6 DELIVERY, STORAGE, AND HANDLING

- .1 Deliver, handle, store and protect materials in accordance with manufacture's recommendations.
- .2 Deliver and store materials in original wrappings and containers with manufacturer's seals and labels, intact. Protect from freezing, moisture, water and contact with ground or floor.
- .3 Condition products to approximately 16 to 20 degrees C for use in accordance with manufacturer's recommendations.
- .4 Handle all products with appropriate precautions and care as stated on the Material Safety Data Sheet.

1.7 PROJECT CONDITIONS

- .1 Environmental Limitations:
 - .1 Do not proceed with installation of joint sealants under following conditions:
 - .1 When ambient and substrate temperature conditions are outside limits permitted by joint sealant manufacturer or are below 4°C.
 - .2 When joint substrates are wet.
- .2 Joint-Width Conditions:
 - .1 Do not proceed with installation of joint sealants where joint widths are less than those allowed by joint sealant manufacturer for applications indicated.
- .3 Joint-Substrate Conditions:

- .1 Do not proceed with installation of joint sealants until contaminants capable of interfering with adhesion are removed from joint substrates.

PART 2 **PRODUCTS**

2.1 **SEALANT MATERIALS**

- .1 Sealants and Caulking compounds must:
 - .1 Meet or exceed all applicable governmental and industrial safety and performance standards; and
 - .2 Be manufactured and transported in such a manner that all steps of the process, including the disposal of waste products arising therefrom, will meet the requirements of all applicable governmental acts, by laws and regulations including, for facilities located in Canada, the Fisheries Act and the Canadian Environmental Protection Act (CEPA).
- .2 Sealant and caulking compounds must not be formulated or manufactured with: aromatic solvents, fibrous talc or asbestos, formaldehyde, halogenated solvents, mercury, lead, cadmium, hexavalent chromium, barium or their compounds, except barium sulphate.
- .3 Sealant and caulking compounds must not contain a total of volatile organic compound (VOC's) in excess of 100 grams per litre as calculated from records of the amounts of constituents used to make the product.
- .4 Sealant and caulking compounds must be accompanied by detailed instructions for proper application so as to minimize health concerns and maximize performance, and information describing proper disposal methods.
- .5 Do not use caulking that emits strong odours, contains toxic chemicals or is not certified as mould resistant in air handling units.
- .6 When low toxicity caulks are not possible, confine usage to areas which off-gas to exterior, are contained behind air barriers, or are applied several months before occupancy to maximize off-gas time.
- .7 Where sealants are qualified with primers use only these primers.
- .8 Sealants acceptable for use on this project must be listed on CGSB Qualified Products List issued by CGSB Qualification Board for Joint Sealants. Where sealants are qualified with primers use only these primers.

2.2 SEALANT MATERIAL DESIGNATIONS

- .1 Urethanes One Part.
 - .1 Non-Sag to CAN/CGSB-19.13, Type 2.
- .2 Silicones One Part.
 - .1 To CAN/CGSB 19.13, mildew resistant.
- .3 Acoustical Sealant.
 - .1 To ASTM C919.
- .4 Preformed Compressible and Non-Compressible back-up materials.
 - .1 Polyethylene, Urethane, Neoprene or Vinyl Foam.
 - .1 Extruded closed cell foam backer rod.
 - .2 Size: oversize 30 to 50 %.
- .5 Neoprene or Butyl Rubber.
 - .1 Round solid rod, Shore A hardness 70.
- .6 High Density Foam.
 - .1 Extruded closed cell polyvinyl chloride (PVC), extruded polyethylene, closed cell, Shore A hardness 20, tensile strength 140 to 200 kPa, extruded polyolefin foam, 32 kg/m3 density, or neoprene foam backer, size as recommended by manufacturer.
- .7 Bond Breaker Tape.
 - .1 Polyethylene bond breaker tape which will not bond to sealant.

2.3 SEALANT SELECTION

- .1 Perimeters of exterior openings where frames meet exterior facade of building, Sealant type CAN/CGSB- 19.13.
- .2 Expansion and control joints in exterior surfaces of poured-in-place concrete walls: Sealant type CAN/CGSB – 19.13.
- .3 Control and expansion joints in exterior surfaces of unit masonry walls: Sealant type: CAN/CGSB – 19.13.
- .4 Seal interior perimeters of exterior openings as detailed on drawings: Sealant type: CAN/CGSB – 19.13.
- .5 Control and expansion joints on the interior of exterior surfaces of unit masonry walls. Sealant Type CAN/CGSB -19.13.

- .6 Interior control and expansion joints in floor surfaces: Sealant type CAN/CGSB -19.13.
- .7 Perimeters of interior frames, as detailed and itemized: Sealant type CAN/CGSB -19.13.
- .8 Acoustical Sealant ASTM C919.

2.4 JOINT CLEANER

- .1 Non-corrosive and non-staining type, compatible with joint forming materials and sealant recommended by sealant manufacturer.
- .2 Primer: as recommended by manufacturer.

2.5 ACCESSORIES

- .1 Primer: Type as recommended by sealant manufacturer. Primer to be compatible with joint forming materials.
- .2 Joint Cleaner: Non-corrosive and non-staining type, recommended by sealant manufacturer and compatible with joint forming materials.

PART 3 EXECUTION

3.1 PROTECTION

- .1 Protect installed Work of other trades from staining or contamination.

3.2 SURFACE PREPARATION

- .1 Examine joint sizes and conditions to establish correct depth to width relationship for installation of backup materials and sealants.
- .2 Clean bonding joint surfaces of harmful matter substances including dust, rust, oil grease, and other matter which may impair work.
- .3 Do not apply sealants to joint surfaces treated with sealer, curing compound, water repellent, or other coatings unless tests have been performed to ensure compatibility of materials. Remove coatings as required.
- .4 Ensure joint surfaces are dry and frost free.
- .5 All joint forming materials to be primed prior to sealant installation.
- .6 Prepare surfaces in accordance with manufacturer's directions.

3.3 PRIMING

- .1 Where necessary to prevent staining, mask adjacent surfaces prior to priming and caulking.
- .2 Prime sides of joints in accordance with sealant manufacturer's instructions immediately prior to caulking.

3.4 BACKUP MATERIAL

- .1 Apply bond breaker tape where required to manufacturer's instructions.
- .2 Install joint filler to achieve correct joint depth and shape, with approximately 30% compression.

3.5 MIXING

- .1 Mix materials in strict accordance with sealant manufacturer's instructions.

3.6 APPLICATION

- .1 Sealant.
 - .1 Apply sealant in accordance with manufacturer's written instructions.
 - .2 Mask edges of joint where irregular surface or sensitive joint border exists to provide neat joint.
 - .3 Apply sealant in continuous beads.
 - .4 Apply sealant using gun with proper size nozzle.
 - .5 Use sufficient pressure to fill voids and joints solid.
 - .6 Form surface of sealant with full bead, smooth, free from ridges, wrinkles, sags, air pockets, embedded impurities.
 - .7 Tool exposed surfaces before skinning begins to give slightly concave shape.
 - .8 Remove excess compound promptly as work progresses and upon completion.
- .2 Curing.
 - .1 Cure sealants in accordance with sealant manufacturer's instructions.
 - .2 Do not cover up sealants until proper curing has taken place.
- .3 Cleanup.
 - .1 Clean adjacent surfaces immediately and leave Work neat and clean.

- .2 Remove excess and droppings, using recommended cleaners as work progresses.
- .3 Remove masking tape after initial set of sealant.

3.7**CLEANING**

- .1 Clean adjacent surfaces immediately and leave Work neat and clean.
- .2 Remove excess and droppings, using recommended cleaners as work progresses.
- .3 Remove masking tape after initial set of sealant.

END OF SECTION

PART 1 **GENERAL****1.1** **RELATED SECTIONS**

- .1 Section 07 92 00 - Joint Sealants.
- .2 Section 08 71 00 - Door Hardware.
- .3 Section 09 91 13 - Exterior Painting.
- .4 Section 09 91 16 - Interior Painting.

1.2 **REFERENCES**

- .1 American Society for Testing and Materials (ASTM)
 - .1 ASTM A653/A653M, Specification for Steel Sheet Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvanized) by the Hot Dip Process.
- .2 Canadian General Standards Board (CGSB)
 - .1 CAN/CGSB-1.181, Ready-Mixed Organic Zinc-Rich Coating.
 - .2 CGSB 41-GP-19Ma, Rigid Vinyl Extrusions for Windows and Doors.
- .3 Canadian Standards Association (CSA)
 - .1 G40.20/G40.21, General Requirements for Rolled or Welded Structural Quality Steel/Structural Quality Steel.
 - .2 CSA W59, Welded Steel Construction (Metal Arc Welding).
- .4 Canadian Steel Door Manufacturers' Association, (CSDMA).
 - .1 CSDMA, Specifications for Commercial Steel Doors and Frames.
 - .2 CSDMA, Recommended Selection and Usage Guide for Commercial Steel Doors.
- .5 National Fire Protection Association (NFPA)
 - .1 NFPA 80, Standard for Fire Doors and Fire Windows.
 - .2 NFPA 252, Standard Methods of Fire Tests of Door Assemblies.
- .6 Underwriters' Laboratories of Canada (ULC)
 - .1 CAN4-S104M, Fire Tests of Door Assemblies.
 - .2 CAN4-S105M, Fire Door Frames Meeting the Performance Required by CAN4-S104.

- .3 CAN/ULC-S701, Thermal Insulation, Polystyrene, Boards and Pipe Covering.
- .4 CAN/ULC-S702, Thermal Insulation, Mineral Fibre, for Buildings.
- .5 CAN/ULC-S704, Thermal Insulation, Polyurethane and Polyisocyanurate Boards, Faced.

1.3 DESIGN REQUIREMENTS

- .1 Design door assembly to withstand minimum 1,000,000 swing cycles in accordance with ANSI A151.1, with no failure of any design features of the door.
- .2 Design exterior frame assembly to accommodate to expansion and contraction when subjected to minimum and maximum surface temperature of -35°C to 35°C.
- .3 Maximum deflection for exterior steel entrance screens under wind load of 1.2 kPa not to exceed 1/175th of span.
- .4 Steel fire rated doors and frames: labelled and listed by an organization accredited by Standards Council of Canada in conformance with CAN4-S104 and NFPA 252 for ratings specified or indicated.
- .5 Provide fire labelled frames for openings requiring fire protection ratings. Test products in conformance with CAN4-S104 and NFPA 252 and listed by nationally recognized agency having factory inspection services and construct as detailed in Follow-Up Service Procedures/Factory Inspection Manuals issued by listing agency to individual manufacturers.

1.4 SUBMITTALS

- .1 Indicate each type of door, material, steel core thicknesses, mortises, reinforcements, location of exposed fasteners, openings, glazed, louvred, arrangement of hardware and fire rating and finishes.
- .2 Indicate each type frame material, core thickness, reinforcements, glazing stops, location of anchors and exposed fastenings and reinforcing firerating and finishes.
- .3 Include schedule identifying each unit, with door marks and numbers relating to numbering on drawings and door schedule.

1.5 DELIVERY STORAGE AND HANDLING

- .1 Deliver, store, handle and protect doors and frames in accordance with the Manufactures Requirements.

- .2 Deliver, handle and store doors and frames at the job site in such a manner as to prevent damage.
- .3 Store doors and frames under cover with doors stored in a vertical position on blocking, clear of floor and with blocking between doors to permit air circulation.

1.6 QUALITY ASSURANCE

- .1 Conform to requirements to ANSI A117.1
- .2 Company specializing in manufacturing products specified with a minimum of five (5) years documented experience.

1.7 WARRANTY

- .1 Provide a written warranty for work of this section from manufacturer for failure due to defective materials and from contractor for failure due to defective installation workmanship, for one (1) year respectively from the date of Substantial Completion.

PART 2 PRODUCTS

2.1 MATERIALS

- .1 Hot dipped galvanized steel sheet: to ASTM A653/A653M, ZF75, minimum base steel thickness in accordance with CSDMA Table 1 - Thickness for Component Parts.
- .2 Reinforcement channel: to CSA G40.20/G40.21, Type 44W, coating designation to ASTM A653/A653M, ZF75.
- .3 All fire rated doors to be ULC listed and tagged.

2.2 DOOR CORE MATERIALS

- .1 Stiffened: face sheets welded insulated core.
 - .1 Expanded polystyrene: CAN/ULC-S701, density 16 to 32 kg/m³.
 - .2 Polyurethane: to CAN/ULC-S704 rigid, modified polyisocyanurate, closed cell board. Density 32 kg/m³.
- .2 Temperature rise rated (TRR): core composition to limit temperature rise on unexposed side of door to 250°C at 60 minutes. Core to be tested as part of a complete door assembly, in accordance with CAN4-S104, ASTM E152 or NFPA 252, covering Standard Method of Tests of Door

Assemblies and listed by nationally recognized testing agency having factory inspection service.

2.3 ADHESIVES

- .1 Polystyrene and polyurethane cores: heat resistant, epoxy resin based, low viscosity, contact cement.

2.4 PRIMER

- .1 Touch-up prime CAN/CGSB-1.181.

2.5 ACCESSORIES

- .1 Door silencers: single stud rubber/neoprene type.
- .2 Exterior top and bottom caps steel.
- .3 Fabricate glazing stops as formed channel, minimum 16 mm height, accurately fitted, butted at corners and fastened to frame sections with counter-sunk oval head sheet metal screws.
- .4 Door bottom seal: Section 08 71 00 – Door Hardware.
- .5 Metallic paste filler: to manufacturer's standard.
- .6 Fire labels: metal riveted.
- .7 Sealant: Section 07 92 00 – Joint Sealants.
- .8 Provide low expanding, single component polyurethane foam sealant installed at head and jamb perimeter of door frame for sealing to building air barrier, vapour retarder and door frame. Foam sealant width to be adequate to provide required air tightness and vapour diffusion control to building air barrier and vapour retarder foam interior.

2.6 FRAMES FABRICATION GENERAL

- .1 Fabricate frames in accordance with CSDMA specifications.
- .2 Fabricate frames to profiles and maximum face sizes as indicated.
- .3 Exterior frames: 1.2 mm welded, thermally broken type construction.
- .4 Interior frames: 1.2 mm welded type construction.

- .5 Blank, reinforce, drill and tap frames for mortised, template hardware, and electronic hardware using templates provided by finish hardware supplier. Reinforce frames for surface mounted hardware.
- .6 Protect mortised cutouts with steel guard boxes.
- .7 Manufacturer's nameplates on frames and screens are not permitted.
- .8 Conceal fastenings except where exposed fastenings are indicated.
- .9 Provide factory-applied touch up primer at areas where zinc coating has been removed during fabrication.
- .10 Insulate exterior frame components with polyurethane insulation.

2.7 FRAME ANCHORAGE

- .1 Shim and anchor new doors in accordance with CAN/CSA A440.4.
- .2 Provide appropriate anchorage to floor and wall construction.
- .3 Locate each wall anchor immediately above or below each hinge reinforcement on hinge jamb and directly opposite on strike jamb.
- .4 Provide 2 anchors for rebate opening heights up to 1520 mm and 1 additional anchor for each additional 760 mm of height or fraction thereof.
- .5 Locate anchors for frames in existing openings not more than 150 mm from top and bottom of each jambs and intermediate at 660 mm o.c. maximum.

2.8 FRAMES: WELDED TYPE

- .1 Welding in accordance with CSA W59.
- .2 Accurately mitre or mechanically joint frame product and securely weld on inside of profile.
- .3 Cope accurately and securely weld butt joints of mullions, transom bars, centre rails and sills.
- .4 Grind welded joints and corners to a flat plane, fill with metallic paste and sand to uniform smooth finish.
- .5 Securely attach floor anchors to inside of each jamb profile.
- .6 Weld in 2 temporary jamb spreaders per frame to maintain proper alignment during shipment.

2.9 DOOR FABRICATION GENERAL

- .1 Doors: swing type, flush, with provision for glass and/or louvre openings as indicated.
- .2 Exterior doors: insulated, hollow steel construction. Interior doors: honeycomb hollow steel construction.
- .3 Fabricate doors with longitudinal edges locked seam. Seams: grind welded joints to a flat plane, fill with metallic paste filler and sand to a uniform smooth finish.
- .4 Doors: manufacturers' proprietary construction, tested and/or engineered as part of a fully operable assembly, including door, frame, gasketing and hardware in accordance with ASTM E330.
- .5 Blank, reinforce, drill doors and tap for mortised, templated hardware and electronic hardware.
- .6 Factory prepare holes 12.7 mm diameter and larger except mounting and through-bolt holes, on site, at time of hardware installation.
- .7 Reinforce doors where required, for surface mounted hardware. Provide flush steel top caps to exterior doors. Provide inverted, recessed, spot welded channels to top and bottom of interior doors.
- .8 Provide factory-applied touch-up primer at areas where zinc coating has been removed during fabrication.
- .9 Manufacturer's nameplates on doors are not permitted.

2.10 HOLLOW STEEL CONSTRUCTION

- .1 Form each face sheet for exterior doors from 1.2 mm sheet steel.
- .2 Reinforce doors with vertical stiffeners, securely welded to each face sheet at 150 mm on centre maximum.
- .3 Fill voids between stiffeners of exterior doors with polystyrene core.

PART 3 EXECUTION**3.1 INSTALLATION GENERAL**

- .1 Install doors and frames to CSDMA Installation Guide.

3.2 FRAME INSTALLATION

- .1 Set frames plumb, square, level and at correct elevation.
- .2 Secure anchorages and connections to adjacent construction.
- .3 Brace frames rigidly in position while building-in. Install temporary horizontal wood spreader at third points of door opening to maintain frame width. Provide vertical support at centre of head for openings over 1200 mm wide. Remove temporary spreaders after frames are built-in.
- .4 Make allowances for deflection of structure to ensure structural loads are not transmitted to frames.
- .5 Caulk perimeter of frames between frame and adjacent material.
- .6 Maintain continuity of air barrier and vapour retarder.

3.3 DOOR INSTALLATION

- .1 Install doors and hardware in accordance with hardware templates and manufacturer's instructions and Section 08 71 00 - Door Hardware.
- .2 Provide even margins between doors and jambs and doors and finished floor as follows.
 - .1 Hinge side: 1.0 mm.
 - .2 Latch side and head: 1.5 mm.
 - .3 Finished floor: 13 mm.
- .3 Adjust operable parts for correct function.

3.4 FINISH REPAIRS

- .1 Touch up with primer finishes damaged during installation.
- .2 Fill exposed frame anchors and surfaces with imperfections with metallic paste filler and sand to a uniform smooth finish.

3.5 COMMISSIONING

- .1 Confirm operation and function for all doors and hardware.
- .2 Commissioning will be witnessed by Owner's Representative and Certificate will be signed by Contractor and Owner's Representative.

END OF SECTION

PART 1 **GENERAL****1.1** **RELATED SECTIONS**

- .1 Section 07 92 00 - Joint Sealants.
- .2 Section 08 80 00 - Glazing.

1.2 **REFERENCES**

- .1 Aluminum Association (AA),
 - .1 AA-DAF 45, Designation System for Aluminum Finishes.
- .2 Canadian General Standards Board (CGSB)
 - .1 CAN/CGSB-1.40, Anticorrosive Structural Steel Alkyd Primer.
 - .2 CAN/CGSB-79.1, Insect Screens.
- .3 Canadian Standards Association (CSA)
 - .1 CSA-A440-00/A440.1, A440, Windows / Special Publication A440.1, User Selection Guide to CSA Standard A440, Windows.
 - .2 CAN/CSA-Z91, Health and Safety Code for Suspended Equipment Operations.

1.3 **SUBMITTALS**

- .1 Indicate materials and details in full size scale for head, jamb and sill, profiles of components, interior and exterior trim junction between combination units, elevations of unit, anchorage details, location of isolation coating, description of related components and exposed finishes fasteners, and caulking. Indicate location of manufacturer's nameplates.

1.4 **TEST REPORTS**

- .1 Submit test reports from approved independent testing laboratories, certifying compliance with specifications, for:
 - .1 Windows classifications
 - .2 Air tightness
 - .3 Water tightness
 - .4 Condensation resistance
 - .5 Glazing
 - .6 Anodized finish

1.5 WARRANTY

- .1 Provide a written warranty for work under this section from manufacturer for failure due to defective materials and from contractor for failure due to defective installation and workmanship, for five (5) years respectively from the date of Substantial Completion.

PART 2 PRODUCTS**2.1 MATERIALS**

- .1 Materials: to CSA-A440/A440.1 supplemented as follows:
- .2 All aluminum windows by same manufacturer.
- .3 Main frame: aluminum thermally broken.
- .4 Glass: in accordance with Section 08 80 00 – Glazing.
- .5 Exterior metal sills: extruded aluminum of type and size to suit job conditions; minimum 3 mm thick, complete with joint covers, jamb drip deflectors, chairs, anchors, anchoring devices.
- .6 Isolation coating: alkali resistant bituminous paint.

2.2 WINDOW TYPE AND CLASSIFICATION

- .1 Types:
 - .1 Fixed: with safety glass.
- .2 Classification rating: to CSA-A440/A440.1 for various regions of Newfoundland and Labrador as follows:
 - .1 Placentia A3, B6, C3, I40, F1, S1
- .3 Energy ratings: windows to be Energy Star certified to Natural Resources Canada Climate Zones for various regions of Newfoundland and Labrador as follows:
 - .1 Island Region (Except the northern part Northern Peninsula)
 - .1 Zone 2 (≥ 3500 to < 6000 HSSs)
 - .2 Northern Part of Northern Peninsula and all of Labrador
 - .1 Zone 3 (≥ 6000 HHDs)

2.3 FABRICATION

- .1 Fabricate in accordance with CSA-A440/A440.1 supplemented as follows:

- .2 Fabricate units square and true with maximum tolerance of plus or minus 1.5 mm for units with a diagonal measurement of 1800 mm or less and plus or minus 3.0 mm for units with a diagonal measurement over 1800 mm.
- .3 Face dimensions detailed are maximum permissible sizes.
- .4 Brace frames to maintain squareness and rigidity during shipment and installation.
- .5 Finish steel clips and reinforcement with 380 g/m² zinc coating to CAN/CGSB-1.40.

2.4 ALUMINUM FINISHES

- .1 Finish exposed surfaces of aluminum components in accordance with Aluminum Association Designation System for Aluminum Finishes.
 - .1 Integral colour anodic finish: designation AA- M32, C12, C22, A42, colour to match sample.

2.5 ISOLATION COATING

- .1 Isolate aluminum from following components, by means of isolation coating:
 - .1 Dissimilar metals except stainless steel, zinc, or white bronze of small area.
 - .2 Concrete, mortar and masonry.
 - .3 Wood.

2.6 GLAZING

- .1 Glaze windows in accordance with CSA-A440/A440.1 and Section 08 80 00 - Glazing.

PART 3 EXECUTION

3.1 WINDOW INSTALLATION

- .1 Install in accordance with CSA-A440.
- .2 Arrange components to prevent abrupt variation in colour.
- .3 Install shims between windows and building frame at each installation screw location. Shim and fasten windows in accordance with manufacturer's recommendations and CAN/CSA A440.4.

3.2 SILL INSTALLATION

- .1 Install metal sills with uniform wash to exterior, level in length, straight in alignment with plumb upstands and faces. Use one piece lengths at each location.
- .2 Cut sills to fit window opening.
- .3 Secure sills in place with anchoring devices located at ends joints of continuous sills and evenly spaced 600 mm oc in between.
- .4 Fabricate and install sills to provide minimum 2% slope away from window.
- .5 Fasten drip deflectors with self tapping stainless steel screws.
- .6 Maintain 6.0 to 9.0 mm space between butt ends of continuous sills. For sills over 1200 mm in length, maintain 3.0 to 6.0 mm space at each end.

3.3 CAULKING

- .1 Seal joints between windows and window sills with sealant. Bed sill expansion joint cover plates and drip deflectors in bedding compound. Caulk between sill upstand and window-frame. Caulk butt joints in continuous sills.
- .2 Apply sealant in accordance with Section 07 92 00 - Joint Sealants. Conceal sealant within window units except where exposed use is permitted by Owner's Representative.

END OF SECTION

PART 1 **GENERAL****1.1** **RELATED SECTIONS**

- .1 Section 08 11 00- Metal Doors & Frames.

1.2 **REFERENCES**

- .1 American National Standards Institute (ANSI) / Builders Hardware Manufacturers Association (BHMA)
 - .1 ANSI/BHMA A156.1, American National Standard for Butts and Hinges.
 - .2 ANSI/BHMA A156.2, Bored and Preassembled Locks and Latches.
 - .3 ANSI/BHMA A156.3, Exit Devices.
 - .4 ANSI/BHMA A156.4, Door Controls - Closers.
 - .5 ANSI/BHMA A156.5, Auxiliary Locks and Associated Products.
 - .6 ANSI/BHMA A156.13, Mortise Locks and Latches Series 1000.
 - .7 ANSI/BHMA A156.16, Auxiliary Hardware.
 - .8 ANSI/BHMA A156.17, Self-closing Hinges and Pivots.
 - .9 ANSI/BHMA A156.18, Materials and Finishes.
- .2 Canadian Steel Door and Frame Manufacturers' Association (CSDFMA)
 - .1 CSDFMA Recommended Dimensional Standards for Commercial Steel Doors and Frames.

1.3 **SUBMITTALS**

- .1 Product Data:
 - .1 Submit manufacturer's printed product literature, specifications and data sheet.
- .2 Samples:
 - .1 Identify each sample by label indicating applicable specification paragraph number, brand name and number, finish and hardware package number.
 - .2 After approval samples will be returned for incorporation in the Work.
- .3 Hardware List:
 - .1 Submit contract hardware list.
 - .2 Indicate specified hardware, including make, model, material, function, size, finish and other pertinent information.

.4 Manufacturer's Instructions:

- .1 Submit manufacturer's installation instructions.

1.4 MAINTENANCE MATERIALS

- .1 Provide maintenance materials in accordance with Municipal Master Specification.

1.5 WARRANTY

- .1 Provide a written manufacturer's warranty for work of this Section for failure due to defective materials for five (5) years, dated from substantial completion certificate.
- .2 Provide a written Contractor's warranty for work of this Section for failure due to defective installation workmanship for one (1) year, dated from submittal completion certificate.

1.6 QUALITY ASSURANCE

- .1 Regulatory Requirements:
- .1 Hardware for doors in fire separations and exit doors certified by a Canadian Certification Organization accredited by Standards Council of Canada.
- .2 Only products meeting ANSI/BHMA standards are acceptable. Items that are equal in design, function and quality will be accepted upon approval of the Owner's Representative.
- .3 Only recognized contract hardware distributors will be considered for the work of this section. The distributor shall have on staff a qualified Architectural Hardware Consultant recognized by the Door and Hardware Institute or a person with equivalent qualifications to assist installers and direct detailing, processing and delivery of material, and certify installation acceptance.

1.7 DELIVERY, STORAGE, AND HANDLING

- .1 Deliver, store, handle and protect materials in accordance with Manufacture's Requirements.
- .2 Store finishing hardware in locked, clean and dry area.
- .3 Package each item of hardware including fastenings, separately or in like groups of hardware, label each package as to item definition and location.

PART 2 **PRODUCTS****2.1** **HARDWARE ITEMS**

- .1 Only door locksets and latches listed on ANSI/BHMA Standards list are acceptable for use on this project.
- .2 Use one manufacturer's products only for similar items.

2.2 **DOOR HARDWARE**

- .1 Locks and latches:
 - .1 Bored and preassembled locks and latches: to ANSI/BHMA A156.2, 4000 bored lock, grade 1.
 - .2 Mortise locks and latches: to ANSI/BHMA A156.3, series 1000 mortise lock.
 - .3 Knobs Lever handles: plain design.
 - .4 Normal strikes: box type, lip projection not beyond jamb.
 - .5 Finished to BHMA 626.
 - .6 Exterior Doors – Von Duprin 992L– MK.
- .2 Butts and hinges:
 - .1 Butts and hinges: to ANSI/BHMA A156.1, NRP feature on exterior and out-swing locked door, non-ferrous hinges to be used. Use hinge to manufacturer's guidelines for size and quantity of hinges.
 - .2 CB81 4 ½ x 4 652.
- .3 Exit devices:
 - .1 to ANSI/BHMA A156.3. Rim type with push pad design.
 - .2 Von Duprin 99 626.
- .4 Door Closers and Accessories:
 - .1 Door controls (closers): to ANSI/BHMA A156.4, sized to manufacturer's recommendation. Double lever, non-metallic cover painted finish. Exterior to CO2041 x CO2191, interior to CO2011.
 - .2 4041 EDA TB 689.
- .5 Door bottom seal: heavy duty, door seal of extruded aluminum frame and hollow closed cell neoprene weather seal, surface mounted with drip cap closed ends, clear anodized finish.
- .6 Thresholds: to ANSI/BHMA A156.21 extruded aluminum mill finish, serrated surface, with lip and vinyl door seal insert. Minimum 125 mm wide 2 full width of door opening.

- .1 179 AP
- .7 Astragal by Hager (flat)
- .8 Weatherstripping:
 - .1 Head and jamb seal:
 - .1 Extruded aluminum frame and solid closed cell neoprene insert, clear anodized finish.
 - .2 332 CS.

2.3 FASTENINGS

- .1 Use only fasteners provided by manufacturer. Failure to comply may void warranties and applicable licensed labels.
- .2 Supply screws, bolts, expansion shields and other fastening devices required for satisfactory installation and operation of hardware.
- .3 Exposed fastening devices to match finish of hardware.
- .4 Use fasteners compatible with material through which they pass.

PART 3 EXECUTION

3.1 MANUFACTURER'S INSTRUCTIONS

- .1 Compliance: comply with manufacturer's written data, including product technical bulletins, product catalogue installation instructions, product carton installation instructions, and data sheets.
- .2 Furnish metal door and frame manufacturers with complete instructions and templates for preparation of their work to receive hardware.
- .3 Furnish manufacturers' instructions for proper installation of each hardware component.

3.2 INSTALLATION

- .1 Install hardware to standard hardware location dimensions in accordance with Canadian Metric Guide for Steel Doors and Frames (Modular Construction) prepared by Canadian Steel Door and Frame Manufacturers' Association.

3.3 EXAMINATION

- .1 Visit site prior to start of installation of hardware.

- .2 Visit will include examination of openings, site conditions and materials for conditions that prevent proper application of finish hardware.
- .3 Installation will imply conditions for installation acceptable hardware contractor to accept responsibility.

3.4 ADJUSTING

- .1 Adjust door hardware for optimum, smooth operating condition, safety and for weather tight closure.
- .2 Lubricate hardware, operating equipment and other moving parts.
- .3 Adjust door hardware to provide tight fit at contact points with frames.
- .4 Where hardware is found defective, repair or replace or correct as desired by inspection reports.

3.5 CLEANING

- .1 Perform cleaning after installation to remove construction and accumulated environmental dirt.
- .2 Remove protective material from hardware items where present.

3.6 PROTECTION

- .1 All hardware shall be protected against damage from paint, plaster or other defacing materials. Whenever possible manufacturers protective covering when applied, shall not be removed until final project cleaning takes place. Material not protected by manufacture shall be covered or removed from door during painting or any other adjustments that can cause damage to hardware.

END OF SECTION

PART 1 GENERAL**1.1 RELATED SECTIONS**

- .1 Section 07 82 00 – Joint Sealants.
- .2 Section 08 11 14 – Metal Doors & Frames.

1.2 REFERENCES

- .1 American National Standards Institute (ANSI).
 - .1 ANSI/ASTM E330, Test Method for Structural Performance of Exterior Windows, Doors, Skylights and Curtain Walls by Uniform Static Air Pressure Difference.
- .2 American Society for Testing and Materials (ASTM)
 - .1 ASTM C542, Specification for Lock-Strip Gaskets.
 - .2 ASTM D2240, Test Method for Rubber Property – Durometer Hardness.
- .3 Canadian General Standards Board (CGSB).
 - .1 CAN/CGSB-12.1, Tempered or Laminated Safety Glass.
 - .2 CAN/CGSB-12.3, Clear Float Glass
 - .3 CAN/CGSB-12.5, Mirrors, Silvered.
 - .4 CAN/CGSB-12.8, Insulating Glass Units.
 - .5 CAN/CGSB-12.11, Wired Safety Glass.
- .4 Canadian Standards Association (CSA).
 - .1 CSA A440.2, Energy Performance Evaluation of Windows and Sliding Glass Doors.
 - .2 CSA Certification Program for Windows and Doors.
- .5 Glass Association of North American (GANA)
 - .1 GANA Glazing Manual.
 - .2 GANA Laminated Glazing Reference Manual.

1.3 SYSTEM DESCRIPTION

- .1 Performance Requirements:
 - .1 Provide continuity of building enclosure vapour and air barrier using glass and glazing materials as follow:

- .1 Utilize inner light of multiple light sealed units for continuity of air and vapour seal.
- .2 Size glass to withstand wind loads, dead loads and positive and negative live loads as measured in accordance with ANSI/ASTM E330 and NBC latest edition.
- .3 Limit glass deflection to 1/200 with full recovery of glazing materials.

1.4 SUBMITTALS

- .1 Product Data:
 - .1 Submit manufacturer's printed product literature, specifications and data sheet.
- .2 Manufacturer's Instructions:
 - .1 Submit manufacturer's installation instructions.
- .3 Closeout Submittals:
 - .1 Provide maintenance data including cleaning instructions for incorporation into manual specified in Closeout Submittals

1.5 QUALITY ASSURANCE

- .1 Perform work in accordance with GANA Glazing Manual and Laminated Glazing Reference Manual for glazing installation methods. Provide shop inspection and testing for glass.
- .3 Provide certificate of quality compliance from manufacturer.

1.6 WARRANTY

- .1 Provide ten (10) year warranty for glazing units from the date of Substantial Completion.

1.7 ENVIRONMENTAL REQUIREMENTS

- .1 Install glazing when ambient temperature is 10°C minimum. Maintain ventilated environment for 24 hours after application.
- .2 Maintain minimum ambient temperature before, during and 24 hours after installation of glazing compounds.

PART 2 PRODUCTS**2.1 MATERIALS: FLAT GLASS**

- .1 Safety glass: to CAN/CGSB-12.5, transparent, 6 mm thick.
 - .1 Type 1, Laminated, Type 2 - tempered
 - .2 Class B - float
 - .3 Category 11

2.2 MATERIALS: SEALED INSULATING GLASS

- .1 Insulating glass units for exterior steel doors: to CAN/CGSB-12.8, double unit, minimum 25 mm overall thickness (as per NBCC for window area and climatic conditions.)
 - .1 Glass: to CAN/CGSB-12.1, tempered.
 - .2 Glass thickness: minimum 6 mm each light (as per NBCC for window area and climatic conditions.)
 - .3 Inner-cavity space thickness: 13 mm.
 - .4 Glass coating: surface number 2 (inside face of outer light), low “E”.
 - .5 Inert gas: argon.

2.3 MATERIALS

- .1 Sealant: 07 92 00 – Joint Sealants.

2.4 ACCESSORIES

- .1 Setting blocks: Neoprene, 80-90 Shore A durometer hardness to ASTM D2240, minimum 100 mm x width of glazing rabbet space minus 1.5 mm x height.
- .2 Spacer shims: Neoprene, 50-60 Shore A durometer hardness to ASTM D2240, 75 mm long x one half height of glazing stop x thickness to suit application. Self adhesive on one face.
- .3 Glazing tape:
 - .1 Preformed butyl compound with integral resilient tube spacing device, 10-15 Shore A durometer hardness to ASTM D2240; coiled on release paper; black colour.
- .4 Glazing splines: resilient polyvinyl chloride, extruded shape to suit glazing channel retaining slot, colour as selected.
- .5 Glazing clips: manufacturer's standard type.
- .6 Lock-strip gaskets: to ASTM C542.

PART 3 **EXECUTION****3.1** **MANUFACTURER'S INSTRUCTIONS**

- .1 Compliance: Comply with manufacturer's written data, including product technical bulletins, product catalogue installation instructions, product carton installation instructions, and data sheets.

3.2 **EXAMINATION**

- .1 Verify that openings for glazing are correctly sized and within tolerance.
- .2 Verify that surfaces of glazing channels or recesses are clean, free of obstructions, and ready to receive glazing.

3.3 **PREPARATION**

- .1 Clean contact surfaces with solvent and wipe dry.
- .2 Seal porous glazing channels or recesses with substrate compatible primer or sealer.
- .3 Prime surfaces scheduled to receive sealant.

3.4 **INSTALLATION: EXTERIOR – WET/DRY METHOD (PREFORMED TAPE AND SEALANT)**

- .1 Perform work in accordance with GANA Glazing Manual and GANA Laminated Glazing Reference Manual for glazing installation methods.
- .2 Cut glazing tape to length and set against permanent stops, 6 mm below sight line. Seal corners by butting tape and dabbing with sealant.
- .3 Apply heel bead of sealant along intersection of permanent stop with frame ensuring full perimeter seal between glass and frame to complete continuity of air and vapour seal.
- .4 Place setting blocks at 1/4 points, with edge block maximum 150 mm from corners.
- .5 Rest glazing on setting blocks and push against tape and heel of sealant with sufficient pressure to attain full contact at perimeter of light or glass unit.
- .6 Install removable stops with spacer strips inserted between glazing and applied stops 6 mm below sight line.

- .7 Fill gap between glazing and stop with sealant to depth equal to bite of frame on glazing, maximum 9 mm below sight line.
- .8 Apply cap head of sealant along void between stop and glazing, to uniform line, flush with sight line. Tool or wipe sealant surface smooth.

3.5 INSTALLATION: INTERIOR DRY METHOD (TAPE AND TAPE)

- .1 Perform work in accordance with GANA Glazing Manual and GANA Laminated Glazing Reference Manual for glazing installation methods.
- .2 Cut glazing tape to length and set against permanent stops, projecting 1.6 mm above sight line.
- .3 Place setting blocks at 1/4 with edge block maximum 150 mm from corners.
- .4 Rest glazing on setting blocks and push against tape with sufficient pressure to attain full contact at perimeter of light or glass unit.
- .5 Place glazing tape on free perimeter of glazing in same manner described in 3.4.3. Apply heel bead of sealant along intersection of permanent stop with frame ensuring full perimeter seal between glass and frame to complete continuity of air and vapour seal.
- .6 Install removable stop without displacement of tape. Exert pressure on tape for full continuous contact.
- .7 Knife trim protruding tape.

3.6 CLEANING

- .1 Perform cleaning after installation to remove construction and accumulated environmental dirt.
- .2 Remove traces of primer, caulking.
- .3 Remove glazing materials from finish surfaces.
- .4 Remove labels after work is complete.
- .5 Clean glass and mirrors using approved non-abrasive cleaner in accordance with manufacture's instructions.
- .6 Upon completion of installation, remove surplus materials, rubbish, tools and equipment barriers.

3.7 PROTECTION OF FINISHED WORK

- .1 After installation, mark light with an "X" by using removable plastic tape or paste. Do not mark heat absorbing or reflective glass units.
- .2 Repair damage to adjacent materials caused by glazing installation.

END OF SECTION

PART 1 **GENERAL****1.1** **RELATED SECTIONS**

- .1 Section 01 33 00 - Submittal Procedures.
- .2 Section 01 74 21 – Construction/Demolition Waste Management and Disposal.
- .3 Section 06 10 53 – Miscellaneous Rough Carpentry.

1.2 **REFERENCES**

- .1 American Society for Testing and Materials, (ASTM)
 - .1 ASTM C475, Specification for Joint Compound and Joint Tape for Finishing Gypsum Board.
 - .2 ASTM C514, Specification for Nails for the Application of Gypsum Board.
 - .3 ASTM C840, Specification for Application and Finishing of Gypsum Board.
 - .4 ASTM C954, Specification for Steel Drill Screws for the Application of Gypsum Panel Products or Metal Plaster Bases to Steel Studs From 0.033 in. (0.84 mm) to 0.112 in. (2.84 mm) in Thickness.
 - .5 ASTM C1002, Specification for Steel Self-Piercing Tapping Screws for the Application of Gypsum Panel Products or Metal Plaster Bases to Wood Studs or Steel Studs.
 - .6 ASTM C1047, Specification for Accessories for Gypsum Wallboard and Gypsum Veneer Base.
 - .7 ASTM C1280, Standard Specification for Application of Gypsum Sheathing.
 - .8 ASTM C1177/C1177M, Standard Specification for Glass Mat Gypsum Substrate for Use as Sheathing.
 - .9 ASTM C1178/C1178M, Standard Specification for Glass Mat Water-Resistant Gypsum Backing Board.
 - .10 ASTM C1396/C1396M, Standard Specification for Gypsum Wallboard.
- .2 Association of the Wall and Ceilings Industries International (AWCI)
 - .1 AWCI Levels of Gypsum Board Finish.
- .3 Canadian General Standards Board (CGSB)
 - .1 CAN/CGSB-51.34, Vapour Barrier, Polyethylene Sheet for Use in Building Construction.

.4 Underwriters' Laboratories of Canada (ULC)

- .1 CAN/ULC-S102, Surface Burning Characteristics of Building Materials and Assemblies.

1.3 SUBMITTALS

- .1 Submit 300 mm size samples of corner and casing beads insulating strip.

1.4 DELIVERY, STORAGE AND HANDLING

- .1 Deliver materials in original packages, containers or bundles bearing manufacturers brand name and identification.
- .2 Store materials inside, level, under cover. Keep dry. Protect from weather, other elements and damage from construction operations and other causes.
- .3 Handle gypsum boards to prevent damage to edges, ends or surfaces. Protect metal accessories and trim from being bent or damaged.

1.5 SITE ENVIRONMENTAL REQUIREMENTS

- .1 Maintain temperature minimum 10° C, maximum 21° C for 48 hours prior to and during application of gypsum boards and joint treatment, and for at least 48 hours after completion of joint treatment.
- .2 Apply board and joint treatment to dry, frost free surfaces.
- .3 Ventilation: Ventilate building spaces as required to remove excess moisture that would prevent drying of joint treatment material immediately after its application.

1.6 QUALIFICATIONS

- .1 Dry wall installers: minimum 5 years proven experience.

1.7 MOCKUPS

- .1 Submit Mock-Ups in accordance with Section 01 45 00 – Quality Control.
- .2 Construct mock up gypsum board wall installation including one inside corner and one outside corner. Mock-up may be part of finished work.
- .3 Allow two (2) working days for inspection of mock-up by Owner's Representative before proceeding with rest of the work.
- .4 When accepted, mock-up will demonstrate minimum standard for this work. Mock-up may remain as part of finished work.

PART 2 **PRODUCTS****2.1** **MATERIALS**

- .1 Standard board: to ASTM C1396/C1396M regular and Type X, thicknesses as indicated on drawings, 1200 mm wide x maximum practical length, ends square cut, edges bevelled.
- .2 Glass mat water-resistant gypsum board: to ASTM C1178/C1178M with glass mat facings, both sides, regular and Type X, thicknesses as indicated on drawings, 1200 mm wide x maximum practical length, ends square cut, long edges tapered.
- .3 Glass mat exterior gypsum board sheathing: to ASTM C1177/C1177M regular and Type X, thicknesses as indicated on drawings, 1200 mm wide x maximum practical length, ends and long edges square cut.
- .4 Metal furring runners, hangers, tie wires, inserts, anchors: to CSA A82.30 galvanized.
- .5 Drywall furring channels: 0.5 mm core thickness galvanized steel channels for screw attachment of gypsum board.
- .6 Resilient drywall furring: 0.5 mm base steel thickness galvanized steel for resilient attachment of gypsum board.
- .7 Nails: to ASTM C514.
- .8 Steel drill screws: to ASTM C1002.
- .9 Stud adhesive: to CAN/CGSB-71.25.
- .10 Laminating compound: as recommended by manufacturer, asbestos-free.
- .11 Casing beads, corner beads, control joints and edge trim: to ASTM C1047, metal, zinc-coated by hot-dip process 0.5 mm base thickness, perforated flanges, one piece length per location.
- .12 Sealants: in accordance with Section 07 92 00 - Joint Sealing.
- .13 Acoustic sealant: to CGSB 19-GP-21M.
- .14 Polyethylene: to CAN/CGSB-51.34, Type 2.
- .15 Insulating strip: rubberized, moisture resistant, 3 mm thick cork strip, 12 mm wide, with self sticking permanent adhesive on one face, lengths as required.
- .16 Joint compound: to ASTM C475, asbestos-free.

2.2 FINISHES

- .1 Texture finish: asbestos-free standard white texture coating and primer-sealer, recommended by gypsum board manufacturer.

PART 3 EXECUTION**3.1 ERECTION**

- .1 Do application and finishing of gypsum board in accordance with ASTM C840 except where specified otherwise.
- .2 Do application of gypsum sheathing to ASTM C1280.
- .3 Erect hangers and runner channels for suspended gypsum board ceilings in accordance with ASTM C840 except where specified otherwise.
- .4 Support light fixtures by providing additional ceiling suspension hangers within 150 mm of each corner and at maximum 600 mm around perimeter of fixture.
- .5 Install work level to tolerance of 1:1200.
- .6 Frame with furring channels, perimeter of openings for access panels, light fixtures, diffusers, grilles, and other protrusions.
- .7 Install 19 x 64 mm furring channels parallel to, and at exact locations of steel stud partition header track.
- .8 Furr for gypsum board faced vertical bulkheads within and at termination of ceilings.
- .9 Furr above suspended ceilings for gypsum board fire and sound stops and to form plenum areas as indicated.
- .10 Install wall furring for gypsum board wall finishes in accordance with ASTM C840, except where specified otherwise.
- .11 Furr openings and around built-in equipment, cabinets, access panels, on four sides. Extend furring into reveals. Check clearances with equipment suppliers.
- .12 Furr duct shafts, beams, columns, pipes and exposed services where indicated.

3.2 APPLICATION

- .1 Do not apply gypsum board until bucks, anchors, blocking, sound attenuation, electrical and mechanical work are approved.
- .2 Apply single/double layer gypsum board to wood or metal furring or framing using screw fasteners. Maximum spacing of screws 300 mm oc.
 - .1 Single-Layer Application:
 - .1 Apply gypsum board on ceilings prior to application of walls in accordance with ASTM C840.
 - .2 Apply gypsum board vertically or horizontally, providing sheet lengths that will minimize end joints.
 - .2 Double-Layer Application:
 - .1 Install gypsum board for base layer and exposed gypsum board for face layer.
 - .2 Apply base layer to ceilings prior to base layer application on walls; apply face layers in same sequence. Offset joints between layers at least 250 mm.
 - .3 Apply base layers at right angles to supports unless otherwise indicated.
 - .4 Apply base layer on walls and face layers vertically with joints of base layer over supports and face layer joints offset at least 250 mm with base layer joints.
- .3 Apply single layer gypsum board to concrete or concrete block surfaces, where indicated, using laminating adhesive.
 - .1 Comply with gypsum board manufacturer's recommendations.
 - .2 Brace or fasten gypsum board until fastening adhesive has set.
 - .3 Mechanically fasten gypsum board at top and bottom of each sheet.
- .4 Apply water-resistant gypsum board where wall tiles are to be applied and adjacent to slop sinks janitors closets. Apply water-resistant sealant to edges, ends, cut-outs which expose gypsum core and to fastener heads. Do not apply joint treatment on areas to receive tile finish.
- .5 Apply 12 mm diameter bead of acoustic sealant continuously around periphery of each face of partitioning to seal gypsum board/structure junction where partitions abut fixed building components. Seal full perimeter of cut-outs around electrical boxes, ducts, in partitions where perimeter sealed with acoustic sealant.
- .6 Install ceiling boards in direction that will minimize number of end-butt joints. Stagger end joints at least 250 mm.

- .7 Install gypsum board on walls vertically to avoid end-butt joints. At stairwells and similar high walls, install boards horizontally with end joints staggered over studs, except where local codes or fire-rated assemblies require vertical application.
- .8 Install gypsum board with face side out.
- .9 Do not install damaged or damp boards.
- .10 Locate edge or end joints over supports. Stagger vertical joints over different studs on opposite sides of wall.

3.3 INSTALLATION

- .1 Erect accessories straight, plumb or level, rigid and at proper plane. Use full length pieces where practical. Make joints tight, accurately aligned and rigidly secured. Mitre and fit corners accurately, free from rough edges. Secure at 150 mm oc using contact adhesive for full length.
- .2 Install casing beads around perimeter of suspended ceilings.
- .3 Install casing beads where gypsum board butts against surfaces having no trim concealing junction and where indicated. Seal joints with sealant.
- .4 Install insulating strips continuously at edges of gypsum board and casing beads abutting metal window and exterior door frames, to provide thermal break.
- .5 Construct control joints of two back-to-back casing beads set in gypsum board facing and supported independently on both sides of joint.
- .6 Provide continuous polyethylene dust barrier behind and across control joints.
- .7 Locate control joints at changes in substrate construction.
- .8 Install control joints straight and true.
- .9 Construct expansion joints as detailed, at building expansion and construction joints. Provide continuous dust barrier.
- .10 Install expansion joint straight and true.
- .11 Install access doors to electrical and mechanical fixtures specified in respective sections.
 - .1 Rigidly secure frames to furring or framing systems.

- .12 Finish face panel joints and internal angles with joint system consisting of joint compound, joint tape and taping compound installed according to manufacturer's directions and feathered out onto panel faces.
- .13 Gypsum Board Finish: finish gypsum board walls and ceilings to following levels in accordance with Association of the Wall and Ceiling Industries (AWCI) International Recommended Specification on Levels of Gypsum Board Finish:
 - .1 Levels of finish:
 - .1 Level 2: Embed tape for joints and interior angles in joint compound and apply one separate coat of joint compound over joints, angles, fastener heads and accessories; surfaces free of excess joint compound; tool marks and ridges are acceptable. (For use where water resistant gypsum backing board is used as a substrate for tile.)
 - .2 Level 4: Embed tape for joints and interior angles in joint compound and apply three separate coats of joint compound over joints, angles, fastener heads and accessories; surfaces smooth and free of tool marks and ridges.
- .14 Finish corner beads, control joints and trim as required with two coats of joint compound and one coat of taping compound, feathered out onto panel faces.
- .15 Fill screw head depressions with joint and taping compounds to bring flush with adjacent surface of gypsum board so as to be invisible after surface finish is completed.
- .16 Sand lightly to remove burred edges and other imperfections. Avoid sanding adjacent surface of board.
- .17 Completed installation to be smooth, level or plumb, free from waves and other defects and ready for surface finish.
- .18 Apply one coat of white primer sealer over surface to be textured. When dry apply textured finish in accordance with manufacturer's instructions.
- .19 Mix joint compound slightly thinner than for joint taping.
- .20 Apply thin coat to entire surface using trowel or drywall broadknife to fill surface texture differences, variations or tool marks.
- .21 Allow skim coat to dry completely.
- .22 Remove ridges by light sanding or wiping with damp cloth.

- .23 Provide protection that ensures gypsum drywall work will remain without damage or deterioration at time of substantial completion.

3.4 SCHEDULES

- .1 Construct fire rated assemblies where indicated, seal penetrations, as per Section 07 84 00 – Firestopping.

END OF SECTION

PART 1 **GENERAL****1.1** **REFERENCES**

- .1 Environmental Protection Agency (EPA)
 - .1 EPA Test Method for Measuring Total Volatile Organic Compound Content of Consumer Products, Method 24 (for Surface Coatings).
- .2 Master Painters Institute (MPI)
 - .1 MPI Architectural Painting Specifications Manual
- .3 Society for Protective Coatings (SSPC).
 - .1 SSPC Painting Manual, Systems and Specifications Manual.
- .4 National Research Council (NRC).
 - .1 National Fire Code of Canada

1.2 **QUALITY ASSURANCE**

- .1 Contractor shall have a minimum of five years proven satisfactory experience. When requested, provide a list of last three comparable jobs including, job name and location, specifying authority, and project manager.
- .2 Qualified journeyperson shall be engaged in painting work. Apprentices may be employed provided they work under the direct supervision of a qualified journeyperson in accordance with trade regulations.
- .3 Conform to latest MPI requirements for exterior painting work including preparation and priming.
- .4 Materials (primers, paints, coatings, varnishes, stains, lacquers, fillers, thinners, solvents, etc.) shall be in accordance with MPI Painting Specification Manual "Approved Products" listing and shall be from a single manufacturer for each system used.
- .5 Other paint materials such as linseed oil, shellac, turpentine, etc. shall be the highest quality product of an approved manufacturer listed in MPI Painting Specification Manual and shall be compatible with other coating materials as required.
- .6 Retain purchase orders, invoices and other documents to prove conformance with noted MPI requirements when requested by Owner's Representative.

- .7 Standard of Acceptance:
 - .1 Walls: No defects visible from a distance of 1000 mm at 90° to surface.
 - .2 Ceilings: No defects visible from floor at 45° to surface when viewed using final lighting source.
 - .3 Final coat to exhibit uniformity of colour and uniformity of sheen across full surface area.

1.3 ENVIRONMENTAL PERFORMANCE REQUIREMENTS

- .1 Provide paint products meeting MPI "Environmentally Friendly" E2 or E3 ratings based on VOC (EPA Method 24) content levels.

1.4 SCHEDULING OF WORK

- .1 Submit work schedule for various stages of painting to Owner's Representative for approval. Submit schedule minimum of two (2) working days in advance of proposed operations.
- .2 Obtain written authorization from Owner's Representative for changes in work schedule.
- .3 Schedule painting operations to prevent disruption of occupants in and about the building.

1.5 SUBMITTALS

- .1 Submit product data and manufacturer's installation/application instructions for paints and coating products to be used.
- .2 Submit WHMIS - MSDS - Material Safety Data Sheets.
- .3 Upon completion, submit records of products used, records to be included in Operation and Maintenance Manuals. List products in relation to finish system and include the following:
 - .1 Product name, type and use.
 - .2 Manufacturer's product number.
 - .3 Colour numbers.
 - .4 Manufacturer's Material Safety Data Sheets (MSDS).
 - .5 MPI Environmentally Friendly classification system rating.
- .4 Submit manufacturer's application instructions for each product specified.
- .5 Submit duplicate 200 x 300 mm sample panels of each paint, stain, clear coating, with specified paint or coating in colours, gloss/sheen and

textures required to MPI Painting Specification Manual standards submitted on the following substrate materials:

- .1 3 mm plate steel for finishes over metal surfaces.
- .2 13 mm birch plywood for finishes over wood surfaces.
- .3 50 mm concrete block for finishes over concrete or concrete masonry surfaces.
- .4 13 mm gypsum board for finishes over gypsum board and other smooth surfaces.
- .6 When approved, samples shall become acceptable standard of quality for appropriate on-site surface with one of each sample retained on-site.
- .7 Submit full range of available colours where colour availability is restricted.

1.6 DELIVERY, HANDLING AND STORAGE

- .1 Deliver, store and handle materials in accordance with Manufactures recommendations.
- .2 Deliver and store materials in original containers, sealed, with labels intact.
- .3 Labels shall clearly indicate:
 - .1 Manufacturer's name and address.
 - .2 Type of paint or coating.
 - .3 Compliance with applicable standard.
 - .4 Colour number in accordance with established colour schedule.
- .4 Remove damaged, opened and rejected materials from site.
- .5 Provide and maintain dry, temperature controlled, secure storage.
- .6 Observe manufacturer's recommendations for storage and handling.
- .7 Store materials and supplies away from heat generating devices.
- .8 Store materials and equipment in a well ventilated area with temperature range 7°C to 30°C.
- .9 Store temperature sensitive products above minimum temperature as recommended by manufacturer.
- .10 Keep areas used for storage, cleaning and preparation, clean and orderly to approval of Consultant. After completion of operations, return areas to clean condition to approval of Consultant.

- .11 Remove paint materials from storage only in quantities required for same day use.
- .12 Comply with requirements of Workplace Hazardous Materials Information System (WHMIS) regarding use, handling storage, and disposal of hazardous materials.
- .13 Fire Safety Requirements:
 - .1 Provide one 9 kg Type ABC dry chemical fire extinguisher adjacent to storage area.
 - .2 Store oily rags, waste products, empty containers and materials subject to spontaneous combustion in ULC approved, sealed containers and remove from site on a daily basis.
 - .3 Handle, store, use and dispose of flammable and combustible materials in accordance with the National Fire Code of Canada.
- .14 Comply with requirements of Workplace Hazardous Materials Information System (WHMIS) regarding use, handling, storage, and disposal of hazardous materials.

1.7 SITE REQUIREMENTS

- .1 Heating, Ventilation and Lighting:
 - .1 Ventilate enclosed spaces.
 - .2 Perform no painting work unless adequate and continuous ventilation and sufficient heating facilities are in place to maintain ambient air and substrate temperatures above 10°C for 24 hours before, during and after paint application until paint has cured sufficiently.
 - .3 Where required, provide continuous ventilation for seven days after completion of application of paint.
 - .4 Provide temporary ventilating and heating equipment where permanent facilities are not available.
 - .5 Perform no painting work unless a minimum lighting level of 323 Lux is provided on surfaces to be painted. Adequate lighting facilities shall be provided by General Contractor.
- .2 Temperature, Humidity and Substrate Moisture Content Levels:
 - .1 Unless specifically pre-approved by Owner's Representative and, applied product manufacturer, perform no painting work when:
 - .1 ambient air and substrate temperatures are below 10°C.
 - .2 substrate temperature is over 32°C unless paint is specifically formulated for application at high temperatures.

- .3 substrate and ambient air temperatures are expected to fall outside MPI or paint manufacturer's prescribed limits.
- .4 the relative humidity is above 85% or when dew point is less than 3°C variance between air/surface temperature.
- .5 rain or snow are forecast to occur before paint has thoroughly cured or when it is foggy, misty, raining or snowing at site.
- .2 Perform no painting work when maximum moisture content of substrate exceeds:
 - .1 12% for concrete and masonry (clay and concrete brick/block).
 - .2 15% for wood.
 - .3 12% for plaster and gypsum board.
- .3 Conduct moisture tests using a properly calibrated electronic Moisture Meter, except test concrete floors for moisture using a simple "cover patch test".
- .4 Test concrete, masonry and plaster surfaces for alkalinity as required.
- .3 Surface and Environmental Conditions:
 - .1 Apply paint finish only in areas where dust is no longer being generated by related construction operations or when wind or ventilation conditions are such that airborne particles will not affect quality of finished surface.
 - .2 Apply paint only to adequately prepared surfaces and to surfaces within moisture limits noted herein.
 - .3 Apply paint only when previous coat of paint is dry or adequately cured.
 - .4 Apply paint finishes only when conditions forecast for entire period of application fall within manufacturer's recommendations.
 - .5 Do not apply paint when:
 - .1 Temperature is expected to drop below 10°C before paint has thoroughly cured.
 - .2 Substrate and ambient air temperatures are expected to fall outside MPI or paint manufacturer's limits.
 - .3 Surface to be painted is wet, damp or frosted.
 - .6 Provide and maintain cover when paint must be applied in damp or cold weather. Heat substrates and surrounding air to comply with temperature and humidity conditions specified by manufacturer. Protect until paint is dry or until weather conditions are suitable.
 - .7 Schedule painting operations such that surfaces exposed to direct, intense sunlight are scheduled for completion during early morning.

- .8 Remove paint from areas which have been exposed to freezing, excess humidity, rain, snow or condensation. Prepare surface again and repaint.
- .9 Paint occupied facilities in accordance with approved schedule only. Schedule operations to approval of the Owner's Representative such that painted surfaces will have dried and cured sufficiently before occupants are affected.

1.8 WASTE MANAGEMENT AND DISPOSAL

- .1 Separate waste materials for reuse and recycling in accordance with Division 1 of the Master Municipal Specifications.
- .2 Remove from site and dispose of packaging materials at appropriate recycling facilities.
- .3 Place materials defined as hazardous or toxic in designated containers.
- .4 Ensure emptied containers are sealed and stored safely.
- .5 Unused paint, coating materials must be disposed of at official hazardous material collections site as approved by Owner's Representative.
- .6 Paint, stain and wood preservative finishes and related materials (thinners, and solvents) are regarded as hazardous products and are subject to regulations for disposal.
- .7 Material which cannot be reused must be treated as hazardous waste and disposed of in an appropriate manner.
- .8 Place materials defined as hazardous or toxic waste, including used sealant and adhesive tubes and containers, in containers or areas designated for hazardous waste.
- .9 To reduce the amount of contaminants entering waterways, sanitary/storm drain systems or into ground follow these procedures:
 - .1 Retain cleaning water for water-based materials to allow sediments to be filtered out.
 - .2 Retain cleaners, thinners, solvents and excess paint and place in designated containers and ensure proper disposal.
 - .3 Return solvent and oil soaked rags used during painting operations for contaminant recovery, proper disposal, or appropriate cleaning and laundering.
 - .4 Dispose of contaminants in approved legal manner in accordance with hazardous waste regulations.

- .10 Empty paint cans are to be dry prior to disposal or recycling (where available).

PART 2 **PRODUCTS**

2.1 MATERIALS

- .1 Paint materials listed in the latest edition of the MPI Approved Products List (APL) are acceptable for use on this project.
- .2 Paint materials for each coating formula to be products of a single manufacturer.
- .3 Low odour products: whenever possible, select products exhibiting low odour characteristics. If two products are otherwise equivalent, select the product with the lowest odour. Only qualified products with E2 or E3 "Environmentally Friendly" rating are acceptable for use on this project.
- .4 Paints, coatings, adhesives, solvents, cleaners, lubricants, and other fluids, shall:
 - .1 be water-based, water soluble, water clean-up.
 - .2 be non-flammable
 - .3 be manufactured without compounds which contribute to ozone depletion in the upper atmosphere.
 - .4 be manufactured without compounds which contribute to smog in the lower atmosphere.
 - .5 do not contain methylene chloride, chlorinated hydrocarbons, toxic metal pigments.
- .5 Water-borne surface coatings must be manufactured and transported in a manner that steps of processes, including disposal of waste products arising therefrom, will meet requirements of applicable governmental acts, by-laws and regulations including, for facilities located in Canada, Fisheries Act and Canadian Environmental Protection Act (CEPA).
- .6 Water-borne surface coatings must not be formulated or manufactured with aromatic solvents, formaldehyde, halogenated solvents, mercury, lead, cadmium, hexavalent chromium or their compounds.
- .7 Water-borne surface coatings must have a flash point of 61.0°C or greater.
- .8 Both water-borne surface coatings and recycled water-borne surface coatings must be made by a process that does not release:
 - .1 Matter in undiluted production plant effluent generating a 'Biochemical Oxygen Demand' (BOD) in excess of 15 mg/L to a

natural watercourse or a sewage treatment facility lacking secondary treatment.

- .2 Total Suspended Solids (TSS) in undiluted production plant effluent in excess of 15 mg/L to a natural watercourse or a sewage treatment facility lacking secondary treatment.
- .9 Water-borne paints and stains, and water borne varnishes must meet a minimum "Environmentally Friendly" E2 rating.

2.2 COLOURS

- .1 Owner's Representative will provide Colour Schedule after Contract award.
- .2 Selection of colours will be from manufacturer's full range of colours.
- .3 Where specific products are available in a restricted range of colours, selection will be based on the limited range.
- .4 Second coat in a three coat system to be tinted slightly lighter colour than top coat to show visible difference between coats.
- .5 For deep and ultra-deep colours 4 coats may be required.

2.3 MIXING AND TINTING

- .1 Perform colour tinting operations prior to delivery of paint to site. On-site tinting of painting materials is allowed only with Owner's Representative written permission.
- .2 Paste, powder or catalyzed paint mixes shall be mixed in strict accordance with manufacturer's written instructions.
- .3 Where thinner is used, addition shall not exceed paint manufacturer's recommendations. Do not use kerosene or any such organic solvents to thin water-based paints.
- .4 Thin paint for spraying according in strict accordance with paint manufacturer's instructions. If directions are not on container, obtain instructions in writing from manufacturer and provide copy of instructions to Owner's Representative.
- .5 Re-mix paint in containers prior to and during application to ensure break-up of lumps, complete dispersion of settled pigment, and colour and gloss uniformity.

2.4 GLOSS/SHEEN RATINGS

- .1 Paint gloss shall be defined as the sheen rating of applied paint, in accordance with the following values:

Gloss Level /Category	Units @ 60°/	Units @ 85°
G1 - matte finish	0 to 5	max. 10
G2 - velvet finish	0 to 10	10 to 35
G3 - eggshell finish	10 to 25	10 to 35
G4 - satin finish	20 to 35	min. 35
G5 - semi-gloss finish	35 to 70	
G6 – gloss finish	70 to 85	
G7 - high gloss finish	> 85	

- .2 Gloss level ratings of painted surfaces shall be as specified herein.

2.5 EXTERIOR PAINTING SYSTEMS

- .1 The following paint formulas requires a three coat finish as indicated in the MPI Architectural Painting Specifications Manual.
- .2 Concrete Vertical Surfaces: (including horizontal soffits)
- .1 EXT 3.1A – Latex G4 finish
- .3 Concrete Horizontal Surfaces: decks
- .1 EXT 3.2D - Alkyd floor enamel G4 finish.
- .4 Structural Steel and Metal Fabrications:
- .1 EXT 5.1J - Pigmented polyurethane finish (over high build epoxy).
- .5 Galvanized Metal: not chromate passivated
- .1 EXT 5.3D - Pigmented polyurethane finish for use in high contact/high traffic areas.
- .6 Dimension Lumber: columns, beams, exposed joists, underside of decking, siding, fencing, etc.
- .1 EXT 6.2L - Semi-transparent stain finish.
- .2 EXT 6.2M - Latex G4 finish (over latex primer).
- .7 Dressed Lumber: doors, door and window frames, casings, battens, smooth facias, etc.
- .1 EXT 6.3L - Latex G4 finish (over latex primer)
- .8 Wood Panelling: plywood siding, fascias, soffits, etc.
- .1 EXT 6.4K - Latex G4 finish (over latex primer).

PART 3 **EXECUTION****3.1** **GENERAL**

- .1 Perform preparation and operations for exterior painting in accordance with MPI Painting Specifications Manual except where specified otherwise.
- .2 Apply all paint materials in accordance with paint manufacturer's written application instructions.

3.2 **EXISTING CONDITIONS**

- .1 Investigate existing substrates for problems related to proper and complete preparation of surfaces to be painted. Report to Owner's Representative damages, defects, unsatisfactory or unfavourable conditions before proceeding with work.
- .2 Conduct moisture testing of surfaces to be painted using a properly calibrated electronic moisture meter, except test concrete floors for moisture using a simple "cover patch test" and report findings to Owner's Representative. Do not proceed with work until conditions fall within acceptable range as recommended by manufacturer.
- .3 Maximum moisture content as follows:
 - .1 Concrete: 12%.
 - .2 Clay and Concrete Block/Brick: 12%.
 - .3 Wood: 15%.

3.3 **PROTECTION**

- .1 Protect existing building surfaces and adjacent structures from paint spatters, markings and other damage by suitable non-staining covers or masking. If damaged, clean and restore such surfaces as directed by Owner's Representative.
- .2 Cover or mask windows and other ornamental hardware adjacent to areas being painted to prevent damage and to protect from paint drops and splatters. Use non-staining coverings.
- .3 Protect items that are permanently attached such as Fire Labels on doors and frames.
- .4 Protect factory finished products and equipment.
- .5 Protect passing pedestrians, building occupants and general public in and about the building.

- .6 Remove electrical cover plates, light fixtures, surface hardware on doors, and all other surface mounted fittings, equipment and fastenings prior to undertaking any painting operations. Store for re-installation after painting is completed.
- .7 Cover or move exterior furniture and portable equipment around building as necessary to carry out painting operations. Replace as painting operations progress.
- .8 As painting operations progress, place "WET PAINT" signs in areas of work to approval of Owner's Representative.

3.4 CLEANING AND PREPARATION

- .1 Clean and prepare exterior surfaces in accordance with MPI Painting Specification Manual requirements. Refer to the MPI Manual in regard to specific requirements and as follows:
 - .1 Remove dust, dirt, and other surface debris by wiping with dry, clean cloths or compressed air.
 - .2 Wash surfaces with a biodegradable detergent and bleach where applicable and clean warm water using a stiff bristle brush to remove dirt, oil and other surface contaminants.
 - .3 Rinse scrubbed surfaces with clean water until foreign matter is flushed from surface.
 - .4 Allow surfaces to drain completely and allow to dry thoroughly.
 - .5 Prepare surfaces for water-based painting, water-based cleaners should be used in place of organic solvents.
 - .6 Use trigger operated spray nozzles for water hoses.
 - .7 Many water-based paints cannot be removed with water once dried. However, minimize the use of kerosene or any such organic solvents to clean up water-based paints.
- .2 Prevent contamination of cleaned surfaces before prime coat is applied and between applications of remaining coats. Apply primer, paint, or pretreatment as soon as possible after cleaning and before deterioration occurs.
- .3 Where possible, prime surfaces of new wood surfaces before installation. Use same primers as specified for exposed surfaces.
 - .1 Apply vinyl sealer to MPI #36 over knots, pitch, sap and resinous areas.
 - .2 Apply wood filler to nail holes and cracks.
 - .3 Tint filler to match stains for stained woodwork.

- .4 Sand and dust between coats as required to provide adequate adhesion for next coat and to remove defects visible from a distance up to 1000 mm.
- .5 Clean metal surfaces to be painted by removing rust, loose mill scale, welding slag, dirt, oil, grease and other foreign substances in accordance with MPI requirements. Remove traces of blast products from surfaces, pockets and corners to be painted by brushing with clean brushes or blowing with clean dry compressed air.
- .6 Touch up of shop primers with primer as specified in applicable section. Major touch-up including cleaning and painting of field connections, welds, rivets, nuts, washers, bolts, and damaged or defective paint and rusted areas, shall be by supplier of fabricated material.
- .7 Do not apply paint until prepared surfaces have been accepted by Owner's Representative.

3.5 APPLICATION

- .1 Method of application to be as approved by Owner's Representative. Apply paint by brush roller, air sprayer, airless sprayer. Conform to manufacturer's application instructions unless specified otherwise.
- .2 Brush and Roller Application:
 - .1 Apply paint in a uniform layer using brush and/or roller of types suitable for application.
 - .2 Work paint into cracks, crevices and corners.
 - .3 Paint surfaces and corners not accessible to brush using spray, daubers and/or sheepskins. Paint surfaces and corners not accessible to roller using brush, daubers or sheepskins.
 - .4 Brush and/or roll out runs and sags, and over-lap marks. Rolled surfaces shall be free of roller tracking and heavy stipple.
 - .5 Remove runs, sags and brush marks from finished work and repaint.
- .3 Spray Application:
 - .1 Provide and maintain equipment that is suitable for intended purpose, capable of properly atomizing paint to be applied, and equipped with suitable pressure regulators and gauges.
 - .2 Keep paint ingredients properly mixed in containers during paint application either by continuous mechanical agitation or by intermittent agitation as frequently as necessary.
 - .3 Apply paint in a uniform layer, with overlapping at edges of spray pattern.

- .4 Brush out immediately runs and sags.
- .5 Use brushes to work paint into cracks, crevices and places which are not adequately painted by spray.
- .6 Wood, stucco, concrete, cement masonry units CMU's and brick; if sprayed, must be back rolled.
- .4 Use dipping, sheepskins or daubers only when no other method is practical in places of difficult access and only when specifically authorized by Owner's Representative.
- .5 Apply coats of paint as a continuous film of uniform thickness. Repaint thin spots or bare areas before next coat of paint is applied.
- .6 Allow surfaces to dry and properly cure after cleaning and between subsequent coats for minimum time period as recommended by manufacturer.
- .7 Sand and dust between coats to remove visible defects.
- .8 Finish surfaces both above and below sight lines as specified for surrounding surfaces, including such surfaces as projecting ledges.
- .9 Finish top, bottom, edges and cutouts of doors after fitting as specified for door surfaces.

3.6 FIELD QUALITY CONTROL

- .1 Field inspection of exterior painting operations to be carried out by Owner's Representative.
- .2 Advise Owner's Representative when each applied coating is ready for inspection. Do not proceed with subsequent coats until previous coat has been approved.
- .3 Co-operate with Owner's Representative and provide access to areas of work.
- .4 Where "special" painting, coating or decorating system applications (i.e. elastomeric coatings) or non-MPI listed products or systems are to be used, paint or coating manufacturer to provide as part of this work, certification of surfaces and conditions for specific paint or coating system application as well as on site supervision, inspection and approval of their paint or coating system application as required at no additional cost.

3.7 RESTORATION

- .1 Clean and re-install all hardware items removed before undertaken painting operations.

- .2 Remove protective coverings and warning signs as soon as practical after operations cease.
- .3 Remove paint splashings on exposed surfaces that were not painted. Remove smears and spatter immediately as operations progress, using compatible solvent.
- .4 Protect surfaces from paint droppings and dust to approval of Owner's Representative. Avoid scuffing newly applied paint.
- .5 Restore areas used for storage, cleaning, mixing and handling of paint to clean condition as approved by Owner's Representative.

END OF SECTION

PART 1 **GENERAL****1.1** **REFERENCES**

- .1 Environmental Protection Agency (EPA)
 - .1 EPA Test Method for Measuring Total Volatile Organic Compound Content of Consumer Products, Method 24 (for Surface Coatings).
- .2 Master Painters Institute (MPI)
 - .1 MPI Architectural Painting Specifications Manual.
- .3 Society for Protective Coatings (SSPC)
 - .1 SSPC Painting Manual, Volume Two, Systems and Specifications Manual.
- .4 National Fire Code of Canada.

1.2 **QUALITY ASSURANCE**

- .1 Conform to latest MPI requirements for interior painting work including preparation and priming.

1.3 **ENVIRONMENTAL PERFORMANCE REQUIREMENTS**

- .1 Provide paint products meeting MPI "Environmentally Friendly" E2 or E3 ratings based on VOC (EPA Method 24) content levels.
- .2 Where indoor air quality (odour) is a problem, use only MPI listed materials having a minimum E2 or E3 rating.

1.4 **SUBMITTALS**

- .1 Submit product data and manufacturer's installation/application instructions for each paint and coating product to be
- .2 Submit product data for the use and application of paint thinner.
- .3 Submit WHMIS MSDS - Material Safety Data Sheets. Indicate VOCs during application and curing.
- .4 Upon completion, submit records of products used, records to be included in Operating and Maintenance Manuals. List products in relation to finish system and include the following:
 - .1 Product name, type and use
 - .2 Manufacturer's product number

- .3 Colour numbers
- .4 MPI Environmentally Friendly Classification System Rating
- .5 Manufacturer's Material Safety Data Sheets (MSDS)
- .5 Submit full range colour sample chips to indicate where colour availability is restricted.

1.5 DELIVERY, HANDLING AND STORAGE

- .1 Deliver, store and handle materials in accordance with Manufacturer's Requirements.
- .2 Deliver and store materials in original containers, sealed, with labels intact.
- .3 Labels shall clearly indicate:
 - .1 Manufacturer's name and address.
 - .2 Type of paint or coating.
 - .3 Compliance with applicable standard.
 - .4 Colour number in accordance with established colour schedule.
- .4 Remove damaged, opened and rejected materials from site.
- .5 Provide and maintain dry, temperature controlled, secure storage.
- .6 Observe manufacturer's recommendations for storage and handling.
- .7 Store materials and supplies away from heat generating devices.
- .8 Store materials and equipment in a well ventilated area with temperature range 7° C to 30° C.
- .9 Store temperature sensitive products above minimum temperature as recommended by manufacturer.
- .10 Keep areas used for storage, cleaning and preparation, clean and orderly to approval of Owner's Representative. After completion of operations, return areas to clean condition to approval of Consultant.
- .11 Remove paint materials from storage only in quantities required for same day use.
- .12 Comply with requirements of Workplace Hazardous Materials Information System (WHMIS) regarding use, handling storage, and disposal of hazardous materials.
- .13 Fire Safety Requirements:

- .1 Provide minimum one 9 kg Type ABC dry chemical fire extinguisher adjacent to storage area.
- .2 Store oily rags, waste products, empty containers and materials subject to spontaneous combustion in ULC approved, sealed containers and remove from site on a daily basis.
- .3 Handle, store, use and dispose of flammable and combustible materials in accordance with the National Fire Code of Canada.

1.6 WASTE MANAGEMENT AND DISPOSAL

- .1 Separate waste materials for reuse and recycling in accordance with Manufacturer's Recommendations.
- .2 Remove from site and dispose of packaging materials at appropriate recycling facilities.
- .3 Place materials defined as hazardous or toxic in designated containers.
- .4 Ensure emptied containers are sealed and stored safely.
- .5 Unused paint, coating materials must be disposed of at official hazardous material collections site as approved by Owner's Representative.
- .6 Paint, stain and wood preservative finishes and related materials (thinners, and solvents) are regarded as hazardous products and are subject to regulations for disposal.
- .7 Material which cannot be reused must be treated as hazardous waste and disposed of in an appropriate manner.
- .8 Place materials defined as hazardous or toxic waste, including used sealant and adhesive tubes and containers, in containers or areas designated for hazardous waste.
- .9 To reduce the amount of contaminants entering waterways, sanitary/storm drain systems or into ground follow these procedures:
 - .1 Retain cleaning water for water-based materials to allow sediments to be filtered out.
 - .2 Retain cleaners, thinners, solvents and excess paint and place in designated containers and ensure proper disposal.
 - .3 Return solvent and oil soaked rags used during painting operations for contaminant recovery, proper disposal, or appropriate cleaning and laundering.
 - .4 Dispose of contaminants in approved legal manner in accordance with hazardous waste regulations.

- .5 Empty paint cans are to be dry prior to disposal or recycling (where available).

1.7 SITE CONDITIONS

.1 Heating, Ventilation and Lighting:

- .1 Ventilate enclosed spaces.
- .2 Perform no painting work unless adequate and continuous ventilation and sufficient heating facilities are in place to maintain ambient air and substrate temperatures above 10°C for 24 hours before, during and after paint application until paint has cured sufficiently.
- .3 Where required, provide continuous ventilation for seven days after completion of application of paint.
- .4 Perform no painting work unless a minimum lighting level of 323 Lux is provided on surfaces to be painted. Adequate lighting facilities shall be provided by General Contractor.

.2 Temperature, Humidity and Substrate Moisture Content Levels:

- .1 Unless specifically pre-approved by the specifying body, Paint Inspection Agency and the applied product manufacturer, perform no painting work when:
 - .1 Ambient air and substrate temperatures are below 10°C.
 - .2 Substrate temperature is over 32°C unless paint is specifically formulated for application at high temperatures.
 - .3 Substrate and ambient air temperatures are expected to fall outside MPI or paint manufacturer's prescribed limits.
 - .4 The relative humidity is above 60% or when the dew point is less than 3°C variance between the air/surface temperature.
- .2 Perform no painting work when the maximum moisture content of the substrate exceeds:
 - .1 12% for concrete and masonry (clay and concrete brick/block).
 - .2 15% for wood.
 - .3 12% for plaster and gypsum board.
- .3 Conduct moisture tests using a properly calibrated electronic Moisture Meter, except test concrete floors for moisture using a simple "cover patch test".
- .4 Test concrete, masonry and plaster surfaces for alkalinity as required.

.3 Surface and Environmental Conditions:

- .1 Apply paint finish only in areas where dust is no longer being generated by related construction operations or when wind or ventilation conditions are such that airborne particles will not affect quality of finished surface.
- .2 Apply paint only to adequately prepared surfaces and to surfaces within moisture limits noted herein.
- .3 Apply paint only when previous coat of paint is dry or adequately cured.
- .4 Additional Interior Application Requirements:
 - .1 Apply paint finishes only when temperature at location of installation can be satisfactorily maintained within manufacturer's recommendations.
 - .2 Apply paint in occupied facilities during silent hours only. Schedule operations to approval of Owner's Representative such that painted surfaces will have dried and cured sufficiently before occupants are affected.

PART 2 **PRODUCTS**

2.1 **MATERIALS**

- .1 Paint materials listed in the MPI Approved Products List (APL) are acceptable for use on this project.
- .2 Paint materials for paint systems shall be products of a single manufacturer.
- .3 Low odor products. Whenever possible, select products exhibiting low odor characteristics. If two products are otherwise equivalent, select the product with the lowest odor. Only qualified products with E2 or E3 "Environmentally Friendly" rating are acceptable for use on this project.
- .4 Paints, coatings, adhesives, solvents, cleaners, lubricants, and other fluids, shall:
 - .1 be water-based, water soluble, water clean-up.
 - .2 be non-flammable.
 - .3 be manufactured without compounds which contribute to ozone depletion in the upper atmosphere.
 - .4 be manufactured without compounds which contribute to smog in the lower atmosphere.
 - .5 do not contain methylene chloride, chlorinated hydrocarbons, toxic metal pigments.

- .5 Water-borne surface coatings must be manufactured and transported in a manner that steps of process, including disposal of waste products arising therefrom, will meet requirements of applicable governmental acts, by-laws and regulations including, for facilities located in Canada, Fisheries Act and Canadian Environmental Protection Act (CEPA).
- .6 Water-borne surface coatings must not be formulated or manufactured with aromatic solvents, formaldehyde, halogenated solvents, mercury, lead, cadmium, hexavalent chromium or their compounds.
- .7 Water-borne surface coatings must have a flash point of 61.0°C or greater.
- .8 Both water-borne surface coatings and recycled water-borne surface coatings must be made by a process that does not release:
 - .1 Matter in undiluted production plant effluent generating a 'Biochemical Oxygen Demand' (BOD) in excess of 15 mg/L to a natural watercourse or a sewage treatment facility lacking secondary treatment.
 - .2 Total Suspended Solids (TSS) in undiluted production plant effluent in excess of 15 mg/L to a natural watercourse or a sewage treatment facility lacking secondary treatment.
- .9 Water-borne paints and stains, and water borne varnishes must meet a minimum "Environmentally Friendly" E2 rating.

2.2 COLOURS

- .1 Owner's Representative will provide Colour Schedule after contract award.
- .2 Selection of colours will be from manufacturers full range of colours.
- .3 Where specific products are available in a restricted range of colours, selection will be based on the limited range.
- .4 Second coat in a three coat system to be tinted slightly lighter colour than top coat to show visible difference between coats.

2.3 MIXING AND TINTING

- .1 Perform colour tinting operations prior to delivery of paint to site. On-site tinting of painting materials is allowed only with Owner's Representative written permission.
- .2 Paste, powder or catalyzed paint mixes shall be mixed in strict accordance with manufacturer's written instructions.

- .3 Where thinner is used, addition shall not exceed paint manufacturer's recommendations. Do not use kerosene or any such organic solvents to thin water-based paints.
- .4 Thin paint for spraying according in strict accordance with paint manufacturer's instructions. If directions are not on container, obtain instructions in writing from manufacturer and provide copy of instructions to Owner's Representative.
- .5 Re-mix paint in containers prior to and during application to ensure break-up of lumps, complete dispersion of settled pigment, and colour and gloss uniformity.

2.4 GLOSS/SHEEN RATINGS

- .1 Paint gloss shall be defined as the sheen rating of applied paint, in accordance with the following values:

Gloss Level Category	Units @ 60°	Units @ 85°
G1 - matte finish	max. 5	max. 10
G2 - velvet finish	max. 10	10 to 35
G3 - eggshell finish	10 to 25	10 to 35
G4 - satin finish	20 to 35	min. 35
G5 - semi-gloss finish	35 to 70	
G6 - gloss finish	70 to 85	
G7 - high gloss finish	> 85	

- .2 Gloss level ratings of painted surfaces shall be as specified herein.

2.5 INTERIOR PAINTING SYSTEMS

- .1 The following paint formulas requires a three coat finish as indicated in the MPI Architectural Painting Specifications Manual.
- .2 Concrete Vertical Surfaces: including horizontal soffits
 - .1 INT 3.1A Latex G5 finish (over sealer).
- .3 Concrete Horizontal Surfaces: floors and stairs
 - .1 INT 3.2B Alkyd floor enamel low gloss finish.
- .4 Structural Steel and Metal Fabrications: columns, beams, joists, etc.
 - .1 INT 5.1E Alkyd G5 finish.
- .5 Galvanized Metal: doors, frames, railings, misc. steel, pipes, overhead decking, ducts, etc.
 - .1 INT 5.3A Latex G5 finish.

- .6 Dimension Lumber: columns, beams, exposed joists, underside of decking, etc.
 - .1 INT 6.2D Latex G5 finish (over latex primer).
- .7 Dressed Lumber: including doors, door and window frames casings, mouldings, etc.
 - .1 INT 6.3T Latex G5 finish (over latex primer).
- .8 Wood Paneling and Casework: partitions, panels, shelving, millwork, etc.
 - .1 INT 6.4C Semi-transparent stain finish.

PART 3 **EXECUTION**

3.1 **MANUFACTURER'S INSTRUCTIONS**

- .1 Compliance: comply with manufacturer's written recommendations or specifications, including product technical bulletins, handling, storage and installation instructions, and data sheet.

3.2 **GENERAL**

- .1 Perform preparation and operations for interior painting in accordance with MPI Painting Specifications Manual except where specified otherwise.
- .2 Apply all paint materials in accordance with paint manufacturer's written application instructions.

3.3 **PROTECTION**

- .1 Protect existing building surfaces and adjacent structures from paint spatters, markings and other damage. If damaged, clean and restore such surfaces as directed by Owner's Representative.
- .2 Cover or mask floors, windows and other ornamental hardware adjacent to areas being painted to prevent damage and to protect from paint drops and splatters. Use non-staining coverings.
- .3 Protect items that are permanently attached such as Fire Labels on doors and frames.
- .4 Protect factory finished products and equipment.
- .5 Protect passing pedestrians, building occupants and general public in and about the building.

- .6 Remove electrical cover plates, light fixtures, surface hardware on doors, door stops, bath accessories and other surface mounted fittings and fastenings prior to undertaking any painting operations. Store for re-installation after painting is completed.
- .7 As painting operations progress place "WET PAINT" signs in occupied areas to approval of Owner's Representative.

3.4 EXAMINATION

- .1 Investigate existing substrates for problems related to proper and complete preparation of surfaces to be painted. Report to Owner's Representative all damage, defects, unsatisfactory or unfavourable conditions before proceeding with work.
- .2 Conduct moisture testing of surfaces to be painted using a properly calibrated electronic moisture meter, except test concrete floors for moisture using a simple "cover patch test" and report findings to Owner's Representative. Do not proceed with work until conditions fall within acceptable range as recommended by manufacturer.
- .3 Maximum moisture content as follows:
 - .1 Plaster and wallboard: 12%
 - .2 Masonry/Concrete: 12%
 - .3 Concrete Block/Brick: 12%
 - .4 Wood: 15%

3.5 CLEANING AND PREPARATION

- .1 Clean and prepare surfaces in accordance with MPI Painting Specification Manual requirements. Refer to MPI Manual in regard to specific requirements and as follows:
 - .1 Remove dust, dirt, and other surface debris by vacuuming, wiping with dry, clean cloths or compressed air.
 - .2 Wash surfaces with a biodegradable detergent and bleach where applicable and clean warm water using a stiff bristle brush to remove dirt, oil and other surface contaminants.
 - .3 Rinse scrubbed surfaces with clean water until foreign matter is flushed from surface.
 - .4 Allow surfaces to drain completely and allow to dry thoroughly.
 - .5 Prepare surfaces for water-based painting, water-based cleaners should be used in place of organic solvents.
 - .6 Use trigger operated spray nozzles for water hoses.

- .7 Many water-based paints cannot be removed with water once dried. However, minimize the use of kerosene or any such organic solvents to clean up water-based paints.
- .2 Prevent contamination of cleaned surfaces by salts, acids, alkalis, other corrosive chemicals, grease, oil and solvents before prime coat is applied and between applications of remaining coats. Apply primer, paint, or pretreatment as soon as possible after cleaning and before deterioration occurs.
- .3 Sand existing surfaces with intact, smooth, high gloss coatings to provide adequate adhesion for new finishes.
- .4 Where possible, prime surfaces of new wood surfaces before installation. Use same primers as specified for exposed surfaces.
 - .1 Apply vinyl sealer to MPI #36 over knots, pitch, sap and resinous areas.
 - .2 Apply wood filler to nail holes and cracks.
 - .3 Tint filler to match stains for stained woodwork.
- .5 Sand and dust between coats as required to provide adequate adhesion for next coat and to remove defects visible from a distance up to 1000 mm.
- .6 Clean metal surfaces to be painted by removing rust, loose mill scale, welding slag, dirt, oil, grease and other foreign substances in accordance with MPI requirements. Remove traces of blast products from surfaces, pockets and corners to be painted by brushing with clean brushes blowing with clean dry compressed air, or vacuum cleaning.
- .7 Touch up of shop primers with primer as specified in applicable section. Major touch-up including cleaning and painting of field connections, welds, rivets, nuts, washers, bolts, and damaged or defective paint and rusted areas, shall be by supplier of fabricated material.
- .8 Do not apply paint until prepared surfaces have been accepted by Owner's Representative.

3.6 APPLICATION

- .1 Method of application to be as approved by Owner's Representative. Apply paint by brush, roller, air sprayer, airless sprayer. Conform to manufacturer's application instructions unless specified otherwise.
- .2 Brush and Roller Application:

- .1 Apply paint in a uniform layer using brush and/or roller of types suitable for application.
 - .2 Work paint into cracks, crevices and corners.
 - .3 Brush and/or roll out runs and sags, and over-lap marks. Rolled surfaces shall be free of roller tracking and heavy stipple.
 - .4 Paint surfaces and corners not accessible to brush using spray, daubers and/or sheepskins. Paint surfaces and corners not accessible to roller using brush, daubers or sheepskins.
 - .5 Remove runs, sags and brush marks from finished work and repaint.
- .3 Spray application:
- .1 Provide and maintain equipment that is suitable for intended purpose, capable of properly atomizing paint to be applied, and equipped with suitable pressure regulators and gauges.
 - .2 Keep paint ingredients properly mixed in containers during paint application either by continuous mechanical agitation or by intermittent agitation as frequently as necessary.
 - .3 Apply paint in a uniform layer, with overlapping at edges of spray pattern.
 - .4 Brush out immediately all runs and sags.
 - .5 Use brushes to work paint into cracks, crevices and places which are not adequately painted by spray.
- .4 Use dipping, sheepskins or daubers only when no other method is practical in places of difficult access and only when specifically authorized by Owner's Representative.
- .5 Apply coats of paint as a continuous film of uniform thickness. Repaint thin spots or bare areas before next coat of paint is applied.
- .6 Allow surfaces to dry and properly cure after cleaning and between subsequent coats for minimum time period as recommended by manufacturer.
- .7 Sand and dust between coats to remove visible defects.
- .8 Finish tops of cupboards, cabinets and projecting ledges, both above and below sight lines as specified for surrounding surfaces.
- .9 Finish closets and alcoves as specified for adjoining rooms.
- .10 Finish top, bottom, edges and cutouts of doors after fitting as specified for door surfaces.

3.7 FIELD QUALITY CONTROL

- .1 Field inspection of interior painting operations to be carried out by Owner's Representative.
- .2 Standard of Acceptance:
 - .1 Walls: no defects visible from a distance of 1000 mm at 90 degrees to surface.
 - .2 Ceilings: no defects visible from floor at 45 degrees to surface when viewed using final lighting source.
 - .3 Final coat to exhibit uniformity of colour and uniformity of sheen across full surface area.

3.8 RESTORATION

- .1 Clean and re-install all hardware items removed before undertaken painting operations.
- .2 Remove protective coverings and warning signs as soon as practical after operations cease.
- .3 Remove paint splashings on exposed surfaces that were not painted. Remove smears and spatter immediately as operations progress, using compatible solvent.
- .4 Protect freshly completed surfaces from paint droppings and dust to approval of Owner's Representative. Avoid scuffing newly applied paint.
- .5 Restore areas used for storage, cleaning, mixing and handling of paint to clean condition as approved by Owner's Representative.

END OF SECTION

PART 1 GENERAL**1.1 DESCRIPTION**

- .1 The work covered under this section includes the supply, installation and commissioning a new pumping and control system for the Clarke's Pond Pump house. General work description includes but not limited to:
 - .1 Modifications to the existing piping and valves to accommodate the new system upgrades.
 - .2 New 100hp submersible well pump assembly to match existing.
 - .3 New control valves and pressure transducers.
 - .4 New flow meters
 - .5 New piping, fitting and valves.
 - .6 New VFD's, control panel c/w with graphical display and program logic.

1.2 SHOP DRAWINGS AND PRODUCT DATA

- .1 Submit shop drawings and product data in accordance with Division 1 of the Master Municipal Specifications.
- .2 Indicate:
 - .1 Equipment including connections, piping, and fittings, control assemblies and ancillaries, identifying factory and field assemblies.
 - .2 Certified performance and efficiency pump curves.
 - .3 Wiring as assembled and schematically.
 - .4 Dimensions, construction details and recommended installation.

1.3 MAINTENANCE DATA

- .1 Provide maintenance data for incorporation into manual as per Division 1 of the Master Municipal Specifications.
- .2 Data to include:
 - .1 Manufacturers name, type, model year, capacity and serial number.
 - .2 Details on operation, servicing and maintenance.
 - .3 Recommend spare parts list and addresses of representatives.

1.4 MEASUREMENT FOR PAYMENT

- .1 All costs associated with work in this section shall be deemed to be included in the lump sum price quoted in the Schedule of Prices and

Quantities, including supply, installation and commissioning of all pumps, fittings, valves, transducers, variable speed drives, piping, and all other work necessary to make the system operational (Note a separate line item is included for the control valves and control panel).

PART 2 PRODUCTS

2.1 GENERAL

- .1 All equipment and pumping systems to be completely factory tested, adjusted and shipped to job site as integral units ready to receive for piping and / or electrical connections.

2.2 SUBMERSIBLE WELL PUMP

- .1 The submersible well pump to be 100 HP pump with a capacity of 1150 usgpm @ 125 psi. The submersible pump shall be supplied as can style sealed booster module vertical mounted lift out pitless c/w riser pipe, 200mm flange discharge, including submersible cable wiring from the pump motor to the well cap. Standard of acceptance is Grundfos model 1100S10003AA or approved equal. The following is to be supplied with submersible pump unit:
 - .1 One pitless well adaptor of stainless-steel construction c/w: 300mm upper barrel with 200mm flange discharge connection and 150mm riser pipe connection.
 - .2 Lower barrel to be welded to wet well casing.
 - .3 Lift out bail c/w hold down rods & riser pipe connection
 - .4 Approximately 15m of 150mm submersible pump riser pipe c/w spline couplings for installation and stainless-steel spline adapters, for pump connection & pitless connection
 - .5 300mm Stainless steel casing in wet well
 - .6 The submersible pump shall be equipped with an electrical cable spliced to pump for above ground connection. Approximate cable length of 20m. Contractor to confirm exact length of cable.
 - .7 Pumps fitted with lifting hooks and stainless-steel lifting cable.
- .2 The submersible pump shall be from 100% high-grade stainless steel to ensure efficient corrosion resistance and long product life.
- .3 All pump components shall be 100 % ANSI flanged 304 stainless steel construction. The pumps shall be capable of operating when entirely submersed under water.

- .4 Pump to be equipped with inlet strainer to prevent particles over certain size from entering the pump.
- .5 Pump to be equipped with air purge valve.
- .6 Motors
 - .1 The submersible motors shall be from the same manufacturer to ensure a perfect match in submersible pump applications. And shall be 100% stainless steel motors to ensure long product life.
 - .2 Motor(s) to be VFD compatibility. The motor shall be capable of continuous operation under water at the specified conditions outlined above. A suitable thrust bearing shall be incorporated in the lower end of the motor adequate to receive the entire hydraulic thrust load of the pump unit plus the weight of the rotating parts regardless of the direction of rotation. Motors shall have a 1.15 service factor and be ANSI 304 stainless steel 3 phase / 60 Hz / 575 V NEMA rated motor.
 - .3 Pump motors shall be with a built temperature sensor for protection against overtemperature.
 - .4 The motor leads shall be of sufficient length so that they may be spliced above the pump assembly and the leads shall be protected by a type 316 stainless steel cable guard held in place with stainless steel banding. As the motor lead exits the top of the cable guard to the booster module junction box it shall be properly protected to prevent damaging Pumps and motors to be completely factory assembled, tested and adjusted, and shipped to the job site ready for piping and electrical connections.
- .7 All pump/motor combinations shall have an operating hydraulic curve that does not exceed the motor horsepower curve for its full range under any flow condition, regardless of head.
- .8 Air release vales to be installed as recommended by the pump manufacturer.
- .9 Shaft Seal: Ceramic / tungsten carbide materials to provide optimum sealing, optimum wear resistance and long life.
- .10 The pumping system shall have a local authorized service representative. Pumping systems not listed in the spec shall be approved by the engineer prior to tender closing. For consideration of a proposed equal system, the contractor shall furnish the following data:
 - .1 A complete specification for the pumping system proposed as an equal.

- .2 A statement of full conformance to the following specifications signed by a corporate officer of the manufacturer.
- .3 A general arrangement drawing showing overall dimensions and all piping layouts.
- .4 Complete submittal data for all major equipment (pumps, motors, valves, electrical controls, etc.).
- .5 An electrical schematic, that provides power and control wiring.
- .6 Location and name of local service representative.

2.3 VARIABLE SPEED DRIVES

- .1 The VFD controller shall match the pump and motor.
- .2 The pump controller shall be the speed pump controller. Shall provide an adjustable carrier frequency with IGBT power switching and utilize PWM technology. The drive shall provide noiseless operation of the driving motor, short circuit and ground protection, and work with controlled sinusoidal current synthesis and dynamic over current limitations. The VFD controller shall be one complete integrated unit including the variable frequency drive and programmable pump control logic. Standard variable frequency drives that do not incorporate pump control logic as the primary control software; programming and features directly applicable to centrifugal pump applications shall not be considered equal.
- .3 The settings and program in whole or part may be locked out with the use of an operator selectable password. Standard system hydraulic settings shall include at a minimum the following functions: loss of suction, lack of NPSHa, pump run-out protection, “dead-head” protection, constant pressure setting with variable flow capability, constant flow with variable TDH (pressure) capability, quadratic differential flow calculation, system curve compensation, multiple pump operation with alternation, pump starting point with allowable, adjustable pressure drop, minimum speed with time delay, pressure of flow sensor error, overpressure shutdown, and low flow shutdown.

2.4 PRESSURE TRANSDUCERS

- .1 Pressure transducers shall be utilized for providing all pressure signals for the pump control logic. Pressure transducer shall be a solid-state bonded strain gage type with an accuracy of plus/minus 0.20% and constructed of 17-4 pH stainless steel. Transducer shall be rated for station discharge pressure as shown on technical data sheet, and shall provide gauge pressure output, rather than an absolute. Pressure transducer constructed of plastic is not acceptable. Pressure transducer shall be 4-20mA analog type with 7- 33 VDC supply range and utilize a packard type connector to

prevent moisture intrusion. Transducer shall be supplied as part of the pump control logic.

2.5 CONTROL VALVES

- .1 Argentia System: Control valve to be 250mm dia oblique style solenoid-controlled valve with check valve feature.
 - .1 Valve to be approved for drinking water use as per AWWA standards.
 - .2 Internal features to be stainless steel.
 - .3 Control valve pressure setting to be electronic controlled for future connection to SCADA system.
 - .4 Standard of acceptance is Bermad model WW -10``-720 – 18 / 55 / 20 – Y – C -16 – EB – 4AC – CB – F.
- .2 Dunville System: Control valve to be 250mm dia oblique style pressure reducing solenoid-controlled valve with check valve feature.
 - .1 Valve to be approved for drinking water use as per AWWA standards.
 - .2 Internal features to be stainless steel.
 - .3 Control valve pressure setting to be electronic controlled for future connection to SCADA system.
 - .4 Standard of acceptance is Bermad model WW -10``-710 – 18 / 25 – Y – C -16 – EB – 4AC – CB – F.

2.6 BUTTERFLY VALVES

- .1 Shall be NSF61 certified for drinking water and meet AWWA C504 Standards.
 - .1 Valve to be level operated with ductile iron body.
 - .2 Disc to be stainless steel
 - .3 Stem to be 316 stainless steel
 - .4 Valve sleeve material to be Buna-N.

2.7 CHECK VALVES

- .1 Shall be NSF61 certified for drinking water and meet AWWA C508 Standards.
- .2 The valve body, cover and disc shall be constructed of ASTM A536 Grade 65-45-12 ductile iron.

- .3 The exterior and interior of the valve shall be coated with an NSF/ANSI 61 approved fusion bonded epoxy coating.
- .4 The removable body seat shall be constructed of ASTM A276, Type 304 stainless steel.
- .5 The removable resilient seat shall be precision molded Buna-N (NBR
- .6 The disc arm and external levers shall be ductile iron.
- .7 A pre-wired limit switch shall be provided to indicate open/closed position to a remote location.

2.8 AIR RELEASE VALVES

- .1 Valves shall be manufactured and tested in accordance with AWWA Standard C512 and shall be certified to NSF/ANSI 61 for Drinking Water.
- .2 The valve body and cover shall be constructed of ASTM A126 Class B cast iron for working pressures up to 300 psig.
- .3 The orifice, float and linkage mechanism shall be constructed of Type 316 stainless steel. Non-metallic floats or linkage mechanisms are not acceptable. The orifice button shall be Viton for simple lever valves and Buna-N for compound lever designs.
- .4 A fully - ported brass ball valve shall be provided to isolate the air release valve from the piping system.

2.9 FLOW METER

- .1 The flow meter shall be electromagnetic flow meter technology capable of measuring flows ranging from 0 to 3000 usgpm. The flow meter system shall consist of a 250mm (10") flange mounted sensor with flow reading on the meter and a remote electronic display read out on the control VFD panel screen. The flow meter system shall be suitable for use with potable water.
- .2 The electronic display on the control panel shall indicate the flow rate indicator, totalizer and keypad for access and adjustment of all parameters.
- .3 The meter shall have no moving parts inside of the waterline.
- .4 The meter shall be complete with empty pipe direction of 4 mA or 0 mA.

- .5 The accuracy shall be at least 0.5% of flow rate over a 33: 1 turndown at all flow rates above 1 fps (0.3 m/s). Accuracy shall be verified by calibration in a flow laboratory traceable to the U.S. National Institute of Standards and Technology. Meter accuracy shall not be affected by inlet and outlet runs.
- .6 Available outputs shall be 1) isolated analog 4-20 mAdc into 800 ohms (standard); 2) scaled pulse 24 Vdc with selectable 12.5/25/50/100 ms on time, maximum Ireq, 60 Hz; 3) 0-1000 Hz freq., for 0-100% flow rate, 15 Vdc; 4) two (2) flow alarms; 5) fault, with open collector; 6) RS232 communication; 7) flow direction with open collector; 8) Positive Zero Return (PZR) for external relay contacts. Outputs 2 and 3 can be open collector if required.
- .7 Standard of Acceptance: Proline 400 by Endress and Hauser (design Option C without inlet / outlet runs)

2.10 PRESSURE GAUGES

- .1 100 mm diameter liquid filled pressure gauge mounted on pipe. Pressure gauge to be capable of registering 0 - 100 psi pressure range. See drawings for details on number and locations.

2.11 SUBMERSIBLE PRESSURE TRANSDUCERS

- .1 The submersible level transducers to be Level Pro or equivalent and come complete with a TVL series level process display in a NEMA 4x enclosure.
- .2 Pressure transducers to be a two-wire, 4-20 mA gage pressure transducer, with accuracy of $\pm 0.5\%$ full scale or better. Compatible with potable water ranging in temperature from -10 – 60° C.
- .3 Housing to be PVC with ceramic sensing diaphragm.

2.12 CONTROL SYSTEM

- .1 The Contractor is responsible for developing the control programming logic and design of the control / VFD panel to ensure that the system operates with the following control sequence:
 - .1 The control panel is to be equipped with graphical display and touchscreen view to allow the operator to monitor or adjust the following minimum parameters:

- .1 Flow meter readings from each meter. Must display the current flow and total flow for each meter. An overall total flow must be displayed.
- .2 Pressure reading and set points from the pressure transmitter on the Argentia side.
- .3 Pressure reading and set points from the pressure transmitter on the Dunville side.
- .4 Wet well level reading and set points.
- .5 Tank 1032 level reading and setpoints (current setup is radio telemetry from tank 1032 to pumphouse)
- .6 Tank 418 level reading and setpoints (current setup is radio telemetry from tank 418 to pumphouse)
- .7 Dunville reservoir level reading and setpoints – currently there is no communication between this reservoir to the pumphouse.
- .8 Pump run hours.
- .9 Pump high and low capacity set points.
- .10 Control valve position.
- .11 Gas chlorination system dosage levels from both systems.
- .12 Weight reading for each side of the chlorine cylinder scales.
- .2 Control Sequence
 - .1 The three pumps will be connected to one pipe header which will be separated going to two zones (Argentia and Dunville). Each zone has an existing reservoir which will be utilized to flow water to the system and provide additional storage. Each zone will be equipped with a control valve and pressure transducer which will signal the pumps to stop and start.
 - .2 When reservoir 1032 on the Argentia zone reaches the high water mark the pressure transmitter will signal the control valve to close stopping the flow of water to the Argentia Zone. Reservoir 1032 then supplies water to the Freshwater / Argentia zone. (Existing Operation: Tank 418 supplies to Argentia and is fed via gravity from Tank 1032. Tank 418 does not control the pumps. The pumps are controlled on level control from Tank 1032. When the water level in tank 418 reaches the low water level a control valve from Tank 1032 opens to supply water to Tank 418. When tank 1032 reaches the low water level the pumps start to fill Tank 1032). The new control setup will be same except that the control valve will close when the tank 1032 reaches its high water level.

- .3 When the Wyse's Pond reservoir on the Dunville zone reaches the high water mark the pressure transducer will signal the control valve to close valve stopping the flow of water to the Dunville Zone. Wyse's Pond Reservoir will then supply water to the Dunville zone.
- .4 When both control valves are closed the pumps will shut down.
- .5 When the water level in the reservoirs reaches the low level mark the pressure transducer will signal the respective control valve to open and the pump(s) will ramp up supplying water to one or both zones and filling each reservoir.
- .6 When the pumps are operating, they will be controlled on the VFD's.
- .7 The pressure transducer provided for each control valve and system will monitor system the pressure and provide a signal to the pump control software and provide a variable Volts/ Hz output to the motor. Once the pressure drops below the set system pressure (tank water level reaches it pre-set level), the respective control valve will open to signal the pump(s) start and provide system pressure. If required system pressure cannot be maintained by one pump, the next pump in sequence shall operate in a lead/lag capacity to provide the extra flow and pressure. The sequence of the pumps shall be field adjustable, and the variable speed pump controller shall be completely integrated with the VFD. Pumps shall alternate based on elapsed run time. Program settings must be field adjustable to provide onsite adjustments. When the system experiences low demand, the variable speed pump controllers will reduce the speed of each pump, until demand has stopped.
- .8 Each reservoir will have a level sensor which will stop the pumps if the water in the tank reaches a high high water level.
 - .1 Tank 1032 has an existing level transducer which stop and starts the pumps in the current configuration. Communication is via radio telemetry.
 - .2 A new level transducer and communication link will be required for the Wyse's Pond reservoir.
 - .3 If either level sensor in the reservoir signals the pumps to shut off then an alarm message is to be sent to the operator.

- .9 Should the Town wish to bypass one or both reservoirs due to maintenance or other operational issues then the pumps will run continuously on the variable frequency drives.
- .10 Pumps are to alternate to run on equal run hours.
- .11 The existing backup generator will be used to operate one pump and all other essential equipment in the pumphouse to provide the Town with water during a power outage.
- .3 Notification of alarms – The operator is to be notified of the following alarms, as a minimum.
 - .1 Low vacuum switch alarm – when the booster pump does not work or one of the chlorine tubes is not connected or the injector is not working.
 - .2 High vacuum switch alarm – when the cylinder valve (s) are left shut or the regulator is left shut or completely empty of chlorine supply
 - .3 Weight switch low alarm that will indicate when the chlorine level in the cylinder is critically low.
 - .4 Notification of gas leak from the alarm system.
 - .5 Notification of pump shut off due to high high water level reached in reservoirs 1032, 418 and Wyse's Pond.
 - .6 Notification of low low levels in reservoirs 1032, 418 and Wyse's Pond.
 - .7 Communication failure with all three reservoir.
 - .8 Wet well low level
 - .9 Wet well low low level
 - .10 Pump failure
 - .11 Control valve failure to open or close
 - .12 Diesel generator fault and low battery
 - .13 System running on emergency generator.
- .2 These are the minimum requirements for the pump control sequence. The Contractor shall design the control sequence to meet industry standards complete with all safety features to prevent damage to equipment. The Contractor is to design and supply all equipment / communication links to provide a fully operational and functional system. It is strongly advised that the Contractor visit the site to access the current setup and equipment.
- .3 When designing and specifying the control system it must be capable of being integrated into a SCADA system. The Town is planning in the future to implement a SCADA system to control and / or monitor various aspects of the water and sewer system.

PART 3 EXECUTION**3.1 PUMP INSTALLATION**

- .1 Install a completely new pump and motor assemblies in accordance with ANSI/AWWA A100, and local authority having jurisdiction.

3.2 PRESSURE TRANSDUCER

- .1 Installation of pressure transducers shall be performed such that isolation from the pumping system for the purposes of maintenance or replacement can be established without shutting down the pumping system. This can be provided through utilization of a corporation cock that is compatible with the threaded male connection of the pressure transducer.
- .2 Extend communication cables through conduit to the pump control system.
- .3 Ensure that all water is turned off and water pressure is released prior to commencing installation of pressure transducer.
- .4 Pressure transducer shall be installed in accordance with manufacturer's instructions.

3.3 TESTS

- .1 Perform all tests required by any law or ordinance, or by any public authority. Tests shall be performed as called for in these specifications in the manner stipulated, or as directed by the Engineer at no additional cost to the Owner.
- .2 Give 48 hours written notice of date for tests.
- .3 Insulate or conceal work only after testing and approved by Engineer.
- .4 Conduct tests in presence of Engineer.
- .5 Bear costs including retesting and making good.
- .6 Piping:
 - .1 General: maintain test pressure without loss for two (2) hours unless otherwise specified.
 - .2 Test systems in accordance with authorities having jurisdiction and as specified elsewhere.
 - .3 Equipment: test as specified in relevant sections and as recommended by manufacturer.

- .4 Prior to tests, isolate all equipment or other parts which are not designed to withstand test procedures or test medium.

3.4 CODES AND BY-LAWS

- .1 All work and materials shall conform to provincial codes and community by-laws where applicable. Where there is any conflict among any codes, by-laws or the drawings and specifications, the more stringent provision will govern.
- .2 The Contractor shall obtain and pay for all permits or other fees required by any authority having jurisdiction.

3.5 ACCESSIBILITY

- .1 Ensure that all equipment that will require future servicing, maintenance or operation, is installed in readily accessible locations.

3.6 SUPPORTS

- .1 All new water piping and fittings shall be supported adequately to carry the weight of the pipe when full of water, as well as all dynamic water pressure loadings on the system during start-up, shut-down and operation, without imposing stresses or thrusts on the equipment or water piping.

3.7 PIPING AND CONNECTIONS

- .1 Make all connections necessary to place equipment in operating condition. Supply and install all piping including placement through walls where applicable.
- .2 Commission all equipment in the presence of the Engineer and Town Maintenance Staff.
- .3 Install piping arrangement as required to accommodate pumping system.

3.8 COMMISSIONING AND START-UP

- .1 A factory qualified service representative shall be present at initial start-up of the system to ensure correct installation and rotation of the units. Any deficiencies shall be noted and corrected prior to the commissioning of the pumps. A minimum of two days (16 hours – excludes travel) commissioning on-site service and training is required. One follow up visit 90 days after start up to be included.
- .2 When discharge piping, electrical connections, and electrical inspection have been completed, the pump station representative shall be contacted

for start-up. During start up, the complete pumping system shall be given a running test of normal start and stop, and fully loaded operating conditions. During this test, each pump shall demonstrate its ability to operate without undue vibration, or overheating, and shall demonstrate its general fitness for service. All defects shall be corrected, and adjustments shall be made to the pumping station for satisfactory operation. System problems or concerns will be corrected by the general contractor in conjunction with the appropriate factory representative. Testing shall be repeated until satisfactory results are obtained, as determined by the engineer.

- .3 Pumping system to be fully tested and started up in the presence of the Engineer and knowledgeable representatives of the suppliers of the pumps and controller. Submit representatives' written reports stating that satisfactory installation of the units has been performed, and in accordance with the manufacturers' instructions and the shop drawings. This work to be done at no additional cost to the Owner.
- .4 Check amperage, voltage and phasing of the power supplies for correct pump operation under full load and no-load conditions.
- .5 Establish pump performance under full load and no-load conditions and compare with required performance and manufacturers' literature. Acceptance of the pump system will be based on this comparison.
- .6 Each pumping unit will be operated for a suitable period during which time all possible loads, where conditions permit, shall be applied. All tests shall be completed with system water.
- .7 During the field tests, readings for all the electrical data shall be recorded on approved log sheets and submitted to the Engineer.
- .8 Any part or parts of the units which are in any way defective shall be replaced at no additional cost to the contract, and tests repeated until acceptable performance is achieved.

3.9 QUALIFICATIONS

- .1 Pump supplier must demonstrate to the satisfaction of the Engineer that they have an adequate parts inventory in the province, and a local service department with factory trained technicians to perform necessary service and repairs to the pumps.
- .2 Copies of the manufacturer's "Operation and Maintenance Manual" for all equipment complete with spare parts list and troubleshooting instructions.

3.10 WARRANTY

- .1 A single written warranty of two (2) years shall be provided from the Contractor for all equipment including the pumping and control system covering workmanship and materials.
- .2 A single written warranty of two (2) years shall be provided from the manufacturer of the control and programming system covering workmanship and materials.

END OF SECTION

PART 1 **GENERAL****1.1** **DESCRIPTION**

- .1 The work covered under this section includes the supply, installation and commissioning a new pressure reducing valve (PRV) station. General work description includes but not limited to:
 - .1 Site preparation and installation of concrete pad per attached drawings for enclosure to rest on.
 - .2 Supply and Installation of station enclosure complete with all mechanical and electrical.
 - .3 Electrical Service to the station enclosure.
 - .4 Supply and installation of all valve and piping. Includes connection to the main watermain.

1.2 **SHOP DRAWINGS AND PRODUCT DATA**

- .1 Submit shop drawings and product data in accordance with Division 1 of the Master Municipal Specifications.
- .2 Indicate:
 - .1 Equipment including connections, piping, and fittings, control assemblies and ancillaries, identifying factory and field assemblies.
 - .2 Wiring as assembled and schematically.
 - .3 Dimensions, construction details and recommended installation.

1.3 **MAINTENANCE DATA**

- .1 Provide maintenance data for incorporation into manual as specified in Division 1 of the Master Municipal Specifications.
- .2 Data to include:
 - .1 Manufacturers name, type, model year, capacity and serial number.
 - .2 Details on operation, servicing and maintenance.
 - .3 Recommend spare parts list and addresses of representatives.
 - .4 .

1.4 **MEASUREMENT FOR PAYMENT**

- .1 All costs associated with work in this section shall be deemed to be included in the lump sum price quoted in the Schedule of Prices and Quantities, including all site work and restoration of surrounding area.

PART 2 PRODUCTS**2.1 GENERAL**

- .1 All equipment and pumping systems to be completely factory tested, adjusted and shipped to job site as integral units ready to receive for piping and / or electrical connections.

2.2 PRESSURE REDUCING VALVE

- .1 Supply and install a pressure reducing valve that includes one (1) 75mm Ø pressure reducing valve complete with limit switch so valve position can view on the future SCADA. Valve must be NSF 61 approved epoxy coatings for potable water. Standard of acceptance is to be Cla-Val, Singer, Bermad.
- .2 Valve body shall be complete with the following features
 - .1 Style: Globe, Cast iron construction
 - .2 Flanges: ANSI pressure rating 1034 kPa (150lbs)
 - .3 Seals: Buna N diaphragm and seals
 - .4 Trim: Stainless Steel Internal Valve trim with
 - .5 Stainless Steel Anti-Cavitation trim (Seat and Disc Guide)
 - .6 Pilot: CRD pressure reducing pilot
 - .7 Pilot System: Standard pilot system materials
 - .8 CK2 Isolation Valves
 - .9 X43 Y Strainer
- .3 Valve must have electronic actuator option for remote valve control which it is to integrate with a future SCADA system.
- .4 Valve to have opening and closing speed controls
- .5 Valve to have a hydraulic Valve position indicator
- .6 Valve to have Stainless Steel fasteners
- .7 Valve must be capable of handling flows ranging from 2 usgpm to 450 usgpm.
- .8 Pressure relief settings must be adjustable from 15 to 230 psi.
- .9 Pressure settings will be set at site as directed.

2.3 PRESSURE TRANSDUCERS

- .1 Supply and install pressure transducer on the upstream and downstream side of the PRV so the pressure can be viewed on the future SCADA system.
- .2 Pressure transducers shall be utilized for providing all pressure signals for the pump control logic. Pressure transducer shall be a solid-state bonded strain gage type with an accuracy of plus/minus 0.20% and constructed of 17-4 pH stainless steel. Transducer shall be rated for station discharge pressure as shown on technical data sheet, and shall provide gauge pressure output, rather than an absolute. Pressure transducer constructed of plastic is not acceptable. Pressure transducer shall be 4-20mA analog type with 7- 33 VDC supply range and utilize a packard type connector to prevent moisture intrusion. Transducer shall be supplied as part of the pump control logic.

2.4 FLOW METER

- .1 The flow meter shall be electromagnetic flow meter technology capable of measuring flows ranging from 0 to 500 usgpm. The flow meter system shall consist of a 750mm (3") flange mounted sensor with flow reading on the meter. The flow meter system shall be suitable for use with potable water. Flow meter shall be compatible with connection to future SCADA System to view the flow.
- .2 The electronic display on the control panel shall indicate the flow rate indicator, totalizer and keypad for access and adjustment of all parameters.
- .3 The meter shall have no moving parts inside of the waterline.
- .4 The meter shall be complete with empty pipe direction of 4 mA or 0 mA.
- .5 The accuracy shall be at least 0.5% of flow rate over a 33: 1 turndown at all flow rates above 1 fps (0.3 m/s). Accuracy shall be verified by calibration in a flow laboratory traceable to the U.S. National Institute of Standards and Technology. Meter accuracy shall not be affected by inlet and outlet runs.
- .6 Available outputs shall be 1) isolated analog 4-20 mAdc into 800 ohms (standard); 2) scaled pulse 24 Vdc with selectable 12.5/25/50/100 ms on time, maximum Ireq, 60 Hz; 3) 0-1000 Hz freq., for 0-100% flow rate, 15 Vdc; 4) two (2) flow alarms; 5) fault, with open collector; 6) RS232 communication; 7) flow direction with open collector; 8) Positive Zero

Return (PZR) for external relay contacts. Outputs 2 and 3 can be open collector if required.

- .7 Standard of Acceptance: Proline 400 by Endress and Hauser (design Option C without inlet / outlet runs)

2.5 BUTTERFLY VALVES

- .1 Shall be NSF61 certified for drinking water and meet AWWA C504 Standards.
- .2 Valve to be level operated with ductile iron body.
- .3 Disc to be stainless steel
- .4 Stem to be 316 stainless steel
- .5 Valve sleeve material to be Buna-N.

2.6 PRESSURE GAUGES

- .1 100 mm diameter liquid filled pressure gauge mounted on pipe. Pressure gauge to be capable of registering 0 - 100 psi pressure range. See drawings for details on number and locations.

2.7 STATION ENCLOSURE

- .1 The station enclosure shall contain and protect all pumps, interior piping, valves and associated controls. Enclosure shall incorporate the following design and service features:
- .2 The enclosure shall have a single access door in one end and a double access door at the opposite end as shown on the attached drawings. Location and size shall permit access for routine maintenance functions such as pump and motor inspection, drive belt adjustment, and pump clean out. Non-hinged panels shall be secured with stainless steel tamper-proof hardware. The enclosure shall be approximately 2.5m x 3.3m.
- .3 The station enclosure shall be manufactured of molded reinforced orthophthalic polyester resins with a minimum of 30% fiberglass, and a maximum of 70% resin. Resin fillers or extenders shall not be used. Chopped glass fibers of 32mm average length shall be sprayed and rolled. Major design consideration shall be given to structural stability, corrosion resistance, and watertight integrity. The polyester laminates shall provide a balance of mechanical, chemical, and electrical properties to insure long life. They must be impervious to microorganisms, mildew, mold, fungus,

corrosive liquids, and gases which are expected to be present in the environment surrounding the wet well.

- .4 All interior surfaces including doors of the housing shall have 12.5mm tick plywood coated with a polyester resin rich finish providing maintenance free service, abrasion resistance, and protection from sewage, greases, oils, gasoline, and other common chemicals. Interior surfaces of the enclosure shall be coated with gel-coat pigmented resin to insure long maintenance free life and UV protection. Color used shall deemphasize the presence of dirt, grease, etc.
- .5 Exterior surfaces shall have 12.5mm tick plywood coated with a polyester resin rich finish providing maintenance free service, abrasion resistance, and protection from sewage, greases, oils, gasoline, and other common chemicals. The exterior shall be esthetically suitable for a residential area and shall consist of prefabricated Canexell solid siding, fiberglass trim, soffit and facias. Roof shall be peak roof with asphalt shingles. Standard of acceptance is enclosures provided by G.N. Leblanc Construction.
- .6 The pump station shall be furnished with insulation of R12 value which shall be applied to the walls, roof, doors, and corner panels.
- .7 Doors shall be equipped with 3 hinges, cam lock latches and weatherstripping. Latch handle locks shall be match keyed, requiring only one key to open all doors.
- .8 The ventilation system shall operate on a humidity and temperature control and be equipped with a motorized louver. The exhaust fan shall automatically engage when personnel enter the enclosure.
- .9 Station Heater
 - .1 Pump station shall be provided with a 1500 watt, 115-volt electric heater with cord and grounding plug.
- .10 Station Electrical
 - .1 The station must be equipped with an exterior light over the access door, interior lighting, adequate receptables and properly size breaker panel to accommodate the list equipment on the drawings. All electrical must be design and installed as per the Canadian Electrical Code.

PART 3 **EXECUTION****3.1** **INSTALLATION**

- .1 Install all equipment in accordance with AWWA standards, manufactures recommendations and local authority having jurisdiction.

3.2 **TESTS**

- .1 A factory qualified service representative shall be present at initial start-up of the system to ensure correct valve setup. Any deficiencies shall be noted and corrected prior to the commissioning of the system. A minimum 4 hours (excludes travel) commissioning on-site service and training is required.
- .2 In the presence of the Engineer, field-testing of all equipment shall be performed to determine that operation is satisfactory and in compliance with the specifications. Testing shall be conducted after the installation is complete, the equipment has been operated and all necessary adjustments have been made.
- .3 Perform all tests required by any law or ordinance, or by any public authority. Tests shall be performed as called for in these specifications in the manner stipulated, or as directed by the Engineer at no additional cost to the Owner.
- .4 Give 48 hours written notice of date for tests.
- .5 Insulate or conceal work only after testing and approved by Engineer.
- .6 Bear costs including retesting and making good.
- .7 Piping:
 - .1 Test systems in accordance with authorities having jurisdiction and as specified elsewhere.
 - .2 Equipment: test as specified in relevant sections and as recommended by manufacturer.
 - .3 Prior to tests, isolate all equipment or other parts which are not designed to withstand test procedures or test medium

3.3 **CODES AND BY-LAWS**

- .1 All work and materials shall conform to provincial codes and community by-laws where applicable. Where there is any conflict among any codes, by-laws or the drawings and specifications, the more stringent provision will govern.

- .2 The Contractor shall obtain and pay for all permits or other fees required by any authority having jurisdiction.

3.4 ACCESSIBILITY

- .1 Ensure that all equipment that will require future servicing, maintenance or operation, is installed in readily accessible locations.

3.5 SUPPORTS

- .1 All new water piping and fittings shall be supported adequately to carry the weight of the pipe when full of water, as well as all dynamic water pressure loadings on the system during start-up, shut-down and operation, without imposing stresses or thrusts on the equipment or water piping.

3.6 PIPING AND CONNECTIONS

- .1 Make all connections necessary to place equipment in operating condition. Supply and install all piping including placement through walls where applicable.
- .2 Install piping arrangement as required to accommodate PRV.

3.7 COMMISSIONING AND START-UP

- .1 Commission all equipment in the presence of the Engineer and Town Maintenance Staff.
- .2 Any part or parts of the units which are in any way defective shall be replaced at no additional cost to the contract, and tests repeated until acceptable performance is achieved.

3.8 WARRANTY

- .1 Fiberglass components of the station enclosure shall be warranted for five (5) years to resist UV damage, corrosion from moisture or corrosive soils, or physical failures occurring in normal service, without the need for special protective coatings, when installed according to the manufacturer's recommendations.
- .2 A single written warranty of two (2) years shall be provided from the manufacturer of the control and programming system covering workmanship and materials.
- .3 The warranty shall become effective upon the date of substantial completion acceptance.

END OF SECTION

PART 1 **GENERAL****1.1** **DESCRIPTION**

- .1 The work covered under this section includes the supply of all labour and the provision of all materials necessary for the complete installation of a water intake screen as detailed on the drawings and outlined in the specifications

1.2 **SHOP DRAWINGS**

- .1 Submit Shop Drawings in accordance with Section 01340 of the Municipal Master Specifications.

1.3 **MAINTENANCE DATA**

- .1 Provide maintenance data in English for incorporation into maintenance manual.

1.4 **MEASUREMENT FOR PAYMENT**

- .1 The intake screens shall be measured by the lump sum for the total completed works. Includes supports, timber crib, fittings and all associated piping to 1.5m from the timber crib as shown on drawings or as required for a properly completed and secure system.

PART 2 **PRODUCTS****2.1** **WATER INTAKE SCREEN**

- .1 The water intake line at the pond shall be protected by a high-performance wedge wire tee intake screen.
- .2 The screen shall be of 304 stainless steel construction with 2.54 mm slots. The screen shall be equipped with a 200mm flange connection for the intake line. The intake connection shall be centered axially on the screen. The intake pipe shall be supported on a timber crib prevent the screen from turning over and resting on the bottom.
- .3 The screen must be designed to handle a peak hourly flow rate of 3500 usgpm. A factor of safety of 1.5 should be added to the design flow rate.
- .4 The screen is to be supplied with all required fitting to mount unto a 300mm diameter pipe HDPE.

- .5 Screen shall comply with DFO requirements for subcarangiform.
- .6 The standard of acceptance is Concord Screens and Johnson Screens.

PART 3 **EXECUTION****3.1** **INSTALLATION**

- .1 Install piping in accordance with Division 2 of the Municipal Water, Sewer & Road Master Specifications.

3.2 **SUPPORTS**

- .1 All water piping and fittings shall be supported adequately using standard pipe supports to carry the weight of the pipe when full of water without imposing stresses or thrust on the system or any other equipment connected to the water piping.

3.3 **CLEAN UP**

- .1 Leave systems operating with work areas clean to satisfaction of Engineer.

END OF SECTION

PART 1 **GENERAL****1.1** **SCOPE**

- .1 This section provides all governing specifications for equipment, materials, labour and all incidentals and all work necessary for installing the gas chlorine feed equipment shown on the drawings and specified herein.
- .2 It shall be the responsibility of the Contractor to provide detailed design and furnish a complete and efficient chlorination system for controlling the chlorine feed rate to the injection point of the raw water supply. The Chlorine system shall be an automatic flow proportional system to accommodate the vary flow rate. The chlorination shall be designed as an all vacuum system with a regulator mounted on each cylinder.
- .3 The Contractor shall be responsible for all details which may be necessary to properly install, adjust and place in operation a complete system that will meet the requirements specified herein.

1.2 **RESPONSIBILITY UNTIL ACCEPTANCE BY THE ENGINEER**

- .1 All equipment and systems supplied under this division of the specifications shall be maintained, operated and protected by the Contractor until the system is taken over by the Owner, after acceptance by the Engineer. No responsibility for maintenance or operation of new systems provided through this Contract by the Owner will be considered until after Substantial Performance. There will be no consideration for Substantial Performance until after commissioning of the chlorination system.

1.3 **PERMITS AND FEES**

- .1 Obtain and pay for all permits and fees related to the work contained in this division of the specifications.

1.4 **INSPECTION AND TESTS**

- .1 A Factory Test Certificate shall be furnished indicating that the equipment has been submitted to the routine factory tests and found to be satisfactory. The Test Certificate shall be signed by a responsible authorized official of the manufacturer.

1.5 SHOP DRAWINGS

- .1 Submit shop drawings in accordance with Division 1 of the Master Municipal Specifications.

1.6 PROJECT RECORD DOCUMENTS

- .1 Refer to Division 1 of the Master Municipal Specification.

1.7 MEASUREMENT FOR PAYMENT

- .1 Payment for the Gas Chlorination System shall include but not be limited to, all pipes, fittings, valves, pumps, meters, electrical treatment equipment and instrumentation required for complete and total operating systems including operator training as specified herein and shall be part of the lump sum for the gas chlorination system. This shall include the following, but not limited to:
 - .1 Provision of all required piping, valves and fittings for the provision of water to the booster pumping system, to the chlorine ejector and for the provision of the chlorine solution to the diffuser.
 - .2 Provision and installation of pipe hangers.
 - .3 Supply and installation of pressure gauges for the booster pumping system.
 - .4 Supply and installation of the booster pumps complete with pump control system.
 - .5 Supply and installation of two (2) new chlorine cylinders and re-use of two (2) existing.
 - .6 Supply and installation of four (4) new chlorine cylinder valves.
 - .7 Supply and installation of new flexible connectors between chlorine cylinders and chlorine gas manifolds.
 - .8 Five (5) tank chlorine gas manifold.
 - .9 Supply and installation of four (4) new chlorine gas vacuum regulators.
 - .10 Supply and installation of vent lines.
 - .11 Supply and installation of all necessary gas supply lines, fittings, and other appurtenances.
 - .12 Supply and installation of new automatic chlorine gas feed controllers (referred to as chlorinator on the Drawings).
 - .13 Supply and installation of new chlorine solution ejectors.
 - .14 Supply and installation of chlorine solution injection corporation stops and diffusers.

- .15 Supply and installation of chlorine gas detection system, including gas sensors and control unit.

PART 2 **PRODUCTS**

- 2.1** The following specifications for the gas chlorination system is based on Wallace and Tiernan products. Other approved gas chlorination system is Regal and Superior gas chlorination systems.

2.2 **MULTIPLE SENSOR GAS LEAK DETECTOR**

- .1 The Chlorine Gas Detection Control Unit shall be an Evoqua Series 35 Acutec Chlorine Gas Detection System as manufactured by Wallace & Tiernan or approved equal. The unit shall consist of a microprocessor-based alarm indicator unit with four (4) remote mounted gas sensors and interconnecting cables. Units shall be CSA approved.
- .2 Each Gas Sensor shall be an electrochemical type device mounted in a NEMA 4X enclosure suitable for wall mounting. Each sensor shall be capable of responding to levels of chlorine from 0.1 - 30 PPM. Each sensor shall provide 80% response to a 10 PPM leak within 30 seconds. Recovery time shall be 30 seconds for an 80% recovery from a 10 PPM leak. An LED shall be mounted on the Gas Sensor enclosure to indicate that power to the sensor is available.
- .3 The receiver shall process and display incoming signals from the sensor modules.
- .1 The receiver shall be housed in a NEMA 4X enclosure suitable for wall mounting and contain a power switch and LED indicators for POWER and READY.
- .2 An LED ALARM indicator shall illuminate and an annunciator, rated 95 decibels, shall sound in the event the pre-set level is exceeded and a corresponding contact closure shall be activated at the same time as the alarm. The contact relay shall be rated 10 amps at 240 Vac maximum, resistive or inductive load, SPDT or DPDT by jumper selection, N.O./N.C.
- .3 An LED MALFUNCTION indicator shall illuminate when the minimum signal, required from any sensor, is not maintained. The jumper selectable latching or unlatching relay contact, if not used as an alarm closure, shall also activate when the minimum signal from any sensor is not maintained.

- .4 A RESET button shall be provided for clearing the alarm and malfunction circuits after the conditions have been corrected.
- .5 A timer shall be provided and activated when the receiver is powered on. This will allow the sensor to stabilize. The timer has a selectable range of 0.5, 1, 2, 4, 8 or 16 minutes, via a jumper. Upon completion of stabilization, the READY indicator shall illuminate indicating the ALARM and MALFUNCTION modes are enabled.
- .6 A 4-20 mAdc output signal shall be provided to transmit the level of the sensor scanned. The maximum load impedance shall not exceed 900 ohms.
- .7 Ambient temperature operating range: -20o C to 55o C.
- .8 The minimum detectable concentration of chlorine gas shall be 0.5 PPM by volume.
- .9 The response time shall be 30 seconds maximum, after stabilization.
- .4 Power shall be provided for (117 Vac, $\pm$ 10%, 50/60 Hz) single phase. Battery terminals shall be provided for use in the event of a power failure.
- .5 The system shall be complete with an internal 18 volt dc battery to automatically provide power in the event of a power failure. No manual switching shall be required. The Power Backup shall automatically and continuously recharge to supply maximum support to the control unit.

2.3 VACUUM REGULATORS

- .1 Vacuum regulators shall be the Model 210 M/S as manufactured by Wallace and Tiernan or approved equal and shall be of the vacuum operated, solution feed type. Each regulator shall have a maximum capacity of 4 kg/hr of chlorine with one regulator per chlorinate cylinder..
 - .1 Regulators shall be provided with a gas valve direction indicator and a loss-of-gas indicator.
 - .2 The regulator shall provide for conveying the gas under vacuum from the vacuum regulator to the ejector check valve assembly to ensure complete system safety.
 - .3 The regulator design shall permit the system to be vacuum checked in the field without the use of special tools or manometers. The regulator shall be constructed of materials suitable for wet or dry gas service. All springs used in the regulator shall be of tantalum alloy - for chlorine gas feed. The rate valve and seat shall be silver. A double-thickness diaphragm shall be provided for vacuum regulation.

- .2 The corrosion-resistant yoke assembly shall be fitted with a metallic inlet valve and filter capsule which is field replaceable using only a screwdriver. The coating on the corrosion-resistant yoke assembly shall be fusion-bonded epoxy.
- .3 Pressure will be prevented from building in the system by means of a spring-loaded diaphragm-actuated pressure relief valve located at the vacuum regulator. The gas shall vent at the vacuum regulator.
- .4 The automatic switchover module shall be vacuum operated, switching from an empty gas source to a full source and shall be provided with automatic reset and integrally mounted vacuum regulator flow indicator. There shall be no manual reset required when the switchover has been automatically made, and the empty gas container replaced.

2.4 GAS FEED CONTROLLER

- .1 Wall mounted cabinets to house the gas flow control components shall be Wallace & Tiernan V10K Automatic Series or approved equal. Cabinet components shall include English/metric flow meter, rate control valve, manual bypass valve, differential pressure regulator, vacuum gauge, manual gas flow control valve, high and low vacuum switch which shall be housed in a cabinet of formed plastic construction.
 - .1 Complete systems shall include remote mounted regulators, ejectors, residual analyzers and other miscellaneous piping and components specified elsewhere or shown on the drawings required for complete and fully functional independent automatic gas chlorination system.
 - .2 All utility inlets and outlets shall be bulkhead connections and all electrical connections shall be made in one terminal box. All components carrying gas shall be made of materials suitable for wet or dry gas service.
- .2 The entire gas feeder system shall be vacuum operated after the regulators and shall convey gas under vacuum from the vacuum regulator through the cabinet mounted flow meter, rate control valve and vacuum line to the ejector where the gas shall be thoroughly mixed with water and applied as a solution. A differential pressure regulator shall maintain a constant differential across the rate control valve.
- .3 Automatic gas flow control shall be by means of microprocessor-based controllers. Controller shall be field configurable for three chlorination modes: flow, residual and compound loop.

2.5 ELECTRONIC DUAL PLATFORM CYLINDER SCALE

- .1 Weigh scales shall be Model 2350 Digital Dual Cylinder Scale for Chlorine Gas as manufactured by Scaletron Industries Ltd., or approved equal.
 - .1 The scale shall be of the electronic strain gauge, load cell type equipped with two separate weighing platforms and built-in stops to prevent overload damage.
 - .2 Each platform shall have a gross weight capacity of 0 - 158 kilograms and a tare weight capacity of 80 kilograms.
 - .3 Each display shall provide large, 3-digit, LCD characters which shall allow values to be read from up to 3 m away and shall be jumper selectable for indication in pounds or kilograms. The electronics shall be housed in a NEMA 4X enclosure.
 - .4 A 4 - 20 mAdc output signal shall be provided and shall be suitable for use with an external device.
 - .5 Bumper pads shall be provided on the enclosure support column to protect the electronics during cylinder change. A safety chain shall be supplied to support two cylinders while in operation. To protect components from the corrosive environment, all exposed parts shall be either stainless steel or coated with polyurethane. Exposed printed circuit boards shall be sealed and impervious to moisture.
 - .6 Each platform shall have an independent tare weight adjustment and built-in stops to prevent overload damage.
 - .7 Operation shall be from a 120 Vac, 60 Hz, single phase power supply. Power connection shall be 12mm conduit.
 - .8 The scale shall be accurate to $\pm 0.5\%$ of the gross weight capacity. Resolution shall be 0.1 kilogram.
 - .9 The scale shall be provided with a 4 m power cord with three prong plug.

2.6 EJECTORS

- .1 The ejector shall be sized to suit and shall be operated by a site specific water flow rate and generate a vacuum to ensure full capacity operation of the associated dosing unit. Connection shall be via a purpose made injection fitting. Ejector shall incorporate double positive non-return valves preventing back flow of water into the vacuum system.
- .2 Ejector selection shall be based on a minimum back pressure of 60 psi. Under normal conditions the system operates under gravity flow with a 25 psi back pressure but when the booster pumps cut in to supply water to the fish plant the pressure increases to approximately 50 psi. Anti-siphon ejectors shall be used throughout.

- .3 The ejector shall receive all gas and ejector water and discharge the resulting solution to the points of application. The ejector shall be equipped with a check valve which will prevent water from backing up into the vacuum regulators. A loss of water supply shall automatically shut off the gas flow.

2.7 CORPORATION COCK AND DIFFUSER ASSEMBLY

- .1 Corporation cock and diffuser assembly completed with solution tube and retainer chain. The diffuser shall be a universal type providing a spray or open-end, and a 19 mm NPT threaded by 25 mm I.D. hose connection for ease of field installation. Acceptable material: Wallace & Tiernan Diffuser Tube, 19 mm, Muller x 19 mm NPT minimum (3/4" x 3/4").

2.8 TANK MANIFOLD

- .1 A total of two (2) manifolds are required, with each manifold accommodating two (2) cylinders. Each manifold is to be connected to a remote switchover module.

2.9 EJECTOR PUMP

- .1 Two booster pumps shall be provided to boost the pressure in the injection point in the finished water line. Ejector water booster pumps shall be vertical multi-stage pumps. Units to be in-line and have 304SS liquid end components, NPT connections and TEFC motors. Pumps shall be sized by the chlorination equipment manufacturer for a back pressure of 125 psi. Pumps to be a Grundfos or Goulds vertical multi-stage or approved equal.
- .2 Pumps shall be labelled as "pump #1" and "pump #2", with pumps alternating between lead and lag or vice versa on a weekly basis.

2.10 EJECTOR PUMP CONTROL PANEL

- .1 Ejector pumps to be provide with a pump controller capable of placing each pump in manual (hand), automatic, or off operation. Mechanism for switching pumps between "hand", "off", "auto" shall be through a labelled rotatable knob only, and not be permissible through the touch screen controls of the pump control panel.
- .2 Controller shall designate a pump as "lead" pump and the other pump as "lag". Each pump shall alternate from lead to lag or vice versa on a weekly basis. Controller interface shall be capable of changing frequency of pump alternation to a time frame of the operator's choice.

- .3 Controller shall have a touch pad controls that allows manual switchover for each of pump #1 and pump #2 between “lead” and “lag” pump.
- .4 Controller screen shall display the following information:
 - .1 Pump run times for each of pump #1 and pump #2.
 - .2 Indicate which pump is designated as “lead pump” and which pump is “lag pump”.
 - .3 Indicate status of pump: “running” or “not running”.
 - .4 Display “hand, “off” “auto” setting for each pump. Do not allow this setting to be changed at touch screen interface for either pump, by restricting change at the labelled rotatable knob.
- .5 Pump controls to be housed in a NEMA 4X rated enclosure.

2.11 PIPING

- .1 Pipe: All chlorine gas piping to be schedule 80 PVC-Type 1, except at connections to equipment where high density polyethylene is to be used where required for connecting. Plastic pipe shall be solvent-welded type. All piping, or the wall immediately adjacent, shall be labeled at 6 m intervals with stick or paint-on lettering, 25 mm high as follows: “Vacuum Chlorine Piping” followed by an arrow indicating the direction of gas flow.
- .2 Unions: Unions or flanges together with suitable isolation valves must be provided at each pump or feed controlling device to permit removal for routine maintenance.
- .3 Valves: Valves used for open/close service to be of the straight-through pattern, maintaining full line size. Ball valves acceptable. Globe and gate valves not acceptable for chlorine applications.
- .4 Hangers: Rigid plastic piping to be supported on hangers at intervals of 1.2 m or less. The piping must not be clamped by the hanger, as movement resulting from expansion and contraction must not be restricted. Flexible plastic and rubber tubing to be supported by channel troughs or sections of steel piping supported on hangers or brackets. In these cases, gaps should be left in the support piping at bends and changes of direction to facilitate installation and removal of tubing.

2.12 PRESSURE GAUGES

- .1 100 mm diameter liquid filled pressure gauge mounted on pipe. Pressure gauge to be capable of registering 0 - 100 psi pressure range. See drawings for details on number and locations.

2.13 SPARE PARTS

- .1 Contractor to supply spare parts to be as recommended by the manufacturer for general maintenance and repair period. Engineer to make final selection. Allow \$500.00 + taxes parts value in lump sum bid price.

2.14 MISCELLANEOUS

- .1 The Contractor shall furnish all manifolds, assemblies, filters, gauges, valves, flexible connectors and piping as required to result in a complete and fully operating system. All electrical, switch relays, starters, conduit and wiring required for complete installation of all shall be of highest quality with regard to workmanship and materials and shall be furnished and installed in accordance with Electrical and Control Sections of these specifications.

PART 3 EXECUTION**3.1 QUALITY OF WORKMANSHIP**

- .1 All work shall be installed in a manner that can be regarded as good examples of workmanship in the trade concerned. Work which, in the opinion of the Engineer, does not meet this requirement shall be dismantled and reinstalled properly.

3.2 CODES AND BY-LAWS

- .1 All work and materials shall conform to Provincial Codes and Community By-Laws where applicable. In the absence of Provincial Codes, Community By-Laws, or other applicable standards enforceable by law, all work shall conform to the requirements of the National Building Code of Canada. Where there is any conflict among any codes, by-laws or the drawings and specifications, the more stringent provision will govern.
- .2 The Contractor shall obtain and pay for all permits or other fees required by any authority having jurisdiction.

3.3 EQUIPMENT

- .1 All of the chlorination equipment as specified herein and all other components not specifically mentioned herein necessary for a complete and functional system shall be furnished by a single manufacturer and shall be of the latest and most modern design.

- .2 Approved equipment manufacturers are Wallace and Tiernan, Regal and Superior.

3.4 TESTS

- .1 In the presence of the Engineer, field-testing of all equipment shall be performed to determine that operation is satisfactory and in compliance with the specifications. Testing shall be conducted after the installation is complete, the equipment has been operated and all necessary adjustments have been made.
- .2 Perform all tests required by any law or ordinance, or by any public authority. Tests shall be performed as called for in these specifications in the manner stipulated, or as directed by the Engineer at no additional cost to the Owner.
- .3 Give 48 hours written notice of date for tests.
- .4 Insulate or conceal work only after testing and approved by Engineer.
- .5 Bear costs including retesting and making good.
- .6 Piping:
 - .1 Test systems in accordance with authorities having jurisdiction and as specified elsewhere.
 - .2 Equipment: test as specified in relevant sections and as recommended by manufacturer.
 - .3 Prior to tests, isolate all equipment or other parts which are not designed to withstand test procedures or test medium

3.5 SERVICES

- .1 All equipment provided within the scope of this section shall be installed under the supervision of a competent Manufacturer's Service Installation Representative who shall thoroughly check the installed equipment. The representative shall make all pre-operational adjustments as required to prepare the equipment for startup and operation. The Manufacturer is responsible for providing services and adjustments during startup to ensure efficient operation.
- .2 The Manufacturer shall supply the services of a factory-trained technician for a period of not less than one (1) full days exclusively in start-up commissioning and training of personnel employed by the Town related to the operation and maintenance of the system. The Contractor shall also include provision for a one-day follow-up visit by the manufacturer's

representatives no later than 90 days from date of Substantial Performance.

3.6 WARRANTIES

- .1 Written warranties shall be provided to the Owner on all equipment specified in this section. Warranties shall provide that, in the event of failure of any parts of equipment during the warranty period due to defective materials or workmanship, such parts or equipment will promptly be replaced and installed by the Contractor at no additional cost to the Owner. Warranty to extend 24 months from date of Substantial Performance of total completed contract.

3.7 INSTALLATION, OPERATION AND MAINTENANCE MANUALS

- .1 The Owner shall be furnished with three (3) copies of complete installation, operation and maintenance manuals for each item of equipment specified in this section and drawings. Manuals to include, but not be limited to:
 - .1 Name, address and telephone number of the nearest competent manufacturers service representative who can furnish parts and technical services.
 - .2 Descriptive literature, including illustrations and drawings covering the operational features of each piece of specified equipment.
 - .3 Operation, maintenance and troubleshooting information.
 - .4 Complete maintenance parts list.
 - .5 Complete connection and assembly diagrams and operational circuit diagrams for specified equipment and systems.

END OF SECTION

PART 1 GENERAL**1.1 SCOPE**

- .1 The work covered under this Section includes the supply of all labour and the provision of all materials necessary for the complete installation of the hypo-chlorination system as detailed on the Drawings and outlined in the Specifications including:
- .2 The supply and installation of one (1) solution feed pump, one (1) solution mixing tank and accessories necessary for a complete operating system.
- .3 Provision of a supply of hypochlorite solution.
- .4 The training of selected maintenance personnel.

1.2 PERMITS AND FEES

- .1 Obtain and pay for all permits and fees related to the work contained in this division of the Specifications.

1.3 INSPECTIONS AND TESTS

- .1 A Factory Test Certificate shall be furnished indicating that the equipment has been submitted to the routine factory tests and found to be satisfactory. The Test Certificate shall be signed by a responsible authorized official of the manufacturer.

1.4 MEASUREMENT FOR PAYMENT

- .1 Payment for the hypo-chlorination system includes, but is not limited to all pipes, fittings, flow meter, valves, solution pump, solution mixing tank, chemicals, hose reel and 15 meters of 19 mm diameter rubber hose, cabling, operator training, operation and maintenance manuals and provision of As-Built information as Specified herein shall be by the lump sum bid for total completed including operation and maintenance manual and a one-year guarantee on all equipment and components.
- .2 The Contractor is to provide two (2) hours of training for community maintenance staff in the use of the chemical feed pumps, mixing of chemicals and safety procedures in the handling and storage of chemicals. All associated costs for the training to be included in the lump sum prices quoted for the hypo-chlorination system.

PART 2 EQUIPMENT**2.1 Hypo-chlorination Equipment**

- .1 The hypo-chlorination system shall meet the following requirements:
 - .1 Chemical feed metering pump shall meet the following design parameters:
 - .1 Design capacity 0.5 GPH (1.9 LPH) at 150 psi max. Repeatability metering accuracy shall be $\pm 1\%$ throughout the output range;
 - .2 Accept a 4-20mA and pulse input for external control by flow meter;
 - .3 Signal level output relay;
 - .4 External stop;
 - .5 Complete with PVC injection valve, foot valve/sinker/strainer, suction and discharge tubing;
 - .6 Complete with 5-function valve for pressure relief, priming, back pressure, air bleed, and anti-siphon; and
 - .7 1000:1 turndown using on-line stroke length and stroke frequency control
 - .2 The chemical feed pump shall be a mechanically actuated diaphragm, positive displacement metering pump. The diaphragm shall be flat, constructed of PTFE, and driven via a gear assembly by a microprocessor controlled stepper motor. The drive assembly shall be of a maintenance free design. The pump shall operate at 100% stroke length throughout the capacity range. Adjustable stroke pumps are not acceptable. The stepper motor shall advance the diaphragm such that discharge is continuous between the suction intervals.
 - .3 The chemical feed pump shall have a backlit LCD to display metered output, configuration and operational functions. Navigation through parameters and menus shall be via a click wheel. The interface shall include a priming button to initiate a priming cycle. The LCD shall display pump status and alarm conditions in distinguishing colours.
 - .4 The pump shall be equipped with an integrated pressure sensor to monitor discharge pressure. Both maximum and minimum pressure limits shall be configurable by the operator. Should the pump pressure go above the maximum, the pump will stop dosing until the pressure drops below the maximum value. Should the pressure drop below the minimum value, the pump will stop dosing to prevent spills.

- .5 Wetted materials shall be compatible with a 12% sodium hypochlorite solution.
- .6 The suction and discharge check valve assemblies shall incorporate a double ball arrangement and be of a cartridge type design. The pump head shall incorporate an integral priming valve and be isolated from the drive unit such that any leaks from the pump head will drain away from the drive unit. The pump shall be able to automatically de-aerate the pump head without the need for external devices.
- .7 The pump shall be equipped with a calibration function to allow adjustment of the pump. The pump shall be equipped with a re-scalable 4-20 mA signal input. The scaling menu should allow for four point adjustments (two for signal, two for flow) within the signal and flow ranges. The pump shall be equipped with input connections for dual level control and alarm outputs for low-level and empty tank warnings. The pump shall be equipped with provisions for selectable mode NO/NC external pump enable/disable interface.
- .8 The pump shall be able to operate in the following modes:
 - .1 Manual control with a start/stop key. Flow rate is determined by an operator entered value.
 - .2 Automatic mode based on the 4-20 mA signal applied to the pump's analog input. The input shall be configurable for direct input or reverse acting and be scalable. Loss of analog signal shall generate an alarm condition.
 - .3 The chemical feed pump shall be supplied with a service kit consisting of a spare diaphragm, O-rings, and valves.
- .9 The pump house is to be equipped with a polyethylene construction hypo-chlorination solution tank. Solution tank shall have a capacity of 200 litres and be provided with mounting bracket for metering pump. The tank shall be enclosed and be equipped with a screw on cap for filling. The tank shall have molded-on graduations in USG and Liters. One hundred (100) litres of 12% sodium hypochlorite to be supplied and stored in location designated by the Engineer. Sufficient chlorine to be mixed on site, in presence of town maintenance staff, to fill solution tank and start the operation of the system.
 - .1 The tank shall be supplied with a rigid suction line with two liquid level switches, foot valve and strainer. The suction line assembly shall be of materials compatible with 12% sodium hypochlorite solution. The liquid level switches shall be utilized to provide a low-level warning and an empty-tank alarm.

- .10 The suction line assembly shall be provided with all necessary accessories for connection to the chemical feed pump. The suction line assembly shall be of the same manufacturer of the chemical feed pump and compatible with the solution tank.
- .11 A chemical injection unit shall be provided of sufficient length to inject the sodium hypochlorite solution into existing pipe. The injection unit shall be equipped with a corporation stop to allow the injection unit to be withdrawn for cleaning or servicing without the need to depressurize the water line. All construction materials to be compatible with 12% sodium hypochlorite solution. The injection unit shall be supplied with all materials necessary for connection to the discharge of the chemical feed pump and for installation into the main 75 mm water line.
- .12 The pump shall be supplied with all the necessary instrumentation, control and power cables required to make all necessary connections.
- .13 Solution pump and equipment are to be installed by mechanics skilled in this installation. Equipment is to be put in operation and a minimum of four (4) hours is to be spent in training the maintenance staff in the operation of the system.
- .14 All the chlorination equipment is to be supplied from a single manufacturer or authorized representative for single system responsibility.

2.2 Combination Emergency Shower / Eyewash Station

- .1 Haws Model 8300-8309 complete with thermostatic mixing valve or approved equal.

PART 3 EXECUTION

3.1 QUALITY OF WORKMANSHIP

- .1 All work shall be installed in a manner that can be regarded as good examples of workmanship in the trade concerned. Work which, in the opinion of the Engineer, does not meet this requirement shall be dismantled and reinstalled properly.

3.2 CODES AND BY-LAWS

- .1 All work and materials shall conform to Provincial Codes and Community By-Laws where applicable. In the absence of Provincial Codes, Community By-Laws, or other applicable standards enforceable by law,

all work shall conform to the requirements of the National Building Code of Canada. Where there is any conflict among any codes, by-laws or the drawings and specifications, the more stringent provision will govern.

- .2 The Contractor shall obtain and pay for all permits or other fees required by any authority having jurisdiction.

3.3 EQUIPMENT

- .1 All of the chlorination equipment as specified herein and all other components not specifically mentioned herein necessary for a complete and functional system shall be furnished by a single manufacturer and shall be of the latest and most modern design.
- .2 Approved equipment manufacturers are Wallace and Tiernan, Regal and Superior.

3.4 TESTS

- .1 In the presence of the Engineer, field-testing of all equipment shall be performed to determine that operation is satisfactory and in compliance with the specifications. Testing shall be conducted after the installation is complete, the equipment has been operated and all necessary adjustments have been made.
- .2 Perform all tests required by any law or ordinance, or by any public authority. Tests shall be performed as called for in these specifications in the manner stipulated, or as directed by the Engineer at no additional cost to the Owner.
- .3 Give 48 hours written notice of date for tests.
- .4 Insulate or conceal work only after testing and approved by Engineer.
- .5 Bear costs including retesting and making good.
- .6 Piping:
 - .1 Test systems in accordance with authorities having jurisdiction and as specified elsewhere.
 - .2 Equipment: test as specified in relevant sections and as recommended by manufacturer.
 - .3 Prior to tests, isolate all equipment or other parts which are not designed to withstand test procedures or test medium

3.5 SERVICES

- .1 All equipment provided within the scope of this section shall be installed under the supervision of a competent Manufacturer's Service Installation Representative who shall thoroughly check the installed equipment. The representative shall make all pre-operational adjustments as required to prepare the equipment for startup and operation. The Manufacturer is responsible for providing services and adjustments during startup to ensure efficient operation.
- .2 The Manufacturer shall supply the services of a factory-trained technician for a period of not less than 2 hours exclusively in start-up commissioning and training of personnel employed by the Town related to the operation and maintenance of the system

3.6 WARRANTIES

- .1 Written warranties shall be provided to the Owner on all equipment specified in this section. Warranties shall provide that, in the event of failure of any parts of equipment during the warranty period due to defective materials or workmanship, such parts or equipment will promptly be replaced and installed by the Contractor at no additional cost to the Owner. Warranty to extend 24 months from date of Substantial Performance of total completed contract.

3.7 INSTALLATION, OPERATION AND MAINTENANCE MANUALS

- .1 The Owner shall be furnished with three (3) copies of complete installation, operation and maintenance manuals for each item of equipment specified in this section and drawings. Manuals to include, but not be limited to:
 - .1 Name, address and telephone number of the nearest competent manufacturers service representative who can furnish parts and technical services.
 - .2 Descriptive literature, including illustrations and drawings covering the operational features of each piece of specified equipment.
 - .3 Operation, maintenance and troubleshooting information.
 - .4 Complete maintenance parts list.
 - .5 Complete connection and assembly diagrams and operational circuit diagrams for specified equipment and systems.

END OF SECTION

TAB 2

SETTLEMENT AGREEMENT entered into with effect as of this ____ day of June, 2022.

BETWEEN: **EDWARD COLLINS CONTRACTING LIMITED**, a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

(**"ECC"**)

AND: **RODCO MECHANICAL (2014) LTD.** a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador,

(**"Rodco"**)

AND: **WESTERN SURETY COMPANY**, a corporation duly incorporated and existing under the laws of the Province of Ontario,

(**"Western"**)

WHEREAS

- A. The Town of Placentia and ECC entered into an agreement for the supply of certain construction works and services dated March 19, 2021 (the **"Contract"**).
- B. Pursuant to the Contract, ECC agreed to supply the construction works and services necessary in connection with a water system upgrade project being undertaken in the Town of Placentia (the **"Project"**).
- C. ECC engaged Rodco to provide certain works and services in connection with the completion of the Contract.
- D. The Town of Placentia is in possession of a holdback in relation to the Project in the amount of \$244,977.53.
- E. Rodco has caused to be registered a mechanics' lien bearing Lien No. 19963 and had further caused a Certificate of Action to be registered with the Supreme Court of Newfoundland and Labrador General Division bearing court file no. 2022 01G 0563. Rodco has also issued a mechanics' lien bearing Lien No 20096.
- F. Western has issued a labour and materials bond in relation to the Project (the **"Bond"**).
- G. Rodco has submitted a claim under the labour and materials bond which bond was issued by Western Surety Company for amounts due and owing to Rodco by ECC.
- H. ECC, Rodco and Western (the **"Parties"**) have agreed to enter into this Settlement Agreement (the **"Settlement Agreement"**), for purposes of setting out the terms and

conditions of the agreement reached between ECC, Rodco and Western with respect to the completion of the Project and release of holdback.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth and contained, and other good and valuable consideration passing between ECC and Rodco (hereinafter collectively referred to as the "**Parties**"), the Parties agree as follows:

AGREEMENT

1. The Parties acknowledge and agree that the holdback can be released and paid as follows:
 - (a) Crane Supply to be paid from the holdback the amount of \$204,781.32.
 - (b) Rodco to be paid from the holdback the amount of \$40,196.17
2. ECC agrees to:
 - (a) Pay the balance of monies due and owing to Rodco in the amount of \$358,411.71 to Rodco on or before July 28, 2022.
 - (b) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of ECC under this Settlement Agreement.
3. Rodco agrees to:
 - (a) Discharge any and all mechanics' liens as registered in connection with the Project, including but not limited to claim for lien No. 19963 and Certificate of Action bearing court file no. 2022 01G 0563 and lien No. 20096.
 - (b) Not register any additional mechanics' liens or initiate legal proceedings in relation to the Contract, with the exception of legal proceedings to enforce this Settlement Agreement.
 - (c) Do all things necessary and execute all documents reasonably necessary to give full effect to the obligations of Rodco under this Settlement Agreement and to take all steps required to have the holdback for the Project released.
4. Western Agrees to:
 - (a) Make full payment to Rodco in the amount of \$358,411.71 less any payments made by ECC following the date of these Minutes of Settlement that remains due to Rodco by ECC as outstanding on July 28, 2022 within 7 business days of Rodco providing written notice to Western of the outstanding amount.
5. General Terms
 - (a) This Settlement Agreement, including the schedules hereto, embodies the entire Agreement between the Parties concerning the subject matters mentioned herein, and supersedes all previous discussions, correspondence,

understandings or agreements, whether written or oral, with respect to such matters.

- (b) Rodco and ECC agree that this Settlement Agreement is intended to be in complete satisfaction of all matters arising between Rodco and ECC in relation to the Contract and/or the Project.
- (c) The invalidity of any of the provisions of this Settlement Agreement, or any of the provisions of the documents attached as schedules to this Settlement Agreement, shall not invalidate or affect any of the other provisions of this Settlement Agreement, which shall remain in full force and effect.
- (d) This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- (e) None of the terms, conditions or provisions of this Settlement Agreement shall be changed, waived, varied, modified or altered unless done so in writing and signed by all of the Parties.
- (f) This Settlement Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Newfoundland and Labrador, and the laws of Canada applicable therein, and the Parties shall attorn to the jurisdiction of the courts of the Province of Newfoundland and Labrador.
- (g) This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together constitute one and the same instrument. This Settlement Agreement may be executed and transmitted by facsimile or by email attachment in .pdf.

[Remainder of page intentionally blank. Signature pages to follow.]

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed as of the day and year first before written.

Witness

EDWARD COLLINGS CONTRACTING LIMITED

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the Town

Witness



C. BRAD LEYTE
"A BARRISTER" (NL)

RODCO MECHANICAL (2014) LTD.

Per: _____

Name: *Stephen Riddicome*

Title: *president.*

I/We have the authority to bind the corporation

Witness

WESTERN SURETY COMPANY

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the corporation

TAB 3

2022 01G 0563

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

RODCO MECHANICAL (2014) LTD.

PLAINTIFF

AND:

EDWARD COLLINS CONTRACTING LIMITED

FIRST DEFENDANT

AND:

TOWN OF PLACENTIA

SECOND DEFENDANT

ORDER

Before the Honourable Justice MacDonald on May 11, 2023.

WHEREAS Western Surety Company ("**Western**") made an application on February 10, 2023 for the determination of the ownership of certain holdback funds retained by the Town of Placentia (the "**Town**") in connection with a project known as the "Placentia Waterline Project" (the "**Holdback**");

AND WHEREAS Edward Collins Contracting Limited, Classic Security Ltd., FGC Holdings Ltd., 51037 Newfoundland and Labrador Inc. and H & E Designs Ltd. (collectively, the "**ECC**") are subject to a stay of proceedings under .11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), which stay was extended by this Honourable Court up until 31 May 2023;

AND WHEREAS Grant Thornton Limited has been appointed as the monitor in respect of the above noted CCAA proceeding (the "**Monitor**").

UPON HEARING counsel for Western, the First and Second Defendants and the Monitor;

IT IS HEREBY ORDERED THAT:

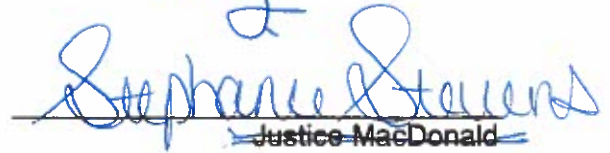
- (a) The Town shall pay the amount of Two Hundred Thirty Seven Thousand Seven Hundred Eighty Five Dollars and Twenty Seven Cents (\$237,785.27) (the "**Holdback Funds**") to the Monitor to be held in trust subject to further order of this Honourable Court.
- (b) Upon delivery to the Monitor of such Holdback Funds:
 - (i) Mechanics' Lien No. 19963 be vacated pursuant to section 26(2)(b) of the *Mechanics' Lien Act* and that pursuant to section 26(4) of the *Mechanics' Lien Act* the Holdback Funds shall thereupon take the place of the property

so discharged and shall be subject to the claims of every person who at the time of the within application had a valid and existing claim for lien as if the Holdback Funds were realized by a sale of the Property in an action to enforce the claim of lien; and

- (ii) Mechanics' Lien No. 20096 be vacated pursuant to section 26(2)(b) of the *Mechanics' Lien Act* and that pursuant to section 26(4) of the *Mechanics' Lien Act* the Holdback Funds shall thereupon take the place of the property so discharged and shall be subject to the claims of every person who at the time of the within application had a valid and existing claim for lien as if the Holdback Funds were realized by a sale of the Property in an action to enforce the claim of lien.

- (c) The applications commenced by Western and ECC in respect of the Holdback Funds are adjourned *sine die* subject to further order of this Honourable Court.

DATED at St. John's, Newfoundland and Labrador, this 11 day of May, 2023.


Justice MacDonald

**COURT
OFFICER**



Appendix “K”

NOTICE OF DETERMINATION OF CLAIM

To: Western Surety Company (the “Claimant”)

Date: September 15, 2023

IN THE MATTER OF THE CCAA PROCEEDINGS OF EDWARD COLLINS CONTRACTING LIMITED, H&E DESIGNS LTD., CLASSIC SECURITY LTD., FGC HOLDINGS LTD. AND 51037 NEWFOUNDLAND AND LABRADOR INC (the “DEBTORS”)

Take notice that Grant Thornton Limited., in its capacity as Monitor (in such capacity, the “Monitor”) appointed pursuant to the Order of Justice MacDonald dated October 5, 2022, has reviewed the Claim in respect of the above-noted Claimant and has assessed the Claim in accordance with the Claims Procedure Order of the Supreme Court of Newfoundland and Labrador dated March 14, 2023 (the “Claims Procedure Order”).

All capitalized terms not defined herein have the meaning given to such terms in the Claim Procedure Order.

The Monitor has reviewed your Claim in accordance with the Claims Procedure Order, and has made the following determination:

Claim Determination

✓ Claim Disallowed

The Monitor has made the above-noted determination in respect of your Claim for the following reason(s):

Facts:

- 1) Edward Collins Contracting entered into a contract with the Town of Placentia (the “Owner”) on March 19, 2021 with respect to water system upgrades, including the removal of existing pipes, walls, roof truss, shingles, etc. in order to complete a new pumphouse extension (the “Contract”) in the amount of \$2,259,486.65.
- 2) Under the contract, ECC was required to procure a Performance Bond as well as a Labour and Materials Payment bond each in the amount of fifty percent of the contract price.
- 3) Pursuant to the Contract, in lieu of a Labour and Materials Bond, the Owner was entitled to accept at their sole discretion an approved certified cheque of ten percent (10%) of the

bid amount. The cheque was to be retained until substantial completion of the work.

- 4) In connection with the Contract, the Claimant ("**Western Surety**") issued a Performance Bond as well as a Labour & Material Payment Bond each in the amount of \$1,129,743.33.
- 5) The Town is required to pay ECC monthly payments on account of the Contract and on substantial performance, pay any unpaid holdback monies then due. The holdback in respect to this contract is in the amount \$237,785.27 (the "**Holdback**") withheld pursuant to the *Mechanics Lien Act (NL)*. The Contract is deemed to be substantially performed when the work or substantial part thereof is ready for use or is being used for the purpose intended and when the work to be done is capable of completion or correction at a cost set out in section 1.9 therein.
- 6) The Monitor understands that ECC engaged subcontractors including Crane Canada Co. ("**Crane**") and Rodco Mechanical (2014) Ltd ("**Rodco**").
- 7) On September 1, 2021, Crane made a claim under the Labour and Material Payment Bond for unpaid work in the amount of \$251,635.00. On September 9, 2021, Crane registered a lien against the project with respect to its claim.
- 8) On October 7, 2021, ECC and Crane executed a settlement agreement (the "**Crane Settlement Agreement**") which provided, *inter alia*, that (i) ECC shall pay \$178,070.71 (the "**Crane Payment**") to Crane in full and final settlement of any debt; (ii) ECC shall make the Crane Payment by way of Irrevocable Direction to the Town directing that the holdback be paid to Crane's solicitor; (iii) upon receipt of the executed direction, Crane shall vacate their lien.
- 9) On October 5, 2021, Crane released its lien claim and the Monitor understands that ECC delivered the Irrevocable Direction to Pay to Crane.
- 10) On or about December 2, 2021, Rodco made a claim under the Payment Bond in the amount of \$508,271.50 for unpaid invoices.
- 11) The Monitor understands that the Contract was completed on March 28, 2022 by way of a signed Substantial Completion Certificate.
- 12) The Monitor understands that on or around June 3, 2022, each of Western Surety, Rodco, Crane and ECC entered into settlement discussions which culminated into a written settlement agreement (the "**All Party Settlement Agreement**") which contemplated the following:
 - The Holdback would be released and Crane would receive from the Holdback, \$204,781.32 and Crane would receive \$40,196.17;
 - ECC would pay the balance of monies due to Rodco in the amount of \$358,411 on or before July 28, 2022;

- Rodco would discharge any and all mechanic liens registered in connection with the Contract; and
 - Western Surety would make full payment to Rodco in the amount of \$358,411.71 less any payments made by ECC following execution of the Settlement Agreement and that remains outstanding on July 28, 2022.
- 13) The Monitor understands that the All Party Settlement Agreement was never executed by ECC and the parties did not exchange signature pages. Accordingly, the Monitor is of the view that the All Party Settlement Agreement was not concluded and so the All Party Settlement Agreement is therefore not valid or binding on the parties thereto. Even if the All Party Settlement Agreement was binding on the parties, the non-performance by ECC to make the required payments to Crane and Rodco would amount to Crane and Rodco holding an unsecured breach of contract claim as against ECC.
 - 14) On July 20, 2022, Justice Marshall issued a Rule 22 Order which effectively provided for a stay of proceedings and thereafter these proceedings under the *Companies Creditors Arrangement Act* were commenced.
 - 15) With respect to Crane's claim, Crane released their lien in exchange for the executed Irrevocable Direction. It is the position of the Monitor, that given that Crane released their lien, Crane no longer has security for any amounts owing to it, and is therefore an unsecured creditor. Any subrogation of Western Surety in respect of the Crane Settlement Agreement or the Crane Payment, is subrogation in respect to Crane's unsecured claim.
 - 16) With respect to Rodco's claim, the Monitor understands that Western is not relying on any registered liens of Rodco to support their claim to the Holdback. In addition, ECC disputes the validity of Rodco's registered liens. The lien number 19963 filed December 3, 2021 was not filed within the required 30 day period. The 30 day period commenced October 26, 2021 as noted on the Rodco invoice #5081 and not November 10, 2021 as noted on the lien. Regardless, assuming that Rodco had valid registered liens on the property such that Western was subrogated to Rodco's lien position, the Monitor's view is that the outstanding deemed trust claim of the Canadian Revenue Agency (the "CRA") ranks in priority to Rodco's registered liens.
 - 17) The CRA filed a proof of claim in the amount of \$2,127,872.52 in respect to unpaid and unremitted payroll deductions. The Monitor after consultation with ECC has accepted this claimed amount.
 - 18) Section 227(4) and (4.1) of the *Income Tax Act* (the "ITA") provides for a super priority deemed trust in respect to outstanding and unremitted payroll deductions:

Trust for moneys deducted

(4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, **to hold the amount separate and apart from the**

property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person **that but for the security interest would be property of the person**, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of trust

(4.1) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

[Emphasis added]

- 19) Based on the above, all of the assets of ECC, including all account receivables or other amounts owed to ECC **or a secured creditor of ECC**, are deemed to be held in trust for the Crown, notwithstanding any security interest or any other legislation in Canada. Accordingly, notwithstanding any alleged lien security interest of Rodco (which is disputed by ECC and, in any event the Monitor understands that Western Surety is not claiming subrogation under the liens), it is the position of the Monitor that the CRA has a super priority interest in the holdback funds.

Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be allowed as follows:

Name of Claimant	Claim Amount per Proof of Claim	Amount of Claim Allowed (if any)
Western Surety	\$237,785.27	\$0

IF YOU WISH TO DISPUTE THIS NOTICE OF DETERMINATION OF CLAIM AS SET FORTH HEREIN, YOU MUST TAKE THE STEPS OUTLINED BELOW.

The Claims Procedure Order provides that if you disagree with the determination of your Claim herein, you must deliver to the Monitor a completed Notice of Objection **before 5:00 p.m. on the day which is seven (7) days after the date the Notice of Determination of Claim is deemed to be received.**

If you do not dispute the determination of your Claim herein in accordance with the above instructions and the Claim Procedure Order, the amount of your Claim will be deemed to be accepted in the amount set forth herein.

If you have any questions or concerns regarding the Claims Procedure Order, please contact the Monitor directly.

DATED the 15th day of September

GRANT THORNTON LIMITED, solely in its capacity as Monitor of the Debtors.

Per: _____

Name: Phil Clarke

Title: Senior Vice President

I have authority to bind the corporation

Appendix “L”

NOTICE OF DETERMINATION OF CLAIM

To: Canada Revenue Agency (the “**Claimant**”)

Date: September 25, 2023

IN THE MATTER OF THE CCAA PROCEEDINGS OF EDWARD COLLINS CONTRACTING LIMITED, H&E DESIGNS LTD., CLASSIC SECURITY LTD., FGC HOLDINGS LTD. AND 51037 NEWFOUNDLAND AND LABRADOR INC (the “DEBTORS”)

Take notice that Grant Thornton Limited., in its capacity as Monitor (in such capacity, the “**Monitor**”) appointed pursuant to the Order of Justice MacDonald dated October 5, 2022, has reviewed the Claim in respect of the above-noted Claimant and has assessed the Claim in accordance with the Claims Procedure Order of the Supreme Court of Newfoundland and Labrador dated March 14, 2023 (the “**Claims Procedure Order**”).

All capitalized terms not defined herein have the meaning given to such terms in the Claim Procedure Order.

The Monitor has reviewed your Claim in accordance with the Claims Procedure Order, and has made the following determination:

Claim Determination

✓ Claim Allowed

The Monitor has made the above-noted determination in respect of your Claim for the following reason(s):

The Monitor has accepted the super priority of your deemed trust claim over the amount \$237,785.27 (the “**Holdback**”) withheld pursuant to the *Mechanics Lien Act (NL)* for the Placentia Waterline Project.

Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be allowed as follows:

Name of Claimant	Claim Amount per Proof of Claim	Amount of Claim Allowed (if any)
Canada Revenue Agency	\$2,259,486.65	\$237,785.27

IF YOU WISH TO DISPUTE THIS NOTICE OF DETERMINATION OF CLAIM AS SET FORTH HEREIN, YOU MUST TAKE THE STEPS OUTLINED BELOW.

The Claims Procedure Order provides that if you disagree with the determination of your Claim herein, you must deliver to the Monitor a completed Notice of Objection **before 5:00 p.m. on the day which is seven (7) days after the date the Notice of Determination of Claim is deemed to be received.**

If you do not dispute the determination of your Claim herein in accordance with the above instructions and the Claim Procedure Order, the amount of your Claim will be deemed to be accepted in the amount set forth herein.

If you have any questions or concerns regarding the Claims Procedure Order, please contact the Monitor directly.

DATED the 25th day of September

GRANT THORNTON LIMITED, solely in its capacity as Monitor of the Debtors.

Per: 

Name: Phil Clarke

Title: Senior Vice President

I have authority to bind the corporation

Appendix “M”

SCHEDULE C

NOTICE OF OBJECTION

IN THE MATTER OF THE CCAA PROCEEDINGS OF EDWARD COLLINS CONTRACTING LIMITED, H&E DESIGNS LTD., CLASSIC SECURITY LTD., FGC HOLDINGS LTD. AND 51037 NEWFOUNDLAND AND LABRADOR INC (the "DEBTORS")

To: Grant Thornton Limited, in its capacity as Monitor of the Debtors (the "Monitor")

Date: the 22nd day of September 2023

Claimant: Western Surety Company (the "Claimant")

Pursuant to the Claims Procedure Order dated ●, 2023, the Claimant hereby gives notice that it disputes the Notice of Determination of Claim dated ●, 2023, issued by the Monitor.

The Claimant disputes the Claim as partially allowed, partially disallowed or disallowed in the said Notice of Determination of Claim as follows:

Amount of Claim determined by the Monitor as set out in the Notice of Determination of Claim	Amount of Claim per Claimant
\$ 0.00	\$ \$237,785.27
\$	\$

Reason for the dispute (*attach copies of any supporting documentation*)

See Schedule "A"

Address for service of this Notice of Objection:

Grant Thornton Limited

in its capacity Monitor of the Debtors

Nova Centre, North Tower
Suite 1000 - 1675 Grafton Street
Halifax NS Canada, B3J 0E9

Attention: Allan MacDonald
Phone: (902) 491.4179
Email: Allan.MacDonald@ca.gt.com

THIS FORM AND ANY REQUIRED SUPPORTING DOCUMENTATION MUST BE RETURNED TO THE MONITOR BY REGISTERED MAIL, PERSONAL SERVICE, EMAIL (IN PDF FORMAT), FACSIMILE OR COURIER TO THE ABOVE-NOTED ADDRESS AND MUST BE RECEIVED BY THE MONITOR BEFORE 5:00 P.M. ON THE FOURTEENTH (14) CALENDAR DAY AFTER THE DATE THE NOTICE OF DETERMINATION OF CLAIM IS DEEMED TO BE RECEIVED.

DATED the 22nd day of September 2023.



(Signature of Witness)
Andrew Punzo

Western Surety Company

(Signature of Claimant)

If the Claimant is not an individual, print name of Claimant, and name and title of authorized signatory:

Per: James Toothill
Name: James Toothill
Title: Chief Claims Manager & Privacy Officer
I have the authority to bind the corporation

SCHEDULE "A"

SCHEDULE "A"

2022 01G 1964

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF the *Companies*
Creditors Arrangement Act, R.S.C., 1985 c.
C-36 as amended (the "CCAA")

AND IN THE MATTER OF an application of
Edward Collins Contracting Ltd., Classic
Security Limited, FGC Holdings Limited,
51037 Newfoundland and Labrador Inc. and
H&E Designs Ltd. (collectively, "ECC" or the
"Company")

NOTICE OF OBJECTION
OF WESTERN SURETY COMPANY

BORDEN LADNER GERVAIS LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto, ON M5H 4E3

Andrew Punzo
Tel: (416) 367-6005
Email: apunzo@blg.com

Mark A. Borgo
Tel: (416) 367-7887
Email: mborgo@blg.com

Lawyers for the Claimant,
Western Surety Company

TO: GRANT THORNTON LIMITED
In its capacity as Monitor of the Debtors
Nova Centre, North Tower
1675 Grafton Street, Suite 1000
Halifax, NS B3J 0E9

Allan MacDonald / Phil Clarke
Email: allan.macdonald@ca.gt.com
Email: phil.clarke@ca.gt.com

THE DISPUTE

1. Western Surety Company (“Western”) disputes the Claim Determination of the Monitor dated September 15, 2023, for the reasons discussed further below.

The Monitor Erred

2. The Monitor made the following errs of fact and law, as set out in further detail herein:
 - (a) The Monitor erred in finding that Rodco’s claim for lien is untimely;
 - (b) The Monitor erred in finding that the Holdback was payable to ECC pursuant to the terms of the Contract when the Project achieved Substantial Performance March 28, 2022; and
 - (c) The Monitor erred in finding that the “All Party Settlement Agreement” was never executed and not binding.
3. Respectfully, the Monitor also erred by making findings of fact by disregarding relevant evidence, and by making factual findings in the absence of evidence, including failing to consider that ECC extinguished any right to payment from the Holdback such that Canada Revenue Agency’s (“CRA”) deemed trust does not attach to these contract funds.

Rodco’s Claim for Lien is Timely

4. At paragraph 16 of the Monitor’s Determination, the Monitor found that Rodco’s claim for lien is untimely having registered its claim for lien outside of the 30 days provided under the

Mechanics' Liens Act (“*MLA*”).¹ To the extent the timeliness of Rodco’s claim for lien is relevant to the issues related to Western’s claim herein, which it is not because the issue before this Court is not a priority dispute, Western states that the Monitor erred.

5. Pursuant to section 2(1)(m) of the *MLA*, “subcontractor” means a person not contracting directly with the owner (in this case, The Town of Placentia) but contracting with a contractor (in this case, ECC).

6. ECC, as Contractor, entered into a subcontract with Rodco, as Subcontractor, for services and materials in relation to the Contract. As such, Rodco is a “subcontractor” under the *MLA*.

7. Pursuant to section 22(1) of the (“*MLA*”), a claim for lien by a subcontractor may be registered before or during the performance of the subcontract or within 30 days after the completion or abandonment of the subcontract.

8. The Monitor erred in finding that the timeliness of Rodco’s claim for lien was based on its purported last date of supply of October 26, 2021. Rather, under the *MLA*, the 30 days period commences after the completion or abandonment of the subcontract.

9. The evidence submitted by Western in its Proof of Claims demonstrates that Rodco was still performing its obligations under its subcontract when it registered its claim for lien on December 3, 2021. In particular, Rodco swore a statutory declaration dated December 2, 2021, expressly stating that it was “*still on site working*” and that there was “*work still ongoing to invoice*”

¹ *Mechanics' Lien Act*, RSNL 1990, C M-3, section 22(1) [*MLA*].

for”.² Furthermore, on January 24, 2022, Josh Collins wrote to Western confirming that Rodco was still performing work to complete the Project.³

10. On December 3, 2021, Rodco registered a claim for lien for work performed in connection with the Contract (the “Rodco Lien”).⁴ Given that the Rodco subcontract was still ongoing when the Rodco Lien was registered, the 30 day period under the *MLA* had not yet commenced or expired. Accordingly, the Rodco Lien is timely.

11. In February 2022, Rodco commenced proceedings to enforce the Rodco Lien in the Supreme Court of Newfoundland and Labrador by way of Statement of Claim and Certificate of Action.⁵

ECC Was Never Entitled to the Holdback

12. Pursuant to the express provisions of the *MLA* and the Contract, at all material times the Holdback was not payable to ECC and was therefore not the property or a debt owing to ECC. The *MLA* and the Contract are clear that the Holdback becomes payable when the express conditions of both the *MLA* and the Contract are satisfied.

13. Pursuant to section 12(1) and 12(7) of the *MLA*,⁶ a contractor’s entitlement to the holdback does not arise until substantial performance or the expiration of the holdback period, being 30 days after completion or abandonment of the work, unless in the meantime proceedings have been commenced to enforce a lien.

² Toothill Affidavit at para 14, Exhibit G, pp. 139-141.

³ Email from Josh Collins to Western Surety Company dated January 24, 2022, Schedule “B”.

⁴ Toothill Affidavit at para 15, Exhibit H, p. 163.

⁵ Toothill Affidavit at para 15, Exhibit H, pp. 169-175.

⁶ *MLA*, sections 12(1) and 12(7).

14. In addition, pursuant to GC 21.4, GC 21.7, and GC 21.9 of the Contract, the Holdback is not payable to ECC unless the following conditions are satisfied: (i) the issuance of a Certificate of Substantial Performance; (ii) the expiration of the Statutory Limitation Period stipulated in the *MLA*; (iii) no lien claims against the Work; and (iv) the Contractor (in this case, ECC) submits to the Owner (in this case, the Town of Placentia) a sworn statutory declaration that all monies have been paid to Subcontractors.⁷

15. At paragraphs 11 and 19 of the Monitor's Determination, the Monitor indicates that the Contract was Substantially Performed March 28, 2022, such that the Holdback was an account receivable of ECC. The Monitor erred in failing to consider that pursuant to the *MLA* and the Contract, the Holdback was not payable to ECC as various conditions to payment referred to above were not satisfied:

(a) The Rodco Lien remained;

(b) There is no evidence in this Claims Process that ECC delivered the requisite sworn statutory declaration that all monies have been paid to Subcontractors; and

(c) A statutory declaration could not have been properly delivered in any event given ECC's acknowledgement that monies were owed to Crane and Rodco.

16. Simply put, ECC failed to satisfy legislation and contractual conditions to payment of the Holdback notwithstanding that Substantial Performance was achieved March 28, 2022.

⁷ Contract, GC 21.7, pp. 79-80, Western's Compendium, Tab 1.

The All Party Settlement Agreement Was Signed and Binding

17. For clarity, there are two settlement agreements. The Crane Settlement dated October 7, 2021 and the All Party Settlement Agreement dated June 7, 2022. Both independently give Western the right to the Holdback. At paragraph 13 of the Monitor's Determination, the Monitor erred in finding that the All Party Settlement Agreement is not valid and binding, which will be discussed further below. However, and in any event, the Crane Settlement ought to be considered irrespective of the All Party Settlement Agreement as the parties do not dispute that the Crane Settlement was validly entered into. Therefore, based on the Crane Settlement alone, Western is entitled to the Holdback. To the extent necessary, below is Western's position on the All Party Settlement.

18. The Monitor found that the All Party Settlement Agreement was not executed and is therefore not valid and binding. This is incorrect. Firstly, the execution of a settlement agreement is not determinative as to whether a settlement agreement has been reached. Rather, the test to contract formation is objective – objectively, one must be convinced that there was a meeting of the minds.⁸

19. In its Proof of Claim, Western submitted correspondence of the settlement discussions between ECC, Rodco, and Western with respect to the formation of the All Party Settlement Agreement. This correspondence unequivocally shows that a settlement had been reached: there was an offer; acceptance; consideration; certainty of terms; and a clear intention of all parties to create legal relations.⁹

⁸ *McCabe v Verge*, 1999 CanLII 18936 (NL CA), at para 12, Western's Brief of Authorities, Tab 5 [*McCabe*].

⁹ Toothill Affidavit at paras 40-56.

20. Respectfully, the Monitor erred in failing to consider and apply the evidence that both Western and ECC filed in this Claims Process with respect to the All Party Settlement Agreement. There is no dispute that the All Party Settlement Agreement was signed by all parties. Rather, ECC admits it was signed, but questionably alleges it is not enforceable.

21. On July 4, 2022, Mr. Brad Leyte, counsel for Rodco confirmed in writing that his client signed the All Party Settlement Agreement.¹⁰ That same day, Mr. Michael Cabot, previous counsel for ECC said he was making arrangements for ECC to sign the All Party Settlement Agreement.¹¹ On July 6, 2022, Mr. Cabot confirmed in writing that ECC had signed the All Party Settlement Agreement.¹² On July 19, 2022, Western confirmed in writing that it had signed the All Party Settlement Agreement.¹³

22. Importantly, Western produced the executed All Party Settlement Agreement signature pages from Western and Rodco in its Proof of Claim¹⁴ and ECC admits at paragraph 38 of the Affidavit of Josh Collins that Francis Collins, on behalf of ECC, executed the All Party Settlement Agreement.¹⁵

23. With respect to the Monitor's finding that the All Party Settlement had not been concluded, the evidence submitted by Western in its Proof of Claim demonstrates otherwise.

¹⁰ Toothill Affidavit at para 49, Exhibit HH, p. 285.

¹¹ Toothill Affidavit at para 51, Exhibit JJ, p. 293.

¹² Toothill Affidavit at para 52, Exhibit KK, p. 301.

¹³ Toothill Affidavit at para 55, Exhibit NN, p. 326.

¹⁴ Settlement Agreement, Western's Compendium, Tab 1 and Toothill Affidavit at para 55, Exhibit NN, p. 328-331.

¹⁵ Affidavit of Josh Collins sworn August 17, 2023 at para 38 [Collins Affidavit].

The Monitor Failed to Consider Western's Argument of Holdback Ownership

24. The Monitor erred in failing to consider that ECC extinguished any right to payment from the Holdback such that CRA's deemed trust does not attach to the subject contract funds.

25. Rather than addressing Western's core assertion to the Holdback, the Monitor focuses on the unsecured and secured claims of Crane and Rodco, which is not the basis of Western's claim to the Holdback.

26. At paragraphs 13 and 14 of the Monitor's Determination, the Monitor concludes that ECC's non-performance under the terms of the Crane Settlement and the All Party Settlement Agreement amount to Crane and Rodco (in this case, Western) holding unsecured breach of contract claims as against ECC.

27. At paragraphs 15, 16, 18, and 19 of the Monitor's Determination, the Monitor indicates that Western is not relying on the Rodco Lien to support its claim to the Holdback but subsequently concludes that, if Western is subrogee of the Rodco Lien, then its claim cannot succeed as the outstanding deemed trust claim of CRA ranks in priority.

28. As underscored in Western's Proof of Claim, Western is not advancing a claim to the Holdback as a secured creditor pursuant to its assigned and/or subrogated liens rights or as an unsecured creditor. This is not a case of priority between creditors. Rather, Western's claim to the Holdback is based on ownership of contract funds (i.e., the Holdback).

29. Western's position is that the Holdback is not the property of ECC nor a debt payable to ECC, which is a pre-condition to the CRA's deemed trust claim as confirmed by the Supreme Court of Canada in *First Vancouver Finance v M.R.N.* ("*First Vancouver*").¹⁶

30. In *PCL Constructors Westcoast Inc. v Norex Civil Contractors Inc.* ("*Norex*"),¹⁷ the Supreme Court of British Columbia considered the deemed trust claim in the construction context and the impact on holdback funds. Although this case was decided in British Columbia, both the British Columbia *Builders' Lien Act*¹⁸ and the Newfoundland *MLA* create a fund to which the contractor (in this case, ECC) "*may eventually become entitled.*"¹⁹

31. In considering the CRA's deemed trust claim over the holdback funds, the Court in *Norex* held that the CRA can have no higher right to the holdback than the tax debtor. This is because the CRA's deemed trust "*only gives the CRA a beneficial right to the property of the contractor which the contractor actually holds.*"²⁰ Put another way, if the tax debtor (in this case, ECC) has no claim to any portion of the holdback, neither does the CRA.²¹ In the present case, it cannot be said that ECC had a claim to the Holdback. ECC expressly extinguished any future entitlement to the Holdback by way of the Crane Agreement and All Party Settlement Agreement, and in any event, the conditions required for payment of Holdback under the *MLA* and the Contract were never satisfied.

32. The circumstances of the present case are identical to a recent decision in Ontario. The principles in *First Vancouver* and *Norex* were applied in *Northwest Angle 33 First Nation v Razar*

¹⁶ *First Vancouver Finance v MRN*, 2002 SCC 49 at para 33 (CanLII).

¹⁷ *PCL Constructors Westcoast Inc v Norex Civil Contractors Inc.*, 2009 BSSC 95 at para 62 [*Norex*].

¹⁸ *Builders' Lien Act*, S.B.C. 1997, c. 45.

¹⁹ *Norex* at para 62.

²⁰ *Northwest Angle 33 First Nation v Razar Contracting Services Ltd. et al.*, 2023 ONSC 1233 (CanLII).

²¹ *Norex* at para 79.

Contracting Services Ltd. et al. (“*Razar*”).²² In *Razar*, the CRA sought payment from a contractor (in that case, the tax debtor) from the statutory holdback on the basis of its deemed trust claim.

33. The issue before the Court in *Razar* was whether the holdback was the property of the contractor or a debt payable to the contractor such that the CRA’s deemed trust attached to those funds. Apart from immaterial differences in the facts, the issues in *Razar* are identical to the current case.

34. In *Razar*, the contractor entered into a construction contract with the owner that contained the following relevant provisions:

- (a) The progress obligations of the owner would be subject to a 10% holdback;²³
- (b) It was a condition to the owner’s obligation to pay the holdback that the project be deemed substantially complete;²⁴ and
- (c) If the work on the project was taken out of the contractor’s hands, the contractor’s right to any further payment from the holdback would be extinguished.²⁵

35. The Court in *Razar* found that it was the intention of the parties to the construction contract that the holdback would be held by the owner pending substantial completion of the contract, and that if the work was taken out of the contractor’s hands, the contractor’s right to any further payment from the holdback would be extinguished, which had occurred in that case.²⁶

²² *Northwest Angle 33 First Nation v Razar Contracting Services Ltd. et al.*, 2023 ONSC 1233 (CanLII) [*Razar*].

²³ *Razar* at para 67.

²⁴ *Razar* at para 67.

²⁵ *Razar* at para 69.

²⁶ *Razar* at paras 68 and 70.

36. In *Razar*, the Court concluded that the holdback was, at all material times, held by the owner and was not the property of the contractor unless and until the applicable conditions under the construction contract were satisfied.²⁷ Moreover, the contractor's right to any payment from the holdback was extinguished when the owner exercised its right to take the work out of the contractor's hands such that the holdback would never be payable.²⁸

37. Identical to *Razar*, ECC and the Town of Placentia (the "Town") agreed, as set out in GC 21.12 of the Contract, that progress payment obligations of the Town to ECC would be subject to a 10% holdback. The Town and ECC further agreed, as set out in GC 21.7 of the Contract, to conditions precedent regarding ECC's entitlement to the Holdback, including that the Project be deemed Substantially Performed, ECC deliver a statutory declaration to the Town that all monies had been paid to Subcontractors, and there be no subsisting lien claims against the Work.²⁹

38. Accordingly, like *Razar*, it is clear from the express terms of the Contract that the Town and ECC intended that ECC not have entitlement to the Holdback where Substantial Performance of the Contract was not achieved and where there were subsisting lien claims.³⁰

39. In the present circumstances, the Contract achieved Substantial Performance on March 28, 2022.³¹ Importantly, this was after ECC entered into the Crane Settlement on October 7, 2021 extinguishing any right to payment of the Holdback. Moreover, at the time of Substantial Performance, the Rodco Lien was subsisting such that the Holdback was not payable to ECC or a debt owing to ECC under the terms of the *MLA* and the Contract. Since the CRA's deemed trust

²⁷ *Razar* at para 68.

²⁸ *Razar* at para 70.

²⁹ Contract, GC 21.12, p. 81 and GC 21.7 p. 79-80, Western's Compendium, Tab 1.

³⁰ Contract, GC 21.7, p. 70-80, Western's Compendium, Tab 1.

³¹ Collins Affidavit at para 25, Exhibit H, p. 84.

cannot result in CRA having a greater position than the tax debtor (in this case, ECC), the CRA's deemed trust could not attach to the Holdback.

40. In addition, like the contractor in *Razar*, ECC's right to payment from the Holdback was extinguished – the only difference being that in *Razar* it was the owner that extinguished the contractor's right to the holdback, whereas in the present circumstances, ECC extinguished its right to the Holdback when it entered into the Crane Settlement and All Party Settlement. In other words, ECC would never have become entitled to the Holdback. In light of the foregoing, the Holdback is neither the property of ECC nor a debt payable to ECC.

41. Respectfully, to suggest that the Holdback is, in these circumstances, either the property of ECC or a debt owing to ECC, is contrary to the *MLA* and the clear intentions of the parties to the Contract, the Crane Settlement, and the All Party Settlement Agreement.

42. Furthermore, and crucially, it is also contrary to the representations of ECC, whose lawyer confirmed in writing on May 30, 2022, that aside from Crane and Rodco, “...*no other company is seeking payment here, including ECC*”.³²

CONCLUSION

43. For the foregoing reasons, as well as the reasons expressed in Western's prior submissions in this Claims Process, Western objects to the determination of the Monitor disallowing Western's claim in its entirety, and respectfully requests that the Holdback be paid to Western.

³²Toothill Affidavit at para 42, Exhibits AA, p 251.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of September 2023.

BORDEN LADNER GERVAIS LLP

Per:

A handwritten signature in black ink, appearing to read "Mark", is written over a horizontal line.

Andrew Punzo and Mark A. Borgo,
Lawyers for Western Surety Company

SCHEDULE "B"

SCHEDULE "B"

From: Josh Collins <joshcollins@edwardcollinscontracting.com>
Sent: January 24, 2022 6:01 AM
To: James Toothill
Cc: Ruby Noseworthy; Connor Chow; Wesley Benson; Michael Cabot
Subject: Re: Edward Collins Contracting Ltd. - Town of Placentia Project and Settlement Agreement and Release Document

The town of Placentia released the two outstanding claims to us Friday. We received approximately \$55,000 and we paid Rodco \$75,000 on Friday. They are continuing to work to complete the job.

Sent from my iPhone