SUPREME COURT OF NOVA SCOTIA

Citation: *Raytech Electrical Systems Ltd. v. Maritech Construction Inc.*, 2025 NSSC 213

Date: 20250624
Docket: Amh No. 529570
Registry: Amherst

Between:

Raytech Electrical Systems Ltd., a body corporate pursuant to the laws of the Province of Nova Scotia

Applicant

v.

Maritech Construction Inc., a body corporate pursuant to the laws of the Province of Nova Scotia, Brian Harold Farrow and Phillip Brian Farrow

Respondents

D E C I S I O N

Judge:	The Honourable Justice James L. Chipman
Heard:	March 17 and April 23, 2025 in Amherst, Nova Scotia
Written Decision:	June 24, 2025
Counsel:	Anthony S.E. Buckland, for the Applicant Paul G. Wadden, for the Respondents

By the Court:

INTRODUCTION AND BACKGROUND

[1] By application in court brought by Raytech Electrical Systems Ltd. against Maritech Construction Inc., Brian Harold Farrow and Phillip Brian Farrow, the applicant seeks the following relief:

- a declaration that Messrs. Farrow are jointly and severally liable to Raytech for breach of their trust obligations under the *Builders' Lien Act*, R.S.N.S. 1989, c. 277 (*BLA*);
- special damages in the amount of $61,799.43;
- punitive damages in the amount of $5,000; and
- costs.

[2] The respondents concede that Maritech is liable in contract to Raytech but they deny that the applicant can invoke the trust provisions of the *BLA* without having first registered lien claims. The respondents ask for a dismissal of the application with costs.

[3] In terms of the evidence, the court had the uncontested affidavits of Robert Rayworth, President of Raytech, filed May 6, 2024, and Brian Farrow, Officer and Director of Maritech, filed August 23, 2024. Neither party sought to cross-examine.

[4] At the close of the hearing on March 17, 2025, the uncontested evidence established the following:

1. Maritech is a body corporate pursuant to the laws of the Province of Nova Scotia with its registered address at Amherst, Nova Scotia.
2. Brian Farrow and Phillip Farrow were at all material times the directing minds of Maritech.
3. In November 2022, Maritech, as general contractor, contracted with Raytech for Raytech to supply and install new electrical cables, wiring, and fixtures at the Cumberland Health Authority office on Prince Arthur Street in Amherst.
4. From November 29, 2022, until June 12, 2023, Raytech, as subcontractor, supplied and installed new electricals in the offices,

including wiring, cabling, plugs, outlets, switches, data cabling and security cabling.

5. All of the work was completed without issue.

6. The total cost of the work completed by Raytech was $124,214.12.

7. Maritech made two payments for $20,987.50 and $44,016.25 to Raytech in partial satisfaction of the total cost.

8. The outstanding balance owed to Raytech from the Cumberland Health Authority contract is $59,210.37.

9. In July 2023, Maritech, as general contractor, contracted with Raytech for Raytech to supply and install a PAC pole and necessary supporting components for internet use at Scotia Hyundai on Robert Angus Drive in Amherst.

10. Raytech, as subcontractor, supplied and installed the necessary materials at Scotia Hyundai on July 4, 5 and 11, 2023, and invoiced Maritech for $2,589.06;

11. Maritech has not paid anything to Raytech for the work completed at Scotia Hyundai.

12. The total debt owing to Raytech by Maritech is $61,799.43.

13. Raytech did not register a lien against either property where the work was performed.

14. Maritech is a defunct company and has been sued by various creditors. It has not filed for bankruptcy.

[5] There was no evidence as to whether Maritech was paid (in full or in part) for its work as general contractor on either project, and, if it was, when that payment was made. If the trust provisions of the *BLA* apply notwithstanding Raytech's failure to register liens, this information would be necessary to establish the existence of a trust over the funds. Without a finding that Maritech is liable for breach of trust, the issue of personal liability does not arise.

[6] During closing submissions, respondents' counsel, Mr. Wadden, argued that even if the trust provisions applied, there was no evidence of any misappropriation of funds by Messrs. Farrow.

[7] After hearing from the parties, I reserved decision. On April 3, 2025, applicant's counsel, Mr. Buckland, filed a motion for an order reopening the evidence and permitting cross-examination of the parties. In the affidavit supporting the motion, Mr. Buckland outlined his understanding, based on the history of the proceeding and his communications with respondents' counsel prior to the hearing, that the respondents were not denying that Maritech received full payment for both projects and that Messrs. Farrow had misappropriated the funds for other purposes. In other words, Mr. Buckland and Raytech believed that the respondents' only defence was that the applicant had no claim under the trust provisions under the *BLA* because it had not registered liens against the properties where the work was performed. For this reason, Mr. Buckland did not call evidence, thinking that the only question to be decided was whether the trust provisions applied.

[8] The respondents opposed the motion to reopen. In Mr. Wadden's affidavit, sworn on April 17, 2025, he denied having ever represented to Mr. Buckland that Messrs. Farrow would concede that they received payment and misappropriated the funds for other purposes. Mr. Wadden stated in part:

> 8. On September 6, 2024, counsel for the Applicant, Anthony Buckland ("Mr. Buckland") sent me an email stating that he would consent to setting aside default judgment if the Farrows agreed to the quantum of damages and that the issues to be heard at the hearing were whether the trust provisions of the *Builders' Lien Act* ("the *Act*") apply and whether the Farrows were personally liable under the *Act*.
>
> 9. I agreed to this, as I understood this to mean was [*sic*] that the Applicant would have to first show that the *Act* applied in this case, and then if it did, show that the Farrows were personally liable under the *Act*.
>
> …
>
> 14. I filed the Notice of Contest for the Farrows on September 26, 2024, which admitted to 16 factual grounds set out in its Notice of Application in Court, but I specifically denied that the Farrows breached the trust provisions of the *Act* and put the Applicant to the strict proof thereof.
>
> 15. I specifically denied this allegation because I did not agree to concede to the Farrows' liability should the *Act* apply, and put the Applicant on notice again in these pleadings that it had to prove its case against the Farrows.
>
> 16. I did not receive any communication from Mr. Buckland after he received my pleadings asking to clarify what was meant by the denial of the breach of trust.

[9] At the motion hearing, I gave an oral decision where I found that at the time of the March 17, 2025, application in court, there was a fundamental

misunderstanding between counsel as to the scope of their agreement. Critically, Mr. Buckland thought that Messrs. Farrow had agreed that if the court determined that the trust provisions of the *BLA* applied, then they acknowledged that the $61,799.43 debt would fall to them because they agreed that their company, Maritech, was paid for the projects, and that they spent the funds elsewhere.

[10] I found that the applicant would suffer a substantial injustice if I did not allow its motion to reopen the evidence and, if required, cross-examine the parties. I further found that there would be minimal prejudice to the respondents if the application was reopened. I held that the court could not come to a correct result on the merits of the application without having the benefit of the evidence the applicant proposed to adduce in respect of the alleged receipt and misappropriation of the funds for the contracts in question.

[11] Consistent with my decision, on May 15, 2025, Raytech filed an affidavit of Jim Furlong, the former General Manager of Casey Realty. Mr. Furlong stated that Casey Realty had contracted with Maritech for the construction of the Cumberland Health Authority Office and that the contract was already ongoing when he assumed the position of General Manager. Mr. Furlong stated that when Brian Farrow requested payment of the holdback, he asked him if everything had been completed and paid. Mr. Farrow responded in the affirmative and Casey Realty subsequently paid the holdback to Maritech. Mr. Furlong attached a true copy of the final invoice provided to Casey Realty from Maritech for the Cumberland Health Authority project in the amount of $38,801.91. He also attached a true copy of the receipt indicating payment by cheque to Maritech on June 21, 2023.

[12] This matter was scheduled to return for a further hearing on June 18, 2025. On June 17, Mr. Wadden wrote to the court on his and Mr. Buckland's behalf advising:

> In anticipation of the upcoming hearing date on June 18, 2025, I write to advise that the Respondents, Brian and Phillip Farrow, have instructed me not to challenge the affidavit evidence submitted by the Applicant. As such, the parties wish to put on the record that [*sic*] undisputed facts before the Court in this Application are that in relation to the Cumberland Health Authority project, Raytech was a subcontractor for Maritech, Raytech supplied materials and labour to the project for which Maritech was the general contractor, Casey Realty paid the entirety of the funds owed to the Respondent Maritech, and that Maritech did not distribute the funds claimed by Raytech to Raytech, namely $59,210.37, which Raytech was owed by Maritech in virtue of the labour and services it provided to Maritech, and that these

> funds have been appropriated for a purpose other than to pay Raytech. As such, the issues before the Court are:
>
> 1. Whether Brian and Phillip Farrow are personally liable under the Builders' Lien Act given that no builders' lien was registered; and
>
> 2. Whether Raytech has proven its claim for the amount claimed related to the Scotia Hyundai project in the amount of $2,589.06
>
> a. and if this is proven, are Brian and Phillip Farrow personally liable under the *Builders' Lien Act* given that no builders' lien was registered.
>
> For greater clarity, in respect to the claim for Cumberland Health Authority Project, there is no dispute that the elements in paragraphs 7 and 8 of *Ceilidh Construction Ltd. v. Optimum Construction Ltd.*, 2015 NSSC 190, have been established. The only question is whether the failure of Raytech to file a lien vitiates any trust that would have otherwise been created pursuant to the *Builders' Lien Act*.
>
> I have confirmed with Mr. Buckland, copied on this letter, that the above is correct. Given the above, we seek the Court's direction on whether there is a need to attend the scheduled hearing in Amherst on June 18, 2025.

[13] The hearing was removed from the docket and I completed my decision on the application.

ISSUES

I Is Raytech entitled to relief under the trust provisions of the *BLA*, notwithstanding its failure to register a lien against the properties where the work was performed?

II If the trust provisions apply, are the Farrows personally liable to Raytech?

PARTIES' POSITIONS

Raytech

[14] Raytech says the lien provisions and the trust provisions of the *BLA* create two distinct and independent remedies, so that access to the trust provisions does not depend on the contractor or subcontractor registering a lien claim within the statutory timeline. Raytech relies on the Supreme Court of Canada's decision in *Stuart Olson Dominion Construction Ltd. v. Structal Heavy Steel*, 2015 SCC 43, and the Law Reform Commission of Nova Scotia's "Builders' Liens in Nova Scotia: Reform of the *Mechanics' Lien Act* - Final Report" (June 2003).

Maritech and the Farrows

[15] The respondents say that the *Stuart Olson* decision is distinguishable because the contractor in that case did register a lien prior to making a trust claim. The respondents acknowledge that the lien and trust remedies are distinct under the *BLA* but argue that a party who wishes to avail themselves of the trust provisions and pierce the corporate veil must first take the necessary procedural steps of registering and perfecting a lien. The respondents rely on the following comments by the Honourable Michael Baker, Minister of Justice, on second reading of Bill No. 58, which became the *BLA*:

> Another provision of this bill which I think is significant is the trust provision. The trust provision has the effect of making sure that **in a case of bankruptcy those funds are available to be distributed amongst the lien holders, so that the lien holders are in a position to be paid out of the funds held by the builder or contractors**. I think those provisions are of great significance and will indeed improve the law in Nova Scotia.
>
> [Emphasis added]
>
> (Nova Scotia, Legislative Assembly, *Hansard*, 59th Gen Ass, 1st Sess (27 April 2004) at p. 2722)

[16] According to the respondents, the former Minister of Justice's comments show that the trust provisions were intended to protect lien holders from a situation where a corporate contractor becomes insolvent. They say the drafters envisioned a system where a subcontractor or supplier who wishes to obtain the benefits of the trust provisions must first avail themselves of the lien provisions.

LEGISLATIVE PROVISIONS

[17] The parties agree and I find that the relevant provisions of the *BLA* are ss. 6(1), 11, 12, 18(A), 24, 25, 26, 44B and 44(6).

Is registering and perfecting a lien claim a prerequisite for making a trust claim?

[18] The issue of whether a subcontractor or supplier must register and perfect a lien before they will be entitled to make a trust claim was first considered by the Supreme Court of Canada in *Minneapolis-Honeywell Regulator Co. v. Empire Brass Manufacturing Co.*, [1955] S.C.R. 694, 1955 CarswellBC 177. In that case, Irvine & Reeves (I & R) had obtained a subcontract to install heating plants in four

schools for which the appellant supplied the automatic heating controls. The respondent was I & R's principal supplier on this and other contracts and had obtained from them an assignment of all present and future book accounts as security for an indebtedness of $20,000. The general contractor was given notice of the assignment and made subsequent payments by cheque payable to I & R and the respondent jointly. The practice was for both to decide together what accounts of I & R should be paid, and then the surplus was applied against the indebtedness to the respondent.

[19] The appellant, who had not been paid, lost its right to a lien against the schools by failing to file a claim within the prescribed time. However, when I & R went into liquidation, the appellant asserted that the moneys received by the respondent under the assignment were trust funds by virtue of s. 19 of the *Mechanic's Lien Act*, R.S.B.C. 1948, c. 205, and sought an accounting.

[20] The appellant was successful at trial, but the decision was reversed on appeal. O'Halloran and Smith JJA held that any rights which s. 19 purported to give could only be invoked by a person who was at the time of the institution of the action entitled to a lien upon the property in respect of which the work had been done or the materials supplied. The Supreme Court of Canada was unanimous in holding that the rights created by s. 19 were independent of the right to a lien under the *Act*. Speaking for the majority, Rand J. stated:

> 1 This appeal raises the question of the interpretation of s. 19 of the *Mechanics' Lien Act* of British Columbia. The section reads as follows: -
>
> > All sums received by a contractor or a sub-contractor on account of the contract price shall be and constitute a trust fund in the hands of the contractor or of the sub-contractor, as the case may be, for the benefit of the owner, contractor, sub-contractors, Workmen's Compensation Board, labourers, and persons who have supplied material on account of the contract; and the contractor or the sub-contractor, as the case may be, shall be the trustee of all such sums so received by him, and, until all labourers and all persons who have supplied material on the contract and all sub-contractors are paid for work done or material supplied on the contract and the Workmen's Compensation Board is paid any assessment with respect thereto, shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust.
>
> 2 I am unable to feel difficulty about what this language provides. The *Act* is designed to give security to persons doing work or furnishing materials in making an improvement on land. Speaking generally, the earlier sections give to such persons a lien on the land, but that is limited to the amount of money owing by the

> owner to the contractor under the contract when notice of the lien is given to him: only thereafter does he pay the contractor at any risk.
>
> 3 For obvious reasons this is but a partial security; too often the contract price has been paid in full and the security of the land is gone. It is to meet that situation that s. 19 has been added. The contractor and sub-contractor are made trustees of the contract moneys and the trust continues while employees, material men or others remain unpaid.

[21] Justice Rand went on to find that the appellants were *cestuis que trustent* of the moneys received by the subcontractor. He noted that the respondent, as assignee of the moneys from I & R,

> acts through the right and power of the assignor; and the receipt by him is likewise that by the creditor. If this were not so, the entire purpose of the section could be nullified by an assignment contemporaneous with the contract. … The assignee of such moneys must either see to the satisfaction of the rights under the trust … or run the peril of participating in a breach of it. (para. 4)

[22] Locke J., dissenting in part but not on this issue, more directly addressed the impact of a failure to register a lien on the right of a subcontractor or supplier to advance a trust claim:

> **23 O'Halloran J.A., with whom Sidney Smith J.A. agreed, found that any rights which s. 19 purported to give could be invoked only by a person who was, at the time of the institution of the action, entitled to a lien upon the property in respect of which the work had been done or the materials supplied.** The view of the learned trial judge to the contrary on this aspect of the matter was adopted by Robertson J.A.
>
> 24 I find no ambiguity in the language of s. 19 and, while the adding of this additional protection for the interests of labourers and material men may create difficulties for contractors seeking credit, as pointed out by Richards J.A. in *Castelein v. Boux* (at p. 106), and while the section lacks any direction as to the manner in which the trust fund declared is to be apportioned among those entitled, **these considerations do not, in my opinion, afford any sufficient reason for failing to give effect to the plain meaning of the language employed or to read into the section a provision that the rights given may be exercised only by those who then have a right to a lien upon the work.**
>
> 25 The *Mechanics' Lien Act* of British Columbia has since 1879 afforded to labourers, material men, contractors and others a means of enforcing their claims against the work produced as a result of their efforts, or with the materials they have supplied, by filing claims of lien within a defined period and, if default were made, instituting proceedings to realize the amounts payable. **S. 19 was apparently designed to provide further security for such persons by providing that**

> **moneys received as payments on account of the principal contract or of any sub-contract should, in the hands of the recipients, constitute a trust fund for their benefit.**
>
> 26 **By s. 20 the lien given by s. 6 ceases to exist if, within the periods of time defined, the claimant fails to file an affidavit, stating the particulars of claim and the description of the property to be charged in the nearest county court registry** in the county where the land is situate, and a duplicate, certified as such by the County Court Registrar, in the Land Registry Office in the district within which the lands are situate, **and thereafter institutes proceedings for its enforcement. These provisions and the provisions for the enforcement of the lien upon the property contained in ss. 29 to 37, inclusive, have no application to the rights afforded to the material men, amongst others, by s. 19. Had it been the intention of the legislature that these rights should be extinguished in the same manner as the right of lien against the property, as provided by s. 20, I think an appropriate amendment to that section would have been made when s. 18A was added in 1942.**
>
> [Emphasis added]

[23] The Supreme Court of Canada revisited the issue in *T. McAvity & Sons Ltd. v. Canadian Bank of Commerce*, [1959] S.C.R. 478, 1959 CarswellOnt 44, this time in relation to the Ontario legislation. In that case, Spartan Contracting Company, Limited entered into a contract with the owners of a subdivision in Richmond Hill to construct sewers, water mains, and appurtenances in the subdivision. The respondent supplied materials to Spartan for the installation of fire hydrants and related equipment. The money owed to Spartan under its contract was paid to the appellant bank as assignee under a general assignment of book debts from Spartan.

[24] It was common ground that Spartan as contractor and the respondent as supplier were not entitled to a lien on the lands due to s. 2 of the *Mechanics' Lien Act*, R.S.O. 1950, c. 227:

> 2 Nothing in this *Act* shall extend to any public street or highway or to any work or improvement done or caused to be done by a municipal corporation therein.

[25] The respondent made a claim against the appellant bank, as trustee, for the price of the materials it supplied to Spartan. The trial judge held that the appellant was a trustee of the money. The judgment was affirmed by the Ontario Court of Appeal. The appellant appealed to the Supreme Court of Canada and argued that s. 2 of the *Act* rendered s. 3, the trust provision, inapplicable to money payable in

respect of work done on a street or highway, and also that Spartan was not a "contractor" under the Act since no lien could arise in consequence of the work.

[26] The impact of the Supreme Court of Canada's judgment in *T. McAvity & Sons Ltd.* is summarized in the following annotation to the Carswell version of the decision:

> The Supreme Court of Canada has now given a further extension to the meaning of s. 3 of the Ontario *Mechanics' Lien Act*. The *Minneapolis-Honeywell* case, [1955] S.C.R. 694, established that it was not necessary for a valid mechanics' lien to exist in order for the trust under s. 3 of the Ontario *Act* to arise. The present case goes the further step in holding that even if there could be no mechanics' lien registered, a trust may still come into existence under said s. 3. The statement of Locke J. that s. 2 is lacking in clarity, is certainly true, but the effect of the section in relation to s. 3 has been settled by the present judgment.
>
> The Consulting Editor

[27] More recently, in *Sunview Doors Ltd. v. Academy Doors & Windows Ltd*., 2010 ONCA 198, 2010 CarswellOnt 1450, the Ontario Court of Appeal considered whether a supplier must intend that the material sold be used for the purposes of a known and identified "improvement" in order for a trust to arise under s. 8 of the *Construction Lien Act*, R.S.O. 1990, c. C.30. The court, sitting as a panel of five, held that in enacting the *Construction Lien Act* to replace the *Mechanics' Lien Act*, the legislature did not intend to change the law related to the trust provisions as articulated in *Minneapolis-Honeywell and T. McAvity & Sons Ltd*. (see paras. 49 – 57).

[28] The court went on to consider the wording of the trust provision in the context of the statute as a whole at paras. 59-73, summarizing as follows at paras. 72 and 73:

> 72 To summarize, the phrase "persons who have supplied services or materials to the improvement" in s. 8 and the phrase "person who supplies services or material to an improvement" in s. 14 describe the beneficiary. **Although ss. 8 and 14 use similar language in describing the beneficiary of a trust and a person benefitting from a lien, that description does not mean that the requirements to access the different benefits or rights must be the same.** They were not the same under the *MLA*. **The object of the statutory trust provision did not change when the Act was enacted and the *MLA* was repealed. Indeed, the focus of each section remains quite different. Section 8 is linked to amounts owing or received on account of the contract price of an improvement; ss. 14 and 15 are linked to the interest of an owner in the premises and to the improvement itself.**

> **The time when a lien and a trust arise is not the same nor is their expiry date. When the wording of these provisions is considered in total context bearing in mind the scheme of the Act, and the object and intent of the legislature, the s. 8 trust remedy is a discrete form of redress, not dependent upon a supplier having a valid subsisting lien right**.
>
> 73 Thus, while I agree that the phrases "to *an* improvement" and "to *the* improvement" must be given a consistent interpretation throughout the Act, an intention that the material be used for a known and specific improvement at the time of sale or supply is not required; **nor is there a requirement that a right to lien exist.**
>
> [Emphasis added]

[29] Nova Scotia's trust provisions were modeled after the provisions in the Ontario legislation. Section 44B is virtually identical to the *Construction Lien Act* provision considered in *Sunview Doors*. Accordingly, I am of the view that s. 44B should be interpreted the same way.

[30] Given the above authoritative law from the Supreme Court of Canada, I must conclude that the respondents' argument that the applicant is barred from making a trust claim because it failed to register and perfect a lien against the properties has no merit.

Establishing breach of trust and personal liability under the *BLA*

[31] The next step to consider is whether Maritech is liable for breach of trust under s. 44B. The issue of personal liability does not arise unless the court finds that Raytech was a beneficiary of the trust provisions, and that the corporation breached its trust obligations.

[32] Section 44B states:

> **Contractor trustee of trust fund**
>
> 44B (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 any of the purposes enumerated in Section 6 constitute a trust fund for the benefit of the subcontractors and other persons who have supplied services or materials to any of the purposes enumerated in Section 6 who are owed amounts by the contractor or subcontractor.

> (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 any of the purposes enumerated in Section 6 are paid all amounts related to any of the purposes enumerated in Section 6 owed to them by the contractor or subcontractor.

[33] Section 44B is almost identical to s. 8 of the Ontario legislation. In the *Report of the Attorney General's Advisory Committee on the Draft Construction Lien Act* (Toronto: Ontario Ministry of the Attorney General, April 1982), the Committee summarized the purpose of s. 8 at page 37:

> **Section 8**
>
> Subsection 8(1) replaces 3(1) of the *Mechanics' Lien Act*. It is designed primarily to protect those working on an improvement from the insolvency or bankruptcy of a contractor of subcontractor. Where money is paid under a contract or subcontract after the contractor or subcontractor has gone bankrupt, the money received by the trustee administering the bankrupt's estate is impressed with a trust. The trust fund must first be used to satisfy the claims of the beneficiaries. The trustee in bankruptcy becomes entitled to money paid to the bankrupt contractor or subcontractor for the benefit of general creditors of the bankrupt only if there is a surplus. …

[34] The Committee explained the meaning of s. 8(1)(a) on the same page:

> Clause a clarifies the time at which the trust arises. It adopts the rule laid down by the Supreme Court of Canada in *Minneapolis Hone[y]well Regulator Co. v. Empire Brass Co.*, and rejects the approach taken in some earlier cases.

[35] The Ontario Court of Appeal in *Sunview Doors*, at footnote 3, explained the "rule" referred to by the Committee as follows:

> The rule, articulated by Rand J., is that an assignment of book debts by a subcontractor to a supplier, given prior to the subcontractor's receipt of money from the contractor, cannot defeat the statutory trust created under the *Act*.

[36] In *The Guarantee Company of North America v. Royal Bank of Canada*, 2019 ONCA 9, 2019 CarswellOnt 300, the respondent relied on the comments of the Committee to argue that the purpose of s. 8(1) is to alter priorities in bankruptcy. The Ontario Court of Appeal disagreed, concluding at para. 32:

> 32 **I agree with the Attorney General of Ontario and LIUNA Local 183 that the s. 8(1) trust must be seen as an integral part of the scheme of holdbacks, liens and trusts, designed to protect the rights and interests of those engaged in the construction industry and to avoid the unjust enrichment of those higher up the construction pyramid. That purpose exists outside the bankruptcy context**. As Slatter J.A. recognized in *Iona Contractors Ltd. (Receiver of) v. Guarantee Co. of North America*, 2015 ABCA 240, 387 D.L.R. (4th) 67 (Alta. C.A.), leave to appeal dismissed, (2016), [2015] S.C.C.A. No. 404 (S.C.C.), the trust provisions of construction lien legislation cannot be seen in isolation and are part of a comprehensive package to protect construction subcontractors: paras. 21-22. **Any effects that s. 8(1) may have on protecting contract monies in the event of bankruptcy are purely incidental and do not detract from the provision's provincial pith and substance**: see *Lacombe*, at para. 36. Accordingly, the s. 8(1) trust is a matter that is the proper subject of legislation relating to property and civil rights in the province: *John M.M. Troup Ltd. v. Royal Bank*, [1962] S.C.R. 487 (S.C.C.), at p. 494.
>
> [Emphasis added]

[37] In *St. Mary's Cement Corp. v. Construc Ltd.*, [1997] O.J. No. 1318, 1997 CarswellOnt 939 (Ct. J. (Gen. Div.)), the court explained that the trust claimant has an initial onus to prove the existence of a trust under s. 8:

> 11 It is common ground that there is an initial onus on the plaintiff to prove the existence of a trust under s. 8 of the *Act*. In order to discharge that onus in this case, the plaintiff would need to show that Construc received monies on account of its contract price for a particular project, that the plaintiff supplied materials on that project and that Construc owes money to the plaintiff for those materials. If all of these elements are clearly proven on the evidence, the trust provisions of s. 8 come into play.

[38] Likewise, in *Sunview Doors* the court set out the elements that a trust claimant must prove as follows:

> 83 In order for Sunview to establish that it was the beneficiary of a trust under s. 8(1) of the *Act*, it must prove that:
>
> (i) Academy was a contractor or subcontractor;
>
> (ii) Sunview supplied materials to the projects on which Academy was a contractor;
>
> (iii) Academy received or was owed monies on account of its contract price for those projects; and
>
> (iv) Academy owed Sunview money for those materials.

> 84 Once all four elements of the trust are proven, the onus then shifts to the contractor, in this case Academy, to demonstrate that payments made from trust funds were to proper beneficiaries of the trust …

[39] The above paragraphs were adopted by Justice Hood in *Ceilidh Construction Ltd. v. Optimum Construction Ltd*. in determining a breach of trust claim under s. 44B.

[40] In *Delco Automation Inc. v. Carlo's Electric Ltd*., 2016 ONCA 591, [2016] O.J. No. 4180, the court described the trust claimant's burden as follows:

> 46 A plaintiff alleging a breach of the s. 8 trust bears the initial onus of proving the existence of the trust by showing the contractor received monies on account of its contract for the project and the plaintiff supplied services or materials to the improvement. The onus then shifts to the contractor to show its payment of trust funds complied with the *CLA*: *Emco Corp. v. Ontario Trenchless Construction Ltd.* (2007), 65 C.L.R. (3d) 33 (Ont. S.C.), at para. 9. The party seeking to attach liability to the individual director or officer must demonstrate the elements required by s. 13(1): *Belmont Concrete Finishing Co. v. Marshall*, 2012 ONCA 585, 15 C.L.R. (4th) 1, at para. 10.

[41] If the trust claimant successfully demonstrates that the contractor received monies on account of the contract for the project and that the claimant supplied services or materials to the project, and the contractor is unable to show that the trust funds were properly disbursed, the contractor will be liable for breach of trust. Only then can the court consider whether any directors, officers, employees or agents of a corporation are personally liable under s. 44G:

> **Persons liable for breach of trust**
>
> 44G (1) In addition to the persons who are otherwise liable in an action for breach of trust under this Act,
>
> (a) every director or officer of a corporation; and
>
> (b) any person, including an employee or agent of the corporation, who has effective control of a corporation or its relevant activities,
>
> who assents to, or acquiesces in, conduct that the person knows or reasonably ought to know amounts to breach of trust by the corporation is liable for the breach of trust.
>
> (2) The question of whether a person has effective control of a corporation or its relevant activities is one of fact and in determining this the court may disregard the form of any transaction and the separate corporate existence of any participant.

> (3) Where more than one person is found liable or has admitted liability for a particular breach of trust under this Act, those persons are jointly and severally liable.
>
> (4) A person who is found liable, or who has admitted liability, for a particular breach of trust under this Act is entitled to recover contribution from any other person also liable for the breach in such amount as will result in equal contribution by all parties liable for the breach unless the court considers such apportionment would not be fair and, in that case, the court may direct such contribution or indemnity as the court considers appropriate in the circumstances.

Section 44G is virtually identical to s. 13 of the Ontario statute.

[42] In the *Report of the Attorney General's Advisory Committee on the Draft Construction Lien Act*, the Committee wrote as follows in relation to its proposed s. 13:

> This new section was included in the Discussion Draft to prevent the use of a shell corporation as a device for defrauding creditors. The use of such corporations presents a problem in some segments of the construction industry. Section 13 allows the court to disregard the limited liability of a corporation, and to impose liability upon those who are actually responsible for a breach of trust. The words "assents to or acquiesces in" in subsection 1 are intended to convey that only those who had the power to prevent a breach of trust are to be found liable under this section. (p. 44)

[43] In recommending that Nova Scotia adopt a similar provision, the Law Reform Commission of Nova Scotia wrote at page 32 of its report:

> Commentators who addressed this issue were very supportive of trust fund provisions. One commentator, for instance, suggested that trust fund provisions form the most important part of builders' lien legislation. Following its review of comments received, the Commission remains of the view that adopting trust provisions would significantly improve the Act. Trust provisions would serve as an additional safeguard, to help ensure that people are paid for Construction work, services, or materials they provide. The automatic application of trust provisions should serve as a comfort to those concerned about missing a deadline for registration of a lien or for commencing a legal action to enforce a lien. In determining what type of trust fund provision would be appropriate for Nova Scotia, the Commission recommends that the Ontario equivalent could serve as a useful model.
>
> To have no means of enforcing a trust provision could seriously undermine its usefulness. This was echoed strongly by the comments which the Commission received on this issue. The Commission recommends that if trust fund provisions

> are included in an amended Act, a penalty for non-compliance should be included. Similar to the policy considerations which underlie a possible penalty for failure to comply with a right to information demand, the nature of this penalty should be a matter for the Aseembly to determine. **Moreover, to underscore the seriousness of not complying with trust fund provisions, an amended Act should expressly state that corporate officers and directors could be held personally responsible for the failure of their corporation to comply with trust fund provisions.**
>
> [Emphasis added]

[44] In *St. Mary's Cement Corp*., the court held that knowledge of the trust provisions is not required for a finding of personal liability for breach of trust under s. 13:

> 45 Mr. Paniccia was an officer, director and controlling mind of Construc. The defendants acknowledge that he falls within the category of individuals who would be potentially liable for any breach of trust by Construc. …
>
> Mr. Paniccia claims that he had no acknowledgement of the trust provisions of the Act and that he therefore could not know that any conduct of Construc amounted to breach of trust. It is surprising to me, to say the least, that an individual with Mr. Paniccia's length and breadth of experience in the construction industry could be wholly ignorant of the trust provisions of the legislation. **However, even if that were the case, ignorance of the law is no defence. A person is deemed to have knowledge of a trust imposed by statute: *Air Canada v. M & L Travel Ltd.* (1993), 108 D.L.R. (4th) 592 (S.C.C.) at 608 (S.C.C.).**
>
> 46 **Construc was essentially a one man operation. When it acted, it did so through, or at the behest of, Mr. Paniccia. This is not a situation of an officer or director who had little involvement in the day to day operations of the corporation. Mr. Paniccia had knowledge of the conduct of Construc and all of the relevant circumstances of that conduct. Whether or not he knew that particular conduct might, as a question of law, constitute a breach of the trust provisions of the Act is not determinative. If the corporation's conduct constituted breach of trust, and if he knew or ought to have known of the constituent factual elements of the corporation's conduct, then the requirements of s. 13(1) are met.** In this regard, I am in full agreement with the view expressed by Jenkins J. in *BPCO Inc. v. Deelstra* (1994) Issue 12 Kirsh's Case Finder 8.28 p.8.170, December 20, 1994 [reported at (1994), 19 C.L.R. (2d) 125] (Ont. Gen. Div.) at p.8.172:
>
> > In this case the company, Garry Deelstra Roofing and Siding Inc., was a one-man operation and Garry Deelstra maintained exclusive control over all payments made by the company. As a result, if there was a breach of the trust provision of the Act, it resulted from his actions.

> The fact that he was not aware of the trust provision is not an answer to the plaintiff's allegations. Mr. Deelstra had been in the roofing and siding business for ten years and he ought to have been aware of the requirements of the *Construction Lien Act*. If there was a breach of the trust, Mr. Deelstra is personally responsible for that breach pursuant to s.13 of the Act.

47 Similar conclusions were also reached by Killeen J. in *Home Depot Inc. v. Fieder Painting Inc.*, London Court File No. 2927/91, July 13, 1995 (Ont. Gen. Div.) unreported, and by McCoombs J. in *Heritage Masonry Ltd. v. Building Team Ltd.*, December 18, 1995 (Ont. Gen. Div.) [1995] O.J. No. 4235, unreported [reported at (1995), 28 C.L.R. (2d) 101] the latter decision (by McCombs J.) was upheld on appeal by the Divisional Court on May 27, 1996 per Southey, Stach and Adams JJ. with a brief endorsement, the relevant portion of which states:

> On the second point, it is not disputed that the 2 defendants against whom judgement was given knew, in fact, what they were doing. That is, they knew that the cheques written were in payment of the contractor's expenses. As the sub-trades had not been paid, they ought to have known this was breach of trust.

Accordingly, in my opinion it is clear that Mr. Paniccia is personally liable under s. 13(1) of the Act for the breaches of trust by Construc as referred to above.

[Emphasis added]

[45] In *Belmont Concrete Finishing v. Marshall*, 2012 ONCA 585, [2012] O.J. No. 4197, the Ontario Court of Appeal clarified that the onus for the elements under s. 13 is on the party seeking to attach liability to the individual defendant, and never shifts:

> [4] The Divisional Court correctly interpreted that section to say that a person can be held liable for a breach of trust by a corporation only where: (1) there is conduct by the corporation that amounts to a breach of trust; (2) the person is a director or officer of the corporation, or in effective control of it; and (3) the person knows or ought reasonably to know that the conduct amounts to a breach of trust and assents to or acquiesces in that conduct.
>
> [5] Neither the appellants nor the respondent contest the finding by the trial judge that only from the end of May 2002 was the respondent in a position with the general contractor such that he would have known or reasonably should have known about and would have assented to or acquiesced in any breach of trust by the general contractor that took place after that date.
>
> [6] The question is whether there were any such breaches after that date.
>
> [7] In finding the respondent liable, the trial judge relied on the summary judgments against the general contractor in this same action. These judgments establish that during the period from 2001 to 2003 the general contractor received

funds for several projects (that therefore became trust funds under the Act) and dispersed them in breach of trust, leaving the appellants unpaid.

[8] However, for the respondent to be liable for these breaches of trust under s. 13(1), the breaches had to occur after the end of May 2002 when he took control of the general contractor sufficiently for s. 13 purposes.

[9] The Divisional Court found that not only did the trial judge make no finding as to when these breaches took place, before or after May 2002, but that there was no evidence that would support any such finding. I agree. It is simply unknown whether the breaches of trust established by the summary judgments occurred on the respondent's watch.

[10] The appellants argue that the onus is on the respondent to fill this evidentiary void. I do not agree. **Unlike s. 8 of the Act, s. 13 is not about liability as a trustee. It is about an individual's liability for breach of trust by the corporation. The onus for the elements required by s. 13(1) is on the party seeking to attach liability to the individual:** see *Duncan Ceiling & Wall Systems of Oshawa Ltd. v. Vin-Bon Retail Systems Ltd*. (2007), 67 C.L.R. (3d) 17 (Ont. Div. Ct.).

[Emphasis added]

[46] In *Duncan Ceiling & Wall Systems of Oshawa Ltd. v. Vin-Bon Retail Systems Ltd.*, (2007), 67 C.L.R. (3d) 17, [2007] O.J. No. 693 (Div. Ct.), cited in *Belmont Concrete*, the court held that even in the case of a sole shareholder and directing mind, the onus never shifts to the individual defendant to prove that they did not acquiesce to the breach of trust:

3 The trial judge found at paragraph 11 of his reasons:

> Indeed, apart from the admission that he was the president of the corporation, Locilento's name is never mentioned in the trial evidence. The contract in question was signed on behalf of the defendant corporation by one Vecchiarelli. Accordingly, there is no evidence, either direct or circumstantial, from which it can reasonably be concluded that Locilento had effective control of the corporation or its relevant activities.

It was not argued before us that this statement respecting the lack of evidence was in error.

4 The appellant submits that the admission in the statement of defence that: "The defendant, Angelo Locilento ... at all material times was the president, director and officer of [the corporate defendant]," as pleaded in paragraph 4 of the statement of claim, establishes that Locilento was the sole director and officer of the corporate defendant, and as such must be taken to have acquiesced in the conduct that constituted the admitted breach of trust.

> 5 **The appellant's position is that where there is a sole director, officer and shareholder of a corporation, the onus shifts to that individual to disprove acquiescence. The pleading is somewhat ambiguous in that it does not allege that the individual defendant was the sole officer, director and shareholder. However, we are prepared to proceed on the assumption that he was**.
>
> 6 On the question of onus, we note that the Court of Appeal in *Zurich Indemnity Co. of Canada v. Matthews* (2005), 44 C.L.R. (3d) 18 (Ont. C.A.), at paragraph 26, said:
>
> > Section 13 does not declare the directors and officers to be trustees nor does it deem them to be such. It does not make the directors and officers trustees. It imposes liability on directors and officers for breaches of trust committed by the corporation only if it is found that the directors and officers assented to, or acquiesced in, conduct by the corporation that they reasonably ought to have known amounted to breach of trust.
>
> 7 **There is nothing in s. 13(1) that refers to a shifting of onus or a burden on the individual defendant. While there is reference in the section to constructive knowledge of the conduct of the defendant corporation that amounts to a breach of trust, there must be a factual finding of actual acquiescence**.
>
> 8 **We are not persuaded that even in the case of a sole shareholder and directing mind, proof of that alone shifts the onus to that person to prove that he or she did not acquiesce.**
>
> 9 As found by the trial judge, there was no evidence on the issue, let alone evidence from which an inference could be drawn. In all of the cases referred to by Mr. Short in his able and helpful argument, there were findings of active participation by the individual sought to be made liable, and no such finding could be made here.
>
> [Emphasis added]

[47] Section 44G, the *BLA* counterpart to s. 13 of the *Construction Lien Act*, has only been considered in two cases - *Atlantica Mechanical Contractors Inc. v. Steve Tsimiklis Holdings Ltd. and Steve Tsimiklis*, 2020 NSSC 76, and *Ceilidh Construction Ltd*. In *Atlantica Mechanical*, Smith J. adopted the following summary of the law from the plaintiff's brief:

> [188] This Court refers to the following sections of the Plaintiffs' pre-trial brief which it has reviewed and determined accurately sets forth the law:
>
> > 44. Knowledge that money has been received by a corporation and is being disbursed to persons who are not contractors is sufficient to give rise to personal liability. In *Belmont Concrete Finishing Co. Limited v.*

Marshall, 2009 CanLII 72102 (On SC) the Court stated the following regarding the counterpart legislation in Ontario, at paras. 23:

> For an individual to be liable for a corporation's breach of trust under section 13 of the Construction Lien Act, there are three elements that must be established. First, there must have been a breach of trust by the corporation. Second, the individual must be a director or officer or else a person in effective control of the corporation or its relevant activities. Third, the individual must have assented to, or acquiesced in, conduct that they knew or reasonably ought to have known amounted to breach of trust by the corporation. This third element requires proof by the plaintiffs of actual assent or acquiescence in particular conduct amounting to breach of trust, coupled with proof of actual knowledge, or proof that a reasonable person would have known, that the conduct amounted to a breach of trust.
>
> …
>
> It is the third element, assent or acquiescence, coupled with knowledge or constructive knowledge, where the plaintiffs have some difficulty. The plaintiffs do not have to establish actual assent - mere acquiescence will do. They do not have to show actual knowledge - constructive knowledge will do. Acquiescence and constructive knowledge may be difficult to establish, even on a balance of probabilities. In addition, just as the second element of the test has a temporal element - when was the person sought to be made liable an officer, director or person in control? - so does the third. When, if ever, did Marshall acquire the degree of knowledge that would make him liable for the corporation's breach of trust?
>
> …
>
> I find that from the end of May, 2002 on, Marvin Marshall had become involved in the monitoring of receipts and disbursements to the extent that he knew or should reasonably have known that payments were being made by Internorth in breach of its trust obligations toward the plaintiffs, and that he not only acquiesced in but also assented to those payments.

45. In *St. Mary's Cement Corp. v. Construc Ltd.*, 1997 CanLII 12114 (ONSC) the Ontario Court specifically considered the knowledge requirement in relation to a "one man" operation and concluded that knowledge of the legal requirements of trusts is not necessary to establish a breach. It stated at page 29:

> Construc was essentially a one-man operation. When it acted, it did so through, or at the behest of, Mr. Paniccia. This is not a situation of an officer or director who had little involvement in the day-to-day operations of the corporation. Mr. Paniccia had knowledge of the

> conduct of Construc and all of the relevant circumstances of that conduct. Whether or not he knew that particular conduct might, as a question of law, constitute a breach of the trust provisions of the Act is not determinative. If the corporation's conduct constituted breach of trust, and if he knew or ought to have known of the constituent factual elements of the corporation's conduct, then the requirements of s. 13(1) are met. In regard, I am in full agreement with the view expressed by Jenkins J. in *BPCO Inc. v. Deelstra* (1994), Kirsh's C.L.C.F. 8.28 (Ont. Gen. Divs), December 20, 1984, at p.8. 172:
>
> …
>
> 47. In *Colautti Construction Ltd. v. Ashcroft Development Inc*., 2011 ONCA 359, the Ontario Court of Appeal confirmed that the burden is on the trustee to prove that the funds held in trust were properly managed. At paragraph 81 the Court stated:
>
> > In order to establish a breach of trust under s. 7 of the Act, the Contractor was required to demonstrate that **[1]** the Developers had received funds that were to be used in the financing of the Projects (s. 7(1)) **[2]** that the Contractor had supplied materials or services related to the improvement of the Projects (ss. 7(2) to (4)), and **[3]** that the Contractor remained unpaid for at least some of those materials or services (s. 7(4)). On proof of these prerequisites, it fell to the Developers to demonstrate that they had complied with their trust obligations under the Act.
> >
> > [Emphasis by Smith J.]

[48] The court in *Ceilidh Construction Ltd.* relied only on the *Sunview Doors* decision.

Is Maritech liable for breach of trust?

[49] Although the respondents admit that Maritech is liable to Raytech for the amount owing, the respondents did not admit that Maritech is liable for breach of trust under the provisions of the *BLA*. The respondents' position was that the trust provisions did not apply at all, since Raytech failed to file liens against the properties where the work was done. For reasons discussed earlier, that position has no merit.

[50] Accordingly, with respect to each of the two projects, Raytech bears the initial onus of establishing the existence of the trust by proving that:

- Maritech was a contractor or subcontractor;
- Raytech supplied services or materials to the project on which Maritech was a contractor;
- Maritech received monies on account of its contract price for the project; and that,
- Maritech owed Raytech money for those services or materials.

[51] If Raytech establishes the existence of the trust over the funds related to one or both projects, the onus switches to Maritech to show that the trust funds were properly disbursed.

[52] In relation to the Cumberland Health Authority project, Raytech has successfully proven the elements required to establish the existence of the trust. The onus therefore shifts to Maritech. As indicated in Mr. Wadden's letter of June 17, 2025, Maritech admits that it was paid in full for the project, that Maritech did not distribute the $59,210.37 claimed by Raytech to Raytech, and that these funds were misappropriated for other purposes. Maritech is therefore liable to Raytech for breach of trust in the amount of $59,210.37.

[53] With respect to the Scotia Hyundai project, Raytech called no evidence to prove that Maritech received monies on account of its contract price for the project. Accordingly, Raytech has failed to establish the existence of the trust.

Are Brian Farrow and Phillip Farrow personally liable for Maritech's breach of trust?

[54] The only remaining issue is whether Messrs. Farrow are personally liable under s. 44G for the $59,210.37 owing to Raytech.

[55] According to Mr. Wadden's letter of June 17, 2025, the only issue in relation to whether Brian Farrow and Phillip Farrow are personally liable as the directing minds of Maritech is whether Raytech's failure to register a lien vitiated the trust. For the reasons I outlined earlier, Raytech's failure to register a lien does not foreclose a finding of personal liability under s. 44G. It follows that Brian Farrow and Phillip Farrow are jointly and severally liable to Raytech for breach of trust in the amount of $59,210.37 (s. 44G(3)).

CONCLUSION

[56] Raytech has proven its claims against the respondents for breach of trust under the *BLA* in relation to the Cumberland Health Authority project. The respondents are jointly and severally liable to Raytech in the amount of $59,210.37.

[57] Raytech's claims against the respondents in relation to the Scotia Hyundai project are dismissed.

[58] There is no basis in law for the punitive damages claim advanced by Raytech. As for costs, if the parties cannot agree on the amount payable to the successful party, Raytech, I invite written submissions within 30 days of this decision.

Chipman, J.