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| HEINTZMAN, WEST AND GOLDSMITH ON CANADIAN BUILDING CONTRACTS Thomas G. Heintzman, Bryan G. West, and Immanuel Goldsmith Release No. 6, December 2025 |
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Heintzman, West and Goldsmith on Canadian Building Contracts provides a systematic analysis of the law of contracts as it applies to building contracts in Canada. The work includes all relevant court decisions dealing with the formation, material provisions, breach and remedies for breach of construction contracts. Separate chapters deal with construction lien legislation, subcontractors, architects and engineers, bonds and arbitration.

This release includes updates to Appendix B, Legislation under Manitoba and Ontario, as well as the addition of a new appendix, Appendix WP, Words and Phrases.

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Highlights

New Appendix WP: Words and Phrases—In this release, a new Appendix WP: Words and Phrases has been added to *Heintzman, West and Goldsmith on Building Contracts*. Appendix WP is a valuable reference tool for accessing words and phrases that are applicable to and have been considered in the context of construction law across Canada, including but not limited to contracting-related matters. The words and phrases are organized alphabetically. Each entry consists of a consideration or definition of the relevant word or phrase, appearing as an extract from a judicial decision and unedited from the original judgment. This appendix will be updated from time to time with the addition of new terms and entries.

Words and Phrases—“At the Earliest Possible Date” and “Commercially Reasonable”—British Columbia—“It is generally agreed that, on its own, the phrase ‘commercially reasonable efforts’ is not the same as ‘best efforts’, which is understood to require that ‘no stoned [be] left unturned’: [citations omitted]. Accordingly, the real question in the case at bar is what, if anything, the inclusion of the language ‘diligent efforts’ and ‘at the earliest possible date’ adds to Bonnis’ obligations to fulfill the conditions precedent under the Agreements. ... As I result, I conclude that, in light of the specific language of s. 2(b), viewed in the context of the Agreements as a whole and the surrounding circumstances, the parties intended that Bonnis make careful, conscientious and persistent efforts to do what appeared reasonable from a commercial perspective in order to obtain the enactment of rezoning and the issuances of the development permit, or at least the PT Letter, at the earliest possible date. In my view, this standard does not require Bonnis to take steps that would be commercially unreasonable, based on their sound business judgment, but does oblige them to find ways to continue moving steadily forward.” (*Epix Developments Ltd. v. Bonnis Development Union Street Limited Partnership*, 2025 BCSC 805, 2025 CarswellBC 1291 (B.C. S.C.), additional reasons 2025 BCSC 1701, 2025 CarswellBC 2613 (B.C. S.C.).)

Words and Phrases—“Completion”—Saskatchewan—“... the term ‘completion’ used in the contract between the parties, when taking into account the contract as a whole, means substantially complete and habitable.” (*Norwood Developments Ltd. v. Paquette*, 2024 SKKB 47, 2024 CarswellSask 121 (Sask. K.B.).)

Words and Phrases—“Consensus ad idem”—British Columbia—“*Consensus ad idem*, or a ‘meeting of the minds,’ is a foundational principle in contract law that states, in order for a contract to be valid, both parties to a contract must have a mutual understanding and agreement on the essential terms.” (*Randhawa v. Khaira*, 2025 BCSC 542, 2025 CarswellBC 882 (B.C. S.C.).)

Words and Phrases—“Enforceable Contract”—Ontario—“What makes an enforceable contract? As stated by Associate Justice Robinson in *Bellsam Contracting Limited v. Torgerson* [citation omitted], an enforceable contract has five elements: offer, acceptance, consideration, certainty of essential terms, and an intention to create a legal relationship. Determining whether a contract is

formed is done through an objective assessment, namely a determination of how each party's conduct would appear to a reasonable person in the position of the other party; see *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga* [citation omitted]. It does not matter whether a party does or does not subjectively intend to contract. It matters whether that party's conduct is such that a reasonable person in the position of the other party would conclude that the party intended to be bound by the contract; see *Ethiopian Orthodox* [citation omitted]. The court must consider the factual matrix between the parties; see *Bellsom Contracting* [citation omitted]." (*Continental Homes Inc. v. 2646576 Ontario Inc.*, 2024 ONSC 6219, 2024 CarswellOnt 17134 (Ont. S.C.J.), additional reasons 2024 ONSC 7301, 2024 CarswellOnt 20490 (Ont. S.C.J.).)