## **Publisher's Note**

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication.  Distribution List

## HEINTZMAN, WEST AND GOLDSMITH ON CANADIAN BUILDING CONTRACTS

Thomas G. Heintzman, Bryan G. West, and Immanuel Goldsmith Release No. 4, October 2025

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 releases features updates to Appendix A Quantum Table—Construction Law.

Thomson Reuters®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization

## **Highlights**

Quantum Table — Construction Law — Payment — The plaintiff was awarded damages for breach of contract in the amount of \$650,209.55. Justice Baker noted that the fact that the Hopkins purported to be concerned about the cost of construction was not enough to convert the LOA into something it was not—namely a fixed price contract. As the LOA was a cost-plus contract, it followed that the plaintiff did not guarantee construction costs within a set budget. The LOA clearly contemplated that the budget would be adjusted during construction. Justice Baker concluded that when the Hopkins did provide the plaintiff with final interior design, structural, electrical, mechanical and plumbing drawings and specifications, those new documents represented owner authorized changes, and the original budget was no longer effective. The Hopkins argued that even in a cost-plus contract, the plaintiff was bound in some way to the preliminary budget. Justice Baker noted that there were significant changes to the scope of work following the preparation of the initial budget. The changes to the scope of work requested and agreed to by the Hopkins rendered the original budget obsolete. The plaintiff provided the Hopkins with ongoing feedback and advice on the cost of work, the exceedances of the budget, and the impact of the Hopkins' choices on the budget. The LOA permitted such advice be oral, and it often was provided orally during the course of construction. To the extent there was an obligation on a builder to inform the owners of the impact of changes on the original budget, Justice Baker concluded that the plaintiff more than met this obligation in the performance of the LOA. Justice Baker concluded that the Hopkins bore the responsibility for all cost overruns, and the LOA was not limited by the preliminary estimate provided by the plaintiff. Justice Baker concluded that the Hopkins were in clear breach of the LOA in failing to pay the balance of the outstanding invoices for work completed by the plaintiff on this project. The Hopkins authorized and approved all aspects of the work on their home, including all cost overages at the time they were incurred. The Hopkins simply refused to pay the costs of what they had approved. The Hopkins received the full benefit of all goods and services supplied under the LOA and ailed to provide payment to the plaintiff for such goods and services, as they agreed under the LOA: Reid Developments Ltd. v. Hopkins, 2025 BCSC 502, 2025 CarswellBC 888 (B.C. S.C.).

Quantum Table — Construction Law — Failure to Complete — Justice Charney noted that it is not unusual for construction jobs to fall behind schedule. In this case, the schedule was an estimate and not part of the contract. It is not unusual for minor deficiencies to be identified as the construction project proceeds, and the builder must be given a chance to correct any deficiencies. Minor deficiencies do not necessarily constitute a breach of contract. Justice Charney noted that the threshold question was to determine which party breached the contract. It is one thing if the homeowners were in breach so that the contractor was justified in abandoning the job. It is another if the contractor improperly abandoned a partly finished project The breach of contract in this case turned on the roof trusses in the dining room that blocked the cathedral window. Neither the Drew's designer nor Topple's designer were called to testify. As such, Justice Charney was left to decide the issue on the basis of the computer-generated photo of the cathedral ceiling in the September 18, 2017 contract. The roof trusses blocking the cathedral window appeared to be an

obvious construction flaw and were inconsistent with the photograph of the cathedral ceiling in the contract. That error was the contractor's fault and should have been corrected by the contractor at no additional cost to the owner. That error had to be fixed before construction continued. Topple took the position that he was not responsible for the error and refused to fix the roof trusses unless the Drews agreed to a change order and pay an additional \$21,248. That was a breach of the September 18, 2017 contract. The Drews were within their rights to refuse to pay extra to have that construction error fixed and Topple was in breach of the contract by failing to fix the trusses and complete the construction after June 2018. Justice Charney concluded that \$345,278 for completion of unfinished work and repairing deficiencies should be included in the damages awarded. Justice Charney allowed for the following amounts for future work: 1) Walk-out patio: \$3,909; 2) Cathedral Ceiling: \$7,300; 3) Retaining Wall: \$6,000; 4) Additional insulation: \$14,700; Total: \$31,909. Thus, the total damages for the cost of completion minus the cost of the balance of the original contract price equaled \$193,496 (\$345,278 + \$31,909 - \$183,691): Drew v. Topple, 2025 ONSC 367, 2025 CarswellOnt 370 (Ont. S.C.J.), additional reasons 2025 ONSC 1868, 2025 CarswellOnt 3992 (Ont. S.C.J.).