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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 2024

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 features the additions of Chapter 17 (Provincial Construction Legislation—Prompt Payment) and Chapter 18 (Adjudication).

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Highlights

§ 17:6 Contractor to subcontractor — If a contractor receives full payment from an owner for a proper invoice within the 28-day period, then the contractor must pay each subcontractor within 7 days of receiving the payment, provided that no “notice of non-payment” has been given. The subcontractor must be paid the amount due for any work or materials provided under the subcontract that was included in the contractor’s proper invoice. If the contractor receives only partial payment from the owner for a proper invoice, the contractor is only required to pay each subcontractor the amount that corresponds to the work or materials provided by the subcontractor(s) that were included in the proper invoice. This payment must be made within 7 days of receiving payment from the owner, as outlined above. Further, in instances where more than one subcontractor is entitled to payment, the Prompt Payment Acts provide mechanisms for proportionate payment. The regulations underlying the Prompt Payment Acts generally provide that a contractor who gets a “notice of dispute” is required to promptly inform its subcontractors about it. Similarly, if a subcontractor gets a “notice of non-payment”, they must immediately notify their subcontractors about it.

§ 18:2 Eligibility for adjudication — The jurisdiction of an adjudicator is based on both statute and contract. The Prompt Payment Acts generally grant parties to a contract or subcontract the right to refer “a dispute” regarding “any prescribed matter” to construction adjudication. Under the Prompt Payment Acts, parties who have entered into a construction contract have submitted to the jurisdiction of an adjudicator. However, the Prompt Payment Acts may provide exceptions to this jurisdiction. For example, under the Alberta Act, where the notice of adjudication is given: (i) “after the date the contract or subcontract is completed, unless the parties to the adjudication agree otherwise”; or (ii) on or after the date a party commences legal action regarding a dispute, adjudication will not be possible. The Prompt Payment Acts thus establish the mandatory right to adjudication and the framework that will apply. However, the Prompt Payment Acts also allow for further flexibility. For example, section 33.5 of the Alberta Act also allows parties to add to or supplement the rules or procedures that will apply to an adjudication between them through the terms of their contract (or subsequent agreement), provided that those contractual terms do not conflict with the Alberta Act, its Regulations, or the rules of the responsible authorized “Nominating Authority”. The same is true under section 13.6(2) of the Ontario Act.