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HEINTZMAN, WEST AND GOLDSMITH ON CANADIAN BUILDING CONTRACTS Thomas G. Heintzman, Bryan G. West, and Immanuel Goldsmith Release No. 3, June 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 includes updates to Appendix B. Legislation, including updates to the legislation in the following jurisdictions: Alberta, Federal, Manitoba, New Brunswick, Nova Scotia, and Nunavut.

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Highlights

Legislation — Federal — *Federal Prompt Payment for Construction Work Regulations (Criteria, Time Limits, Interests and Circumstances)*, SOR/2023-269 — The proposed *Federal Prompt Payment for Construction Work Regulations (Criteria, Time Limits, Interest and Circumstances)* will complement both the Act and the proposed *Federal Prompt Payment for Construction Work Regulations (Dispute Resolution)*. The *Federal Prompt Payment for Construction Work Regulations (Criteria, Time Limits, Interest and Circumstances)* [the Regulations] define the criteria for the designation of provinces that have enacted a reasonably similar prompt payment and adjudication regime as well as the time limits, interest and circumstances of the adjudication process. The criteria for the designation of provinces establishes that the following aspects of a provincial legislation would have to be reasonably similar to those of the federal regime set out in the Regulations: the submission of a proper invoice; time limits for invoice payments to the contractor and subcontractors; in the case of non-payment, the provision of a written notice of non-payment; in the case of a payment dispute, an adjudication process that would allow a determination within certain time limits; and a binding determination, unless the parties come to a written agreement or the determination is set aside by a court order or arbitral award. In addition, the Regulations outline the time limits, interest and circumstances of the adjudication process as follows: the days that are not to be counted towards timelines of payment in the adjudication process (*e.g.*, holidays, Saturdays); how interest on unpaid amounts is to be computed as simple interest that is equivalent to the average bank rate plus 3% per year, from the due date until receipt of payment; and the situations where adjudicators can be relieved of the requirement to adjudicate a specific dispute (due to consolidation, revocation of appointment, conflict of interest, circumstances beyond their control).

Legislation — Manitoba — *The Builders' Lien Act* — The Act, amended by *The Builders' Lien Amendment Act (Prompt Payment)*, S.M. 2023, c. 30, received Royal Assent in May 2023 but is not yet in force. It contains payment deadlines similar to those in other provinces, including: invoice specifications, and payment timelines. Payment is to be issued by the owner to the contractor within 28 days of receipt of a proper invoice, subject to the notice of non-payment to the contractor, within 14 days of receipt of the proper invoice. Upon receipt of payment from the owner, the contractor is to pay subcontractors within 7 days, subject to dispute and other non-payment provisions. Subject to dispute provisions, the subcontractor must pay its subcontractors within 7 days after receipt of payment. The amendments provide for adjudication of payment disputes. The adjudication process is binding on the parties until an order is made on the matter by the court, a decision is made as a result of an arbitration under *The Arbitration Act*, a written agreement is entered into between the parties, or the arbitrator's determination is set aside.