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<p><b>HEINTZMAN, WEST AND GOLDSMITH ON CANADIAN BUILDING CONTRACTS</b> Thomas G. Heintzman, Bryan G. West, and Immanuel Goldsmith Release No. 2, May 2025</p>
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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 features updates to Appendix A. Quantum Table—Construction Law, as well as updates to Appendix F. Ontario Dispute Adjudication for Construction Contracts.

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## Highlights

**QUANTUM TABLE — CONSTRUCTION LAW — PAYMENT** — Absent an express term in the contract stipulating otherwise, a construction contractor is not entitled to payment until the work on the project is substantially complete. It is a question of fact whether a project is substantially complete. The court will consider the terms of the contract and the nature of the work involved, and make a reasonable appraisal of the work already carried out. In *JCB Contracting Ltd. v. Blackett*, 2024 BCSC 2091, 2024 CarswellBC 3397 (B.C. S.C.), the Court saw no reason to treat a progress draw that is due upon the completion of a stage of a project more rigorously than a final payment upon completion of the overall project. The concept of substantial completion is widely used and understood in construction law and has been applied in the context of progress draws. There is no principled reason why some other standard should apply to progress draws. In the Court's view, the principal questions on summary trial were whether the electrical, plumbing, insulation, and drywall stage of the project was substantially complete such that the related progress draw was due and whether the overall project was substantially complete such that the final payment was due.

**QUANTUM TABLE — CONSTRUCTION LAW — PAYMENT** — In *Solaris Custom Home Inc. v. Trovao*, 2024 BCSC 1831, 2024 CarswellBC 2966 (B.C. S.C.), the factual issue was whether, in addition to the cost-plus contract, the parties agreed on a total budget for the project. The Court was not satisfied that there was ever a meeting of the minds or an agreement that the house would be built within a specific budget range, or that any estimates that were discussed were firm or clear enough, to have any contractual effect. Accordingly, the Court concluded that the plaintiffs were entitled to enforcement of the contract on a cost-plus basis.

**QUANTUM TABLE — CONSTRUCTION LAW — PAYMENT** — On the pleadings and evidence before the motion judge, Queen raised a genuine issue, namely, whether the damages Arcamm claimed in its Action were caused, or contributed to, by Arcamm's conduct. The Ontario Court of Appeal found in *Arcamm Electrical Services Ltd. v. Avison Young Real Estate Management Services LP*, 2024 ONCA 925, 2024 CarswellOnt 19788 (Ont. C.A.), additional reasons 2025 ONCA 84, 2025 CarswellOnt 1133 (Ont. C.A.), that the motion judge erred both by failing to address the issue of contributory fault and by failing to determine whether that issue could be fairly and justly decided without a trial. Justice Gillese concluded that the motion judge could not grant summary judgment unless she was confident she could find the necessary facts and apply the relevant legal principles so as to resolve the dispute fairly and justly. To do that, the motion judge had to address the Contributory Fault Defence to determine whether it raised a triable issue. She further had to consider whether she could resolve the issue in a fair and just manner or whether a trial of the issue was necessary. She erred in law by failing to make those determinations. Justice Gillese addressed Arcamm's submission that Queen could raise the Contributory Fault Defence only by way of counterclaim as against Arcamm or by seeking set-off for any amounts due to Arcamm's alleged negligence and/or poor workmanship. Justice Gillese understood this submission to rest on the assumption that contributory fault cannot be raised as a defence to a claim in

contract. Justice Gillese rejected that submission and the assumption which underlay it. Queen was entitled to defend the Arcamm Action on the basis of contributory fault, and to seek to have the contractual damages Arcamm claimed reduced to recognize Arcamm's alleged conduct in increasing those damages.