

Table of Contents

CHAPTER 1. CLIMATE CHANGE AND DESIGN PROFESSIONALS

- § 1:1 Introduction
- § 1:2 Treaties and Legislative Initiatives
- § 1:3 Federal Laws and Initiatives
- § 1:4 Provincial Laws and Initiatives
- § 1:5 Municipal initiatives
- § 1:6 How Does Climate Change Affect Design Professionals (and the Construction Industry)?
- § 1:7 The Approach of Professional Associations to Climate Change
- § 1:8 The 2030 Challenge and its Adoption
- § 1:9 Declare Climate and Biodiversity Emergency
- § 1:10 Equitable Climate Commitment
- § 1:11 Legal Issues and Risks for Design Professionals
- § 1:12 Standard of Care of Design Professionals
- § 1:13 Climate Change Litigation
- § 1:14 United States and Europe
- § 1:15 Canada
- § 1:16 Preparing for Risks of Exposure to Litigation
- § 1:17 Conclusion

CHAPTER 2. SUSTAINABLE CONSTRUCTION

- § 2:1 Introduction
- § 2:2 Third-Party Rating Systems
- § 2:3 LEED®—Introduction
- § 2:4 —Industry Endorsement
- § 2:5 —The Rating System
- § 2:6 BOMA BEST
- § 2:7 Other Rating Systems in Use in Canada
- § 2:8 Legislative and Policy Initiatives in Canada
- § 2:9 Federal—Federal Sustainable Development Strategy
- § 2:10 —Net Zero Building Codes
- § 2:11 Provincial
- § 2:12 Municipal
- § 2:13 Policies
- § 2:14 Bylaws

- § 2:15 Official Plans
- § 2:16 Legal Issues in Green Building
- § 2:17 Tendering Issues
- § 2:18 LEED or Sustainable Building Not a *Carte Blanche*
- § 2:19 Challenging Green Building Legislation
- § 2:20 Failure to Achieve Desired Rating
- § 2:21 The Importance of a Properly Qualified Green Building Expert
- § 2:22 Standard Form Contracts
- § 2:23 Damages—Liquidated Damages
- § 2:24 —Consequential Damages
- § 2:25 Conclusion

CHAPTER 3. INTEGRATED PROJECT DELIVERY AND LEAN CONSTRUCTION

- § 3:1 Introduction
- § 3:2 Integrated Project Delivery: What is it? Why is it Different?
- § 3:3 IPD and Lean Construction: What is the Relationship?
- § 3:4 IPD is Not for Every Project or Every Party
- § 3:5 Forms of IPD Agreements
- § 3:6 Canada
- § 3:7 United States
- § 3:8 United Kingdom
- § 3:9 Australia
- § 3:10 Templates for IPD: What Works Best is Project Specific
- § 3:11 Canada: CCDC 30—Integrated Project Delivery Contract
- § 3:12 Parties
- § 3:13 Governance
- § 3:14 Project phases
- § 3:15 Payment
- § 3:16 Changes
- § 3:17 Conflict Management
- § 3:18 Termination
- § 3:19 Termination for Failure to Achieve Validation
- § 3:20 SMT's Right to Terminate Design/Construction Member
- § 3:21 Design Construction Team's Right to Terminate the Contract (or Suspend the Project)

TABLE OF CONTENTS

- § 3:22 Owner's Right to Terminate the Contract due to Default
- § 3:23 CCDC 30—No Provision for Owner's Termination for Convenience
- § 3:24 Waiver of Liability
- § 3:25 Consultant Roles and Conflicts of Interest: What Are They and Can They Be Reduced through IPD?
- § 3:26 Insurance: How Might it Adapt to an IPD Context?
- § 3:27 The Future of IPD in Canada: Barriers and Breakthroughs
- § 3:28 Conclusion

CHAPTER 4. DIGITAL TRANSFORMATION: ADVANCING DESIGN AND EFFICIENCIES IN CONSTRUCTION

- § 4:1 Digital Transformation
- § 4:2 Why BIM?
- § 4:3 BIM Growth Internationally
- § 4:4 United Kingdom
- § 4:5 Continental Europe
- § 4:6 United States
- § 4:7 East Asia
- § 4:8 Canada's Constrained BIM Adoption
- § 4:9 Long-Standing and Accepted Risk Transfer Mechanisms
- § 4:10 Industry Comfort with 2D Processes, High Up-Front Costs, and Difficulty Accounting for Long-Term Benefits
- § 4:11 Perceived Uncertainties in Risk Transfer and Dispute Resolution
- § 4:12 Lack of a Federal Mandate in Canada
- § 4:13 Post-Construction Implications of BIM
- § 4:14 Uncertainty Surrounding Intellectual Property Rights and Ownership of Model Elements
- § 4:15 Embracing Digital Technology in Canada

CHAPTER 5. INTELLECTUAL PROPERTY

- § 5:1 Introduction
- § 5:2 Intellectual Property
- § 5:3 Copyright
- § 5:4 Work Must be Original
- § 5:5 Fixation is Required

ISSUES IN CANADIAN LAW OF ARCHITECTS AND ENGINEERS

- § 5:6 Who Owns Copyright?
- § 5:7 Crown Copyright
- § 5:8 How Long does Copyright Last?
- § 5:9 Reversionary Rights
- § 5:10 Registration
- § 5:11 Drawings
- § 5:12 CAD
- § 5:13 Copyright Infringement
- § 5:14 Concept of Substantial Taking
- § 5:15 Useful Article Exception to Infringement
- § 5:16 Copyright Infringement Case Examples
- § 5:17 Fair Dealing
- § 5:18 Protection of Copyright
- § 5:19 Preparing for Potential Access Disputes
- § 5:20 Remedies
- § 5:21 Damages
- § 5:22 Moral Rights
- § 5:23 Patents
- § 5:24 Trademarks
- § 5:25 Relevance of Trademarks to the Industry
- § 5:26 Use, Registration, and Enforcement
- § 5:27 Entitlement to and Registrability of Trademarks
- § 5:28 Trademarks in the Context of Architectural Designs
- § 5:29 Industrial Design
- § 5:30 Licensing Intellectual Property
- § 5:31 Implied Licences
- § 5:32 Non Payment of Fees
- § 5:33 Standard Form Contracts
- § 5:34 Remedies—Contractual Remedies
- § 5:35 —Damages
- § 5:36 Other Dispute Resolution Methods—Alternative
Dispute Resolution
- § 5:37 —Applicability of Adjudication
- § 5:38 Conclusion

CHAPTER 6. PROMPT PAYMENT

- § 6:1 Overview
- § 6:2 Trigger for Prompt Payment: a Proper Invoice
- § 6:3 Payment Obligation—Owner to Contractor
- § 6:4 —Contractor to Subcontractor
- § 6:5 —Subcontractor to Subcontractor
- § 6:6 —Set-Off

TABLE OF CONTENTS

- § 6:7 —Example Flow Charts
- § 6:8 Prompt Payment in the Rest of Canada—British Columbia
- § 6:9 —Alberta
- § 6:10 —Manitoba
- § 6:11 —New Brunswick
- § 6:12 —Nova Scotia
- § 6:13 —Saskatchewan
- § 6:14 —Federal
- § 6:15 Application of Prompt Payment Legislation to Design Professionals
- § 6:16 Obligations of the Design Professional as Contractor vs. Consultant
- § 6:17 As “contractor” under the Act
- § 6:18 As Consultant
- § 6:19 Conclusion

CHAPTER 7. ADJUDICATION

- § 7:1 Introduction
- § 7:2 What is Adjudication?
- § 7:3 Status of Adjudication across Canada
- § 7:4 British Columbia
- § 7:5 Alberta
- § 7:6 Saskatchewan
- § 7:7 Manitoba
- § 7:8 Ontario
- § 7:9 Quebec
- § 7:10 Newfoundland and Labrador
- § 7:11 New Brunswick
- § 7:12 Nova Scotia
- § 7:13 Prince Edward Island
- § 7:14 Territories
- § 7:15 Federal
- § 7:16 The Status of Adjudication in other Jurisdictions
- § 7:17 United States
- § 7:18 England and Wales
- § 7:19 New Zealand
- § 7:20 Singapore
- § 7:21 The Professionals’ View on Adjudication
- § 7:22 The Impact of Adjudication on the Design Professional’s Contract Administration Role
- § 7:23 Involvement of the Design Professionals in Adjudication

ISSUES IN CANADIAN LAW OF ARCHITECTS AND ENGINEERS

§ 7:24 Design Professionals and Impartiality in
Adjudication

Table of Cases

Index