

INDEX

References are to section numbers of the Construction Lien Act, R.S.O. 1990, c. C.30, unless preceded by GR, ADJ or PD, in which case references are to the General Regulation (GR), Adjudications Regulation (ADJ) and Practice Direction for Civil Actions, Applications, Motions and Procedural Matters in the Toronto Region, effective December 7, 2018 (PD).

A

ABANDONMENT OF CONTRACT, 72

ACTION, see also PRACTICE

- carriage, 59
- commencing, 53
- consolidation, 59
- court to dispose of all claims, 51
- defined, 1(1)
- lien, 53
 - expiration, 53
 - registration, 53

ADJOURNMENTS

- civil motions, PD I G
- construction lien motions, PD I G

ADJUDICATION

- adjudicator, 13.9
 - appointment, 13.9(5)
 - selection, 13.9(2)
- amounts payable, 13.19
 - costs of resumption, 13.19(6)
 - enforcement, 13.19(2)
 - holdback, 13.19(1)
 - late payment, interest, 13.19(3)
- authorized nominating authority, 13.2(1)
- availability of adjudication
 - application despite other proceedings, 13.5(5)
 - contract, 13.5(1)
 - expiry of period, 13.5(3)
 - multiple matters, 13.5(4)
 - subcontract, 13.5(2)
- conduct, 13.12
 - costs of assistance, 13.12(3)
 - on-site inspection, 13.12(2)
 - powers, 13.12(1)
- consolidate adjudication, 13.8
- costs, 13.16
- court enforcement, 13.20
- definition, 13.1
- determination, 13.13
 - delayed, 13.13(5)
- effect, 13.15
 - extension, 13.13(2), 13.13(3)
- documents, 13.11
- duties and powers, 13.3
 - fees
 - setting, 13.3(3)

Index

ADJUDICATION (*cont'd*)

- retention, 13.3(4)
- fee, adjudicator, 13.10
- frivolous, vexatious, 13.17
- immunity, 13.21
- testimonial immunity, 13.22
- interim authority, 13.4
- judicial review, setting aside, 13.18
- notice, 13.7
- response, 13.11.1
- powers and duties, 13.3
- fees
- setting, 13.3(3)
- retention, 13.3(4)
- procedure, 13.6
- termination, 13.14

AGREEMENT OF PURCHASE AND SALE

- retention of holdbacks for improvement, 5(2)

ALTERNATIVE FINANCING AND PROCUREMENT, 1.1

APPEALS, 71

- general, 71(2)
- extension of time, 71(2)
- notice of, 71(2)
- time limits, 71(2)
- intervention, 57
- procedure
- appeal to Divisional Court, 71(1)
- notice of appeal, 71(2)
- stated case and facts, 70(1), (2)
- where no appeal, 71(3)
- trial date, 71(3)
- setting, 71(3)

APPENDICES

- Report of the Attorney General's Advisory Committee on the Draft Construction Lien Act, Appendix A
- Construction Law Judicially Considered Words and Phrases and Statutorily Defined Terms, Appendix A

APPLICATION OF RULES OF COURT, 67

- accounting, 67
- breach of trust, 67
- claim, 67
- payment to court and, 67
- trust account and, 67
- decision, 67
- on reference, 67
- standard of review, 67
- test, 67
- palpable and overriding error, 67
- funds, 67
- payment into court and, 67
- preservation of funds and, 67
- trust account and, 67
- interim certificate of pending litigation, 67
- judgment, 67
- on consent, 67
- lien, 67
- perfection of, 67
- materials and services, 67
- reference, 67
- tracing order, 67
- work performed, 67
- valuation, 67

Index

APPLICATIONS, see PRACTICE

ASSIGNMENT OF RIGHTS, see LIEN

B

BOND

- financial guarantee bond under s. 44, GR Form 21
- financial guarantee bond ss. 78(10), GR Form 30

BOND, LABOUR AND MATERIAL PAYMENT, 69

BREACH OF TRUST

- by corporation, 13(1)
- breach of trust, 13(1)
- claim, 13(1)
- officer, director, controlling mind, 13(1)
- effective control, 13(1)
- knowledge, 13(1)
- personal liability, 13(1)
- trust obligation, 13(1)
- conduct, 13(1)
- knowledge, 13(1)
- onus to show compliance, 13(1)

C

CASE MANAGEMENT MASTER, REFERENCE TO

- general, 58
- report, 62
- requests for assignment to case management
- consent requests, PD II A
- opposed requests, PD II B

CERTIFICATE

- completion of a subcontract, GR Form 10
- of action under s. 36, GR Form 14
- substantial performance, GR Form 9

CERTIFICATES

- completion of subcontracts, 33
- copy of certificate, 33(4)
- date subcontract deemed completed, 33(2)
- declaration and certification, 33(1)
- services or materials supplied after subcontract certified completed, 33(3)
- minor irregularities, 6
- publication information, duty to furnish, 39(4)
- rules governing, 32
- substantial performance of contracts, 32, *see SUBSTANTIAL PERFORMANCE*

CERTIFICATION OF ACTION TO SET PRE-TRIAL AND TRIAL DATES

- generally, PD IV

CLAIM

- for lien under s. 34, GR Form 12

CLAIM FOR LIEN, see also LIEN, LIEN CLAIMANT

- affidavit of verification
- cross-examination, 40, *see CROSS-EXAMINATION ON CLAIM FOR LIEN*
- contents, 34(5)
- exaggerated claims, 35
- minor irregularities, 6

Index

CLAIM FOR LIEN (*cont'd*)

- preservation
- Crown, 34(3)
- general owner, 34(7)
- municipal, 34(3.1)
- owner, 34(1)
- railway right-of-way, 34(4)
- where lien attaches, 34(1)(a)
- where lien does not attach, 34(1)(b)
- uniting claims of number of persons, 34(8)

“CLASS”

- persons comprising, 79

COMMON INTEREST, 18

CONTRACT SUBSTANTIALLY PERFORMED, 2

- adjudication amounts, 2(2.1)
- deemed complete, 2(3)
- multiple improvements, 2(4)

CONSTRUCTION DISPUTE, *see* ADJUDICATION

CONSTRUCTION LIEN ACT

- application
- architects, 3(4)
- contract as defined in *Ministry of Transportation and Communication Creditors Payment Act* made before April 1, 1990, 3(2)
- Crown, 3(1)
- *Proceedings Against the Crown Act*, s. 3(3)
- failure to comply strictly with, ss. 6, 32(2), 32(5), 33(1)
- waiver of rights, 4

CONSTRUCTION TRADE NEWSPAPER

- defined, 1(1)
- certificates or declarations of substantial performance, 32(5)
- notice of intention to register under *Condominium Act, 1998*, 33(2)
- publication information, duty to furnish, 39(4)

CONTRACT, 1(1)

- abandonment or non-completion, 72
- conformity of, 5(1), *see IMPROVEMENT*
- deemed completion, 2(3)
- defined, 1(1)
- obligations under, 1(1)
- meals and incidental services, 1(1)
- operation of statute and, 1(1)
- performance, 1(1)
- reference to prime contract, 2

CONTRACTOR

- agent for owner, deemed, 1(3)
- defined, 1(1)

CONTRACTOR'S AND SUBCONTRACTOR'S TRUST, AMOUNTS RECEIVED A TRUST

- accounting, 8(1)
- barter agreement, 8(1)
- breach of trust, 8(1)
- under Construction Lien Act, 8(1)
- breach of trust, 8(1)
- liability for

Index

CONTRACTOR'S AND SUBCONTRACTOR'S TRUST, AMOUNTS RECEIVED A TRUST (*cont'd*)

- contractor's, 8(1)
- Construction Lien Act, 8
- action for breach of trust
- trust provisions, 8
- duty of care, 8
- fraud, 8(1)
- general, 8
- holdback, 8(1)
- improvident underwriting, 8
- interim certificate of pending litigation, 8(1)
- jurisdiction, 8
- Bankruptcy and Insolvency Act s. 178 and, 8
- Bankruptcy and Insolvency act, s. 69
- Bankruptcy and Insolvency act rule, 11
- Bankruptcy and Insolvency Act, s. 178(1)(d)
- stay of proceeding, 8
- trustee
 - fiduciary capacity, 8
- payment certificate, 8(1)
- subrogated rights, 8(1)
- tracing order, 8(1)
- trust
 - defined by statute, 8(1)
 - payment into court, 8(1)
 - trust funds, 8(1)
 - conversion to principal's own use, 8(1)
 - accounting for, 8(1)

- trust, 8(1)
 - privity of contract, 8(1)
- ### CONVEYANCES, *see also SALE OF INTEREST IN PREMISES*
- priorities
 - general priority of liens, 78(1)
 - prior conveyances, 78(3), (4)
 - subsequent conveyances, 78(6)
 - security for lien claim, 80(2)
- ### COSTS, 86(1)
- action for damages, 86(1)
 - costs, 86(1)
 - award of, 86(1)
 - power of Master, 86(1)
 - exceeding amount of claim, 86(1)
 - full indemnity scale, 86(1)
 - partial indemnity scale, 86(1)
 - principles, 86(1)
 - time for payment, 86(1)
 - timing of motion for, 86(1)
 - holdback, 86(1)
 - statutory, 86(1)
 - contractor's invoice exceeding, 86(1)
 - holdback funds, 86(1)
 - retention, 86(1)
 - statutory obligation to retain, 86(1)
 - least expensive course not taken, 86(2)
 - liens, 86(1)
 - claim in excess of a amount owed, 86(1)
 - liability, 86(1)
 - registration of claim, 86(1)

Index

COSTS (*cont'd*)

- written notice of, 86(1)
- payment, 86(1)
- defined, 86(1)
- set-off and, 86(1)
- person, 86(1)
- defined, 86(1)
- set-off, 86(1)
- record keeping and, 86(1)
- work done, 86(1)
- improvement test, 86(1)

COUNTERCLAIM, *see* *PLEADINGS*

COURT, *see also PRACTICE*

- defined, 1(1)

COURTS OF JUSTICE ACT, 67

CROSSCLAIM, *see PLEADINGS*

CROSS-EXAMINATION ON CLAIM FOR LIEN, 40

- application of rules of court, 40(4)
- notice requirement, 40(3)
- procedure
 - who may examine, 40(2)
 - who may be examined, 40(1)

CROWN, 16(1), *see also 67*

- Act binding on, 3(1)
- contracts prior to April 1990, 3(2)
- crown agents, 16(1), 67
 - defined, 16(1), 67
 - community college, 16(1), 67
 - lien attachment and, 16(1), 67
- defined, 1(1)
- delivery of claim for lien, 34(3)
- interest in premises, 16(1)

- registration not required, 16(3)
- notice provisions under *Proceedings Against the Crown Act*, not applicable, s. 3(3)
- owner, as, s. 16(2), 16(3)

D

DEATH OF PERSON HAVING LIEN, 73

DECLARATION

- declaration of last supply, 31(5), GR Form 7
- declaration of substantial performance, 32
- minor irregularities, 6

DEEMED COMPLETION OF CONTRACT, 2(3)

DEFINITIONS

- action, 1(1)
- construction trade newspaper, 1(1)
- contract, 1(1)
- contractor, 1(1)
- court, 1(1)
- Crown, 1(1)
- declaration, 33.1(1)
- description, 33.1(1)
- holdback, 1(1)
- home, 1(1)
- home buyer, 1(1)
- improvement, 1(1)
- interest in the premises, 1(1)
- land, 1(1)
- lien claimant, 1(1)
- materials, 1(1)
- mortgage, 1(1)
- municipality, 1(1)

Index

DEFINITIONS (*cont'd*)

- owner, 1(1)
- payer, 1(1)
- payment certifier, 1(1)
- person having a lien, 1(1)
- premises, 1(1)
- price, 1(1)
- registered, 33.1(1)
- services or materials, 1(1)
- subcontract, 1(1)
- subcontractor, 1(1)
- substantial performance, 2(1), (2)
- suffers damage as a result, 1(1)
- supply of services, 1(1)
- wages, 1(1)
- worker, 1(1)
- workers' trust fund, 1(1)
- written notice of lien, 1(1)

DIRECTIONS

- application to court for, 66

DISCHARGE OF LIEN, *see also* *LIEN*

- corporation, 47
- • action as personal judgment and, 47
- • charter, 47
- • • cancellation, 47
- • • revival, 47
- • time limits and, 47
- court, 47
- • authority, 47
- • • generally, 47
- crown agent, 47
- • college as, 47
- • lien attachment and, 47
- • improper preservation and, 47

- general power, 47(1)(a)
- • business, 47(1)(a)
- • • integrated operation, 47(1)(a)
- • lien, 47(1)(a)
- • • registration, 47(1)(a)
- • • • error, 47(1)(a)
- judicial function, 47
- • motions judge, 47
- • trial judge, 47
- limitations period, 47
- motion under, 47
- no genuine issue for trial and, 47

DISPUTE, *see* ADJUDICATION

DIVISIONAL COURT

- enforcement, 71
- • post-judgment, 71
- lien bond, 71
- stay, 71
- • pending appeal, 71

DOCUMENTS, SERVICE OF, 87

E

ENFORCEMENT OF LIEN, *see* *LIEN*

EXAGGERATED CLAIMS, 35(1)1

- liens, 35(1)1
- • claim in excess of amount owed, 35(1)1
- • • liability, 35(1)1
- person, 35(1)1
- • defined, 35(1)1

EXTENDING TIME FOR PAYMENT, 75(1)

EXTRAORDINARY REMEDIES, 68

Index

F

FORMS

- administrative forms, PD V
- Certificate of Action, s. 36, GR Form 14
- Certificate of Completion of Subcontract, s. 33(1), GR Form 10
- Certificate of Substantial Performance of Contract, s. 32, GR Form 9
- Claim for Lien, s. 34, GR Form 12
- Contractor Notice of Non-Payment if Dispute under s. 6.5(6), GR Form 1.3
- Contractor Notice of Non-Payment Where Owner Does not Pay under s. 6.5(5), GR Form 1.2
- Declaration of Last Supply, s. 31(5), GR Form 7
- Financial Guarantee Bond, s. 44, GR Form 21
- Financial Guarantee Bond, s. 78(10), GR Form 30
- Holdback Repayment Bond under s. 22(4), GR Form 5
- Judgment at Trial Where Lien Attaches to Premises, s. 62, GR Form 28
- Judgment at Trial Where Lien Does Not Attach to Premises, s. 62, GR Form 29
- Judgment Directing Reference for Trial, s. 58, GR Form 22
- Labour and Material Payment Bond under s. 85.1, GR Form 31
- Letter of Credit under s. 22(4), GR Form 4
- Notice Given by Defendant, s. 36(4), GR Form 15
- Notice of Cross-Examination under clause 40(3), GR Form 16 and 17
- Notice of Intention to Register under *Condominium Act, 1998*, s. 33.1, GR Form 11
- Notice of Non-Payment of Holdback under s. 27.1, GR Form 6
- Notice of Postponement of Lien, s. 43, GR Form 20
- Notice of Settlement Meeting, GR Form 34
- Notice of Termination under s. 31(6), GR Form 8
- Notice of Trial, GR Form 33
- Notice to Contractor, s. 18, GR Form 2
- Notice to Lien Claimant, s. 19(3), GR Form 3
- Owner Notice of Non-Payment under s. 6.4(2), GR Form 1.1
- Performance Bond under s. 85.1, GR Form 32
- Release of Lien, s. 41, GR Form 19
- Report Where Lien Attaches to Premises, s. 62, GR Form 26
- Report Where Lien Does Not Attach to Premises, s. 62, GR Form 27
- Subcontractor Notice of Non-Payment if Dispute under s. 6.6(7), GR Form 1.5
- Subcontractor Notice of Non-Payment Where Contractor Does not Pay under s. 6.6(6), GR Form 1.4
- Written Notice of Lien under s. 1(1), GR Form 1

Index

G

GENERAL LIEN, *see LIEN*

H

HIGHWAY

- land dedicated to municipality, 17(4)
- lien constituting charge, 16(3)

HOLDBACK, 22, 51(a)

- agreement of purchase and sale providing for retention of, 5(2), *see also IMPROVEMENT*
- bonding, 22(1)
- deficiency holdback and, 22(1)
- financing and, 22(1)
- first progress draw and, 22(1)
- charge, *see LIEN*
- defined, 1(1)
- early release of funds on subcontract certified complete, 25
- general, 22(1)
 - breach of trust and, 51(a)
 - contract and, 22(1)
 - estoppel and, 22(1)
 - payment certificate and, 51(a)
 - payments made in trust, 22(1)
 - statute and, 22(1)
 - statutory holdback, 51(a)
- obligation to retain, 22(3)
- owner's personal liability, 23(1)
 - determined by an action under *Act*, 23(4)
 - limitation, 23(2), (3)
- payments
 - basic holdback, 26
 - defaulted subcontract, 30

- directly to person having lien, 28
- discharge, extent of, 29
- finishing work holdback, 27
- other than holdback, 24
- where subcontract certified complete, 25
- prohibited applications of funds, 30
- security, effect of posting, 44(6), (7)
- types
 - basic, 22(1)
 - separate for finishing work, 22(2)

HOME

- defined, 1(1)

HOME BUYER

- defined, 1(1)

I

IMPROVEMENT, 1(1)

- agreement of purchase and sale providing for, 5(2)
- conformity of contracts to Act, 5(1)
- contaminant
 - Environmental Protection Act and, 1(1)
- defined, 1(1)
- definition, 1(1)
- generally, 1(1)
- importation of from other statutes, 1(1)
- pari material, 1(1)
- quality control, 1(1)
- generally, 1(1)

Index

IMPROVEMENT (*cont'd*)

- alteration and repair of the land, 1(1)
- Construction Lien Act and, 1(1)
- lienable improvement, 1(1)
- substantial part of, 2(2)
- transitory, 1(1)

INFORMATION, DUTIES RESPECTING

- beneficiary of trust, 39(1), (2)
- certificate of substantial performance publication information, 39(4)
- failure to provide information, 39(5)
- lienholder, 39(1), (2)
- mortgagee, 39(1)
- negligent mis-statement, 39(5)
- order to comply with request, 39(6)
- persons having preserved or perfected lien, 60
- trustee of workers' fund, 39(3)

INSOLVENCY

- priorities, 85

INSURANCE PROCEEDS, 83

“INTEREST IN THE PREMISES”

- defined, 1(1)

INTEREST ON DEBT

- no right to lien, 14(2)

INTERLOCUTORY PROCEEDINGS, 67

- security for costs, 67
- statutory regime, 67

J

JOINT INTEREST, 18

JUDGMENT

- at trial where lien attaches to premises, s. 62, GR Form 24
- at trial where lien does not attach to premises, GR Form 25
- default, setting aside, 54
- directing a reference for trial, s. 58, GR Form 22

JUDGMENT OR REPORT

- general, 62
- personal judgment
- effect, 75(1)
- jurisdiction to grant, 63

L

LABOUR AND MATERIAL PAYMENT BOND, 69

LAND

- defined, 1(1)

LAND TITLES ACT

- application to lien, 76

LEASE, *see also* LEASEHOLD INTEREST

- effect of forfeiture or termination, 19(2)
- enforcement requires notice to lien claimants, 19(3)
- reinstatement of lease upon payment of unpaid rent, 19(4)
- order for completion of lease by trustee, 68(5)
- owner's interest as, 19(1)
- priority to proceeds, 84

Index

- LEASEHOLD INTEREST**, 19(1)
 - written notice, 19(1)
 - criteria, 19(1)
 - O. Reg. 175 and, 19(1)
 - other types of written notice and, 19(1)
 - test, 19(1)
- LIEN**, *see also CLAIM FOR LIEN, PRIORITIES*
 - assignment of rights, 73
 - bootstrapping lien right, 31(3)(b)(i)
 - charge on holdbacks and additional debts, 21
 - charge upon amount paid into court, 44(6), (7)
 - condominiums, 33
 - creation of lien, 14(1)
 - materials and service, 14(1)
 - movable walls/furniture system, 14(1)
 - lienable improvement, 14(1)
 - onus as to what is lienable, 14(1)
 - office work, 14(1)
 - lienable interest and, 14(1)
 - rental of tools, 14(1)
 - lienable interest and, 14(1)
 - when lien arises, 15
 - Crown's interest exempt, 16(1)
 - direct payment to person having
 - s. 28 and, 28
 - application of, 28
 - discharge
 - court's general power, 47(1)(a)
 - general lien, 42
 - irrevocability, 48
 - registration of court order, 49
 - release, by, 41(1)
 - enforcement where contract not completed, 72
 - exaggerated claim, 35
 - expiry
 - corporate charter and, 31(2)
 - cancellation of, 31(2)
 - revival of, 31(2)
 - retroactivity and, 31(2)
 - declaration by court, 45–47
 - orders of court, 45(3), 46(3), (4)
 - declaration of last supply, 31(5)
 - requirements of declaration, 31(5)(a), (b)
 - failure to perfect, 36(2)
 - failure to preserve, 31(1)
 - of contractors' liens, 31(2)
 - for services or materials supplied before certification, 31(2)(a)
 - for services or materials supplied where no certification, 31(2)(b)
 - of liens, 31(1)
 - of other persons, 31(3)(b)(i)
 - lien, 31(3)(b)(i)
 - registration of, 31(3)(b)(i)
 - timely preservation, 31(3)(b)(i)
 - for services or materials supplied before certification, 31(3)(a)
 - for services or materials supplied where no certification, 31(3)(b)

Index

- LIEN (*cont'd*)
- of separate liens when ongoing supply, 31(4)
 - other rights not affected, 38
 - perfected lien, 37
 - motion required, 46, 37(2)
 - preserved lien, 36(2)
 - registration of court's declaration, 49
 - saving other rights, 38
 - time limit, 31(2)
 - incorporation and, 31(2)
 - interpretation of, 31(2)
 - judicial discretion and, 31(2)
 - liens and, 31(2)
 - preserving and perfecting claim, 31(2)
 - expiration, 31(2)
 - expiry of preserved lien
 - corporation and, 37(1)
 - revived, 37(1)
 - time limits for preservation and perfection, 37(1)
 - generally, 36(2)
 - issuance of action, 36(2)
 - counting of days, 36(2)
 - registration, 36(2)
 - in accordance with statute, 36(2)
 - general lien
 - discharge, 42
 - inapplicable to liens arising and expiring on lot-by-lot basis, 20(2)
 - perfection, 36(5)
 - lien, 36(3)
 - excessive claim, 36(3)
 - perfection, 36(3)
 - commencement of an action and, 36(3)
 - preservation of, 36(3)
 - procedure, 36(3)
 - amending statement of claim, 36(3)
 - premises, on more than one, 20(1)
 - preservation, 34(7)
 - lien, 34(1)(b)
 - crown agents and, 34(1)(b)
 - registration, 34(1)(b)
 - electronic, 34(1)(b)
 - procedure, 34(1)(b)
 - compliance with statute, 34(1)(b)
 - vacating of, 34(1)(b)
 - posting of security, 34(1)(b)
 - release against one or more premises, 74(2)
 - sale of one or more premises, 74(1)
 - subordination, 82
 - vacating, 44(4)
 - interest on amount owed, 14(2)
 - jurisdiction for claim, 50(1)
 - labour and materials payment bond, 1(1)
 - claimant, meaning of, and, 1(1)
 - preservation of, 1(1)
 - limitation on value, 17(1), (2)
 - liability of municipality, 17(4), *see MUNICIPALITY*
 - set-off, 17(3)
 - not lienable work, 31(3)(b)(i)

Index

- LIEN** (*cont'd*)
- notice of lien, withdrawal of, 41(2)
 - perfection
 - expiry of perfected lien, 37
 - extended payment terms, 36(6)
 - general lien, 36(5)
 - how to perfect lien, 36(3)
 - preservation necessary, 36(1)
 - sheltering, 36(4)
 - postponement, 43
 - preservation
 - expiry where no perfection, 36(2)
 - general lien, 34(7)
 - how lien is preserved, 34(1)
 - lien claimant deemed purchaser, 76
 - lien expires if not preserved, 31(1)
 - right to lien, 14(2)
 - single contract for more than one premises, 20(1)
 - supply of services, 31(3)(b)(i)
 - preparation for the work day as, 31(3)(b)(i)
 - site closure and, 31(3)(b)(i)
 - work done, 31(3)(b)(i)
 - uniting claims of number of persons, 34(8)
 - vacating
 - court's general power, 47
 - expiry of perfected lien under, s. 37, 46
 - expiry of time to preserve or perfect, 45
 - payment into court, 44, *see also* **VACATING LIEN**
 - registration of order, 49
 - when arises, 15
- LIEN CLAIMANT**
- death, 73
 - deemed purchaser, 76
 - defined, 1(1)
 - information, right to, 39(1), (2)
 - multiple claimants, 50(3)
 - representation in court, 67
- LIEN CLAIM ENFORCEABLE IN ACTION**, 50(1)
- corporation charter, 50(1)
 - cancellation, 50(1)
 - revival, 50(1)
 - articles of revival, 50(1)
 - time limits and, 50(1)
 - lien, 50(1)
 - claim, 50(1)
 - abeyance, 50(1)
 - OBCA s. 241(5) and, 50(1)
 - costs of action, 50(1)
 - discharge, 50(1)
- M**
- MANDATORY MEDIATION**
- generally, PD III
- MASTER, REFERENCE TO**
- general, 58
 - report, 62
- MATERIAL PAYMENT BOND**, 69
- MATERIALS**
- defined, 1(1)
 - improvement, defined, 1(1)
 - supply of, defined, 1(2), (3)

Index

MINOR IRREGULARITIES

- failure to comply strictly with, ss. 6, 32(2), 32(5), 33(1)
- lien, 6
- overperfection, 6
- lien claim, 6
- action seeking personal judgment for breach of contract, 6
- claim exceeding amount of, 6
- prejudice and, 6
- proper parties, 6

MORTGAGE, *see also* MORTGAGEE

- defined, 1(1)
- order for completion of mortgage by trustee, 68(5)
- priorities, 78
- security for lien claim, 80(2)

MORTGAGEE, *see also* MORTGAGE

- information
- duty to provide, 39(2)
- right to, 39(1)

MORTGAGE PROCEEDINGS

- designated counties for commencement of, PD VI

MOTIONS, *see PRACTICE*

MUNICIPALITY

- defined, 1(1)
- public street or highway
- delivery of claim for lien, 34(3.1)
- improvements done at expense of others, 17(4)
- liability for payment, 17(4)

- lien constituting charge, 16(3)
- railway right-of-way
- copy of claim for lien to be given to office manager, 34(4)
- lien constituting charge, 16(3)

NOTICE

- contractor under s. 18, to a, GR Form 2
- cross-examination of person verifying claim for lien under s. 40(3) of the act, GR Form 16
- intention to register under *Condominium Act, 1998*, 33.1(3), GR Form 11
- lien claimant, to a GR Form 3
- postponement of lien under, s. 43, GR Form 20
- settlement meeting, GR Form 34
- trial, GR Form 33

NOTING IN DEFAULT, 54

- general, 54
- setting aside, 54
- test under s. 54 CLA, 54

O

ONTARIO REGULATION 304/18 — GENERAL

- alternative financing and procurement
- surety bonds, GR 3
- commencement, GR 16
- definition, GR 1
- expiry, preservation and perfection of liens
- certificate, declaration of substantial performance, GR 9
- claim for lien copy given to crown office, GR 11

Index

- ONTARIO REGULATION
304/18 — GENERAL (*cont'd*)**
- claim for lien copy given to municipal clerk, GR 11.1
 - notice of contract termination, GR 8
 - notice of intention to register condominium, GR 10
 - forms, GR 2
 - holdbacks
 - non-payment, GR 7
 - payment on annual basis, GR 5
 - payment on phased basis, GR 6
 - nuclear facilities, non-application, GR 13
 - prompt payment
 - notices of non-payment, GR 4
 - surety bonds, application of s. 85.1, GR 12

**ONTARIO REGULATION
306/18 — ADJUDICATIONS**

- adjudicators
- certificate of qualification, ADJ 3
- requirements for holders of certificates, ADJ 4
- suspension, cancellation of certificate, ADJ 5
- commencement, ADJ 26
- consolidation of adjudications, ADJ 18
- definitions, ADJ 1
- designation, ADJ 2
- determinations, ADJ 22
- documents, ADJ 16.1
- disclosure, ADJ 20
- duties and powers
- adjudicator registry, ADJ 6

- annual report, ADJ 13
- code of conduct, ADJ 7
- expertise, ADJ 12
- fee schedule, ADJ 9
- failure of adjudicator to complete, ADJ 24
- labour and material payment bonds, ADJ 25
- notice of adjudication, copy to authority, ADJ 16
- powers, ADJ 20
- responding to notice, ADJ 17
- unable to conduct adjudication, ADJ 23
- failure of adjudicator to complete, ADJ 24

OWNER

- defined, 1(1)
- personal liability, 23(2), 33.1(4)

P

PARTIES, *see PRACTICE*

PAYER

- defined, 1(1)
- payments that may be made
- where no written notice of lien received, 24(1)
- where subcontract certified complete, 25
- where written notice of lien received, 24(2)

PAYMENT, *see PROMPT PAYMENT*

PAYMENT CERTIFIER

- certification of substantial performance, 32
- defined, 1(1)

Index

- PAYMENT CERTIFIER** (*cont'd*)
- determination of whether subcontract completed, 33
- PERFECTION OF LIEN**, *see LIEN*
- PERFORMANCE OF CONTRACT**, *see SUBSTANTIAL PERFORMANCE*
- “PERSON HAVING A LIEN”**
- defined, 1(1)
- PLEADINGS**, *see also PRACTICE*
- counterclaim
 - beyond limitation period, 67
 - leave to amend, 53, 67
 - need not be related to making of improvement, 55
 - time for delivery, 53
 - what defendant may do, 55
 - crossclaim
 - must be related to making of improvement, 55
 - time for delivery, 53
 - what defendant may do, 55
 - joinder of claims, 55
 - party noted in default, 54
 - statement of claim, 53
 - statement of defence
 - default in delivery, 54
 - time for delivery, 54
 - third party claims, 56
- POSTPONEMENT OF CLAIM**
- general, 43
 - priority, 78(8)
- PRACTICE**, *see also ACTION and PLEADINGS*
- adding parties, 57
 - appeals, 71
 - procedure
 - appeal to Divisional Court, 71(1)
 - notice of appeal, 71(2)
 - stated case and facts, 70(1), (2)
 - where no appeal, 71(3)
 - application for directions, 66
 - applications and motions
 - adjournments, PD I G
 - Civil Practice Court, PD I A
 - motions in writing, PD I F
 - rules applicable to all, PD I B
 - scheduling
 - long application before judge, PD I D
 - long motion before judge, PD I D
 - motions before masters, PD I E
 - short application before judge or master, PD I C
 - short motion before judge or master, PD I C
 - summary judgment motion before judge, PD I D
 - urgent matter before judge, PD I D
 - appointment of trustee, 68(1)
 - carriage of action, 59
 - commencing action, 53
 - completion of sale, orders for, 65
 - consolidation of actions, 59
 - costs, 86
 - counterclaim
 - need not be related to making of improvement, 55
 - time for delivery, 53

Index

- PRACTICE (*cont'd*)
- court to dispose completely of action, 51
 - *Courts of Justice Act* applies, 67
 - crossclaim
 - must be related to making of improvement, 55
 - time for delivery, 53
 - cross-examination on claim for lien, 40
 - declaration that lien has expired
 - court's general power, 47(1)(c)
 - expiry of perfected lien under, s. 37, 46
 - expiry of time to preserve or perfect, 45
 - default judgment, 54
 - discharging lien, court's general power, 47(1)(a)
 - dismissing action
 - court's general power, 47(1)(d)
 - where lien expires, 46
 - extraordinary remedies, 68
 - application for appointment of trustee, 68(1)
 - powers of trustee, 68(2)
 - liens a charge on amounts recovered, 68(3)
 - orders for completion of sale, 68(5)
 - sale subject to encumbrances, 68(4)
 - factual disclosure, 67
 - interlocutory steps, 67
 - joinder, 50(3)
 - judgment or report
 - general, 62
 - personal judgment, 63, 75
 - jurisdiction
 - court of competent jurisdiction, 50(2)
 - Ontario Court (General Division), 50(1)
 - where exclusive jurisdiction not acquired, 52
 - mandatory mediation, PD III
 - motions, procedure on, 67
 - multiple lien claimants, 50(3)
 - notice of trial, 57, 60
 - parties to action, 57
 - party noted in default, 54
 - payment into court, 67
 - reference to master, case management master or person agreed on by parties
 - general, 58
 - report, 62
 - regulations, Lieutenant Governor, 88
 - representation of lien claimant in court, 67
 - return of payment into court, 46(4)
 - rules of court apply, 67
 - security for costs, 67, 71(3)
 - service of documents, 87
 - settlement meeting
 - conduct of, 61
 - fixing date, 60
 - non-application of Rule 50, 61
 - notice, 60
 - power of court, 61
 - statement of settlement, 61
 - stated case, 70
 - statement of claim, 53

Index

- PRACTICE** (*cont'd*)
- summary character of proceedings, 67
 - technical assistance to court, 67
 - third party claims, 56
 - trial date, fixing, 60
 - trust claim, 50(2)
 - vacating lien, 44
- PREMISES**
- defined, 1(1)
 - “interest in the”, defined, 1(1)
 - • Crown’s interest, 16(1), (3)
 - • joint interest, 18
 - • other person’s interest, 16(2)
 - • preservation of lien, 34(7)
- PRESERVATION OF LIEN**, *see LIEN*
- PRICE**
- defined, 1(1)
- PRIORITIES**
- agreements affecting owner’s interest, 78
 - “class”
 - • persons comprising, 79
 - • priority, 80(1)
 - • where conveyance or mortgage void, 80(2)
 - conveyances, 78
 - • where void, 80(2)
 - disposition proceeds, 84
 - general creditors, 77
 - general liens, 82
 - insolvency, 85
 - insurance proceeds, 83
 - lease, 84
 - mortgages, 78
 - • building, 78(2)
 - • financial guarantee bond, 78(10)
 - • general, 78(1)
 - • home buyers, 78(11)
 - • saving provision, 78(9)
 - postponement, 78(8)
 - prior mortgages, prior advances, 78(3)
 - prior mortgages, subsequent advances, 78(4)
 - proceeds of sale, 84
 - subsequent mortgages, general priority against, 78(6)
 - subsequent mortgages, special priority against, 78(5)
 - trustees appointed under Part IX, 78(7)
 - worker
 - • device to defeat priority, 81(3)
 - • forty days’ wages, 81(1)
 - • trustee to trust fund is subrogated to rights of, 81(2)
- PROCEEDINGS**, *see PRACTICE*
- PROCEEDS OF SALE**
- perfected lienholder’s right to share, 64
 - priorities, 84
 - preservation of lien, 34(7)
- PROMPT PAYMENT**
- definition, 6.1
 - holdback, 6.2
 - interest on late payments, 6.9
 - invoice, 6.3(1)
 - • exception, 6.3(4)
 - • restriction on condition, 6.3(2)
 - • revisions, 6.3(5)

Index

- PROMPT PAYMENT** (*cont'd*)
- late payments, interest, 6.9
 - non-payment, reason, 6.7
 - payment deadline, 6.4
 - contractor to subcontractor, 6.5
 - exception, 6.5(5), 6.5(6)
 - non-payment, 6.5(4)
 - partial payment, 6.5(2)
 - payment deadline once received from owner, 6.5(8)
 - timing of notice, 6.5(7)
 - owner to contractor, 6.4(1)
 - exception, 6.4(2)
 - pay remaining amount, 6.4(3)
 - subcontractor to subcontract, 6.6
 - date invoice was given, 6.6(10)
 - exception, 6.6(6), 6.6(7)
 - non-payment, 6.6(4)
 - partial payment, 6.6(2)
 - payment deadline once received from contractor, 6.6(9)
 - timing of notice, 6.6(8)
 - reason for non-payment, 6.7
 - wages, 6.8

R

RAILWAY RIGHT-OF-WAY

- copy of claim for lien to be given to office manager, 34(4)
- lien constituting charge, 16(3)
- preservation of lien, 34(7)

REDUCTION OF AMOUNT PAID INTO COURT, 44(5)

- security, 44(5)

- prorate share, 44(5)
- reduction of, 44(5)
- holdback funds, 44(5)
- release of, 44(5)

REFERENCE TO MASTER, CASE MANAGEMENT MASTER OR PERSON AGREED ON BY PARTIES

- costs, 58(4)
- award of, 58(4)
 - power of Master, 58(4)
- exceeding amount of claim, 58(4)
- full indemnity scale, 58(4)
- partial indemnity scale, 58(4)
- holdback funds, 58(4)
- retention, 58(4)
- statutory obligation to retain, 58(4)
- general, 58
- report, 62

REGISTRATION ON TITLE

- court orders, 49

REGISTRY ACT

- application to lien, 76

RELEASE

- of lien under s. 41 of the act, GR Form 19

REPORTS

- where the lien attaches to the premises, s. 62, GR Form 26
- where the lien does not attach to the premises, s. 62, GR Form 27

REPRESENTATION BY AGENT, 67

Index

RULES OF CIVIL PROCEDURE

- application where not inconsistent, 67
- Rule 50 not applying to action, 61

S

SALE OF INTEREST IN PREMISES, *see also* CONVEYANCES

- fees and disbursements, 65(3)
- general lien, continuation of, 74
- orders for completion of sale, 65, 68(5)
- proceeds
 - court's direction as to fees and disbursements, 65(3)
 - court's direction as to completion of sale, 65(1)
 - court's direction as to whom proceeds paid, 65(4)
 - deficiency, 65(5)
 - payment into court, 65(2)
 - perfected lienholder's right to share, 64
 - priorities, 84
- subject to encumbrance that court directs, 68(4)

SECURITY

- bond posted under s. 44, GR Form 21
- effect of taking, 75
- payment in place of lien, 44
- return where action dismissed, 46

SERVICE OF DOCUMENTS, 87

- general, 53
 - extending time for service, 53
 - statement of claim, 53

- amendment of, 53
- time limits, 53
- services and materials, 53

“SERVICES OR MATERIALS”

- defined, 1(1)

SET OFF BY TRUSTEE, 12

- lien, 12
 - written notice of, 12
 - holdback, 12
 - statutory, 12
 - contractor's invoice exceeding, 12
- payment, 12
- defined, 12
 - set-off and, 12
- set-off, 12
- record keeping and, 12

SETTLEMENT MEETING

- conduct of, 61
- fixing date, 60
- notice, 60
- statement of settlement, 61

SHELTERING PRESERVED LIEN, 36(4)

STATED CASE, 70

STATEMENT OF CLAIM, *see* PLEADINGS

STATEMENT OF DEFENCE, *see* PLEADINGS

STATEMENT OF SETTLEMENT, 61

- lien, 61
 - discharge, 61
 - perfection of, 61
 - preservation, 61

Index

STATEMENT OF SETTLEMENT (*cont'd*)

- • vacating of, 61

STREET

- land dedicated to municipality, 17(4)
- lien constituting charge, 16(3)

SUBCONTRACT

- abandonment or non-completion, 72
- certificate of completion, 33
- defined, 1(1)

SUBCONTRACTOR

- agent for owner, deemed, 1(3)
- defined, 1(1)

SUBROGATION

- bankruptcy, 69
- bonds, 69
- • payment, 69
- • • labour and material, 69
- improvident underwriting, 69
- officers and director, 69
- surety, 69
- trustee of workers' trust fund, 81(2)

SUBSTANTIAL PERFORMANCE

- certification and declaration, 32(1), *see also MINOR IRREGULARITIES, PAYMENT CERTIFIER*
- • contents of certificate, 32(2)
- • copies of certificates or declarations, 32(5)
- • liability for failure to furnish copy of certificate, 32(4)
- • liability for refusal to certify, 32(3)

- of contract defined, 2(1)
- of improvement, 2(2)
- trust fund created by, 7(3)
- defined, 2(1), (2)

“SUFFERS DAMAGES AS A RESULT”

- defined, 1(1)

SUMMARY PROCEDURE, 67,

see also CROWN, 16

“SUPPLY OF SERVICES”

- defined, 1(1)
- “last supply”, 2(3)
- lienable, 1(1)
- transportation of materials, 1(1)
- work done, 1(1)

T

THIRD PARTY CLAIMS

- court may give directions, 56
- leave application, 56
- third party may be added for purpose of claiming contribution or indemnity, 56

TIME

- for delivery of pleading, 54
- • claims, 54
- • • R. 19.04(1)(a) Rules of Civil Procedure and time limits, 54
- • • statement of claim and, 54

TRUST FUNDS, *see also TRUSTEE, WORKERS' TRUST FUND*

- beneficiary's right to information, 39(1), (2)
- breach of trust
- • contribution or indemnity, 13(4)

Index

TRUST FUNDS (*cont'd*)

- corporations, 13(1), (2)
- joint and several liability, 13(3)
- liability of corporations, 13(1), 13(2)
- claim not to be joined with lien claim, 50(2)
- created by
 - amounts payable, 7(2)
 - substantial performance, 7(3)
- insolvency, priorities on, 85
- payments by trustee
 - discharging loan, 11(2)
 - non-trust monies, 11(1)
 - person owed for improvement, 10
 - set-off for debts, claims or damages, 12
- trusts created
 - contractor's and subcontractor's trust, 8(1), *see also TRUSTEE*
 - owner's trust, 7(1), *see also TRUSTEE*
 - vendor's trust, 9(1), *see also TRUSTEE*
- workers' trust fund, right to information, 39(3)

TRUSTEE

- appointment, 68(1)
- liens a charge on amounts recovered, 68(3)
- obligations
 - under contractor's and subcontractor's trust, 8(2)
 - under owner's trust, 7(4)
 - under vendor's trust, 9(2)
- powers, 68(2)

- priority, 78(7)

TRUSTS, 7

- amounts certified as payable, 7(2)
- owners assets, 7(2)
- sales proceeds, 7(2)
- asset sale, 7(2)
- general operating revenues, 7(1)
- gross proceeds of sale, 7(2)
- net proceeds of sale, 7(2)
- operating account, 7(2)
- intention, 7(2)
- secured creditors, 7(2)
- trust monies and, 7(2)

V

VACATING LIEN

- court order where lien expires, 45
- payment into court of reasonable amount, 44(2)
- payment into court, without notice, 44(1)
- jurisdiction, 44
- court, 44
- payment of holdback into court, 44
- procedure
 - consolidation of motions, 44(8)
 - ex parte proceedings, 44(2)
 - rules govern, 44(9)
- reduction of amount paid into court, 44(5)
- security, posting, 44
- where general lien, 44(4)
- where lien does not attach to premises, 44(3)

Index

VENDOR'S TRUST, 9(1)

- general security interest, 9(1)
- leasehold interest, 9(1)
- • lien claimants and, 9(1)
- owner's assets, 9(1)
- • court approval, 9(1)
- sale proceeds, 9(1)
- • definition, 9(1)(a)
- • gross, 9(1)
- • net, 9(1)
- secured creditors, 9(1)
- • consent to sell, 9(1)
- trust fund, 9(1)
- • defined, 9(1)

W

WAGES

- defined, 1(1)

WAIVER OF RIGHTS UNDER ACT, 4

- holdback, 4
- holdback liability, 4
- • estoppel and, 4

WORKER

- defined, 1(1)

- device to defeat priority, 81(3)
- priority of lien, 81(1)
- • registration of, 81
- • timely preservation, 81
- supply of services, 81
- • preparation for the work day as, 81
- • site closure and, 81
- • work done, 81

WORKERS' TRUST FUND

- defined, 1(1)
- subrogation to rights of worker, 81(2)

"WRITTEN NOTICE OF A LIEN"

- defined, 1(1)
- Written Notice of Lien under s. 1(1), GR Form 1

