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).

ABANDONMENT OF ADJUDICATION—Cont'd **CONTRACT** Availability of adjudication —Cont'd Generally, 72 multiple matters, 13.5(4) **ACTION** subcontract, 13.5(2) See also PRACTICE Conduct, 13.12 Carriage, 59 costs of assistance, 13.12(3) Commencing, 53 on-site inspection, 13.12(2) Consolidation, 59 powers, 13.12(1) Court to dispose of all claims, 51 Consolidate adjudication, 13.8 Defined, 1(1), § 1:3 Costs, 13.16 Lien, 53 Court enforcement, 13.20 expiration, 53 Definition, 13.1 registration, 53 Determination, 13.13 **ADJOURNMENTS** delayed, 13.13(5) Documents, 13.11 Civil motions, PD I G Duties and powers, 13.3 Construction lien motions, PD I G **ADJUDICATION** retention, **13.3(4)** Adjudicator, 13.9 setting, 13.3(3) appointment, 13.9(5) Effect, 13.15 selection, **13.9(2)** extension, 13.13(2), 13.13(3) Amounts payable, 13.19 Fee, adjudicator, 13.10 costs of resumption, 13.19(6) Frivolous, vexatious, 13.17 enforcement, 13.19(2) **Immunity**, **13.21** holdback, 13.19(1) testimonial immunity, 13.22 late payment, interest, 13.19(3) Interim authority, 13.4 Authorized nominating authority, Judicial review, setting aside, 13.18 13.2(1) Notice, 13.7 Availability of adjudication response, 13.11.1 application despite other proceedings, 13.5(5) Powers and duties, 13.3 contract, 13.5(1) expiry of period, 13.5(3) retention, **13.3(4)**

ADJUDICATION—Cont'd APPLICATION OF RULES OF Powers and duties, 13.3—Cont'd COURT-Cont'd fees-Cont'd Funds, 67 setting, **13.3**(3) payment into court and, 67 Procedure, 13.6 preservation of funds and, 67 Termination, 13.14 trust account and, 67 Interim certificate of pending litiga-AGREEMENT OF PURCHASE tion, 67 AND SALE Judgment, 67 Retention of holdbacks for on consent, 67 improvement, 5(2) Lien, 67 ALTERNATIVE FINANCING AND perfection of, 67 **PROCUREMENT** Materials and services, 67 Generally, 1.1 Reference, 67 Tracing order, 67 **APPEALS** Work performed, 67 Generally, 71 valuation, 67 General, 71(2), § 71:4 extension of time, 71(2), § 71:4 **APPLICATIONS** notice of, 71(2), § 71:4 See PRACTICE time limits, 71(2), § 71:4 Intervention, 57 ASSIGNMENT OF RIGHTS Procedure See LIEN appeal to Divisional Court, 71(1), **BOND** § 71:3 Financial guarantee bond ss. 78(10), notice of appeal, 71(2), § 71:4 Form 30 stated case and facts, 70(1), 70(2)Financial guarantee bond under s. Where no appeal, 71(3), § 71:5 44, Form 21 trial date, 71(3), § 71:5 setting, 71(3), § 71:5 BOND, LABOUR AND MATERIAL PAYMENT APPLICATION OF RULES OF Generally, 69 **COURT BREACH OF TRUST** Generally, 67 Accounting, 67 By corporation, 13(1), § 13:3 Breach of trust, 67 breach of trust, 13(1), § 13:3 claim, 13(1), § 13:3 Claim, 67 officer, director, controlling payment to court and, 67 mind, 13(1), § 13:3 trust account and, 67 effective control, 13(1), § 13:3 Decision, 67 knowledge, 13(1), § 13:3 on reference, 67 personal liability, 13(1), § 13:3 standard of review, 67 trust obligation, 13(1), § 13:3 test, **67** conduct, 13(1), § 13:3 palpable and overriding

knowledge, 13(1), § 13:3

error, 67

CLAIM FOR LIEN BREACH OF TRUST—Cont'd By corporation, **13(1)**, § **13:3** See also LIEN, LIEN CLAIMANT -Cont'd Affidavit of verification trust obligation, 13(1), § 13:3 cross-examination, 40 —Cont'd See CROSS-EXAMINATION onus to show compliance, ON CLAIM FOR LIEN 13(1), § 13:3 Contents, 34(5), § 34:6, § 34:7 CASE MANAGEMENT MASTER, Exaggerated claims, 35 **REFERENCE TO** Minor irregularities, 6 General, 58 Preservation Report, 62 Crown, 34(3), § 34:5 Requests for assignment to case general owner, 34(7) management municipal, 34(3.1) consent requests, PD II A owner, 34(1), § 34:2, § 34:3 **CERTIFICATE** railway right-of-way, **34(4)** where lien attaches, 34(1)(a), Completion of a subcontract, **Form** § 34:2 Of action under s. 36, Form 14 where lien does not attach, Substantial performance, Form 9 34(1)(b), § 34:3 Uniting claims of number of **CERTIFICATES** persons, 34(8), § 34:9 Completion of subcontracts, 33 copy of certificate, 33(4) "CLASS" date subcontract deemed Persons comprising, 79 completed, 33(2) **COMMON INTEREST** declaration and certification, 33(1) Generally, 18 services or materials supplied CONSTRUCTION DISPUTE after subcontract certified completed, 33(3) See ADJUDICATION Minor irregularities, 6 CONSTRUCTION LIEN ACT Publication information, duty to furnish, **39(4)** Application Rules governing, 32 architects, 3(4) Substantial performance of contract as defined in Ministry of contracts, 32 Transportation and Com-See SUBSTANTIAL PERFORmunication Creditors Pay-**MANCE** ment Act made before April 1, 1990, 3(2) CERTIFICATION OF ACTION TO Crown, **3**(**1**) SET PRE-TRIAL AND TRIAL Proceedings Against the Crown **DATES** Act, 3(3) Generally, PD IV Failure to comply strictly with, ss.

CLAIM

For lien under s. 34, Form 12

6, 32(2), 32(5), 33(1)

Waiver of rights, 4

CONSTRUCTION TRADE NEWSPAPER

furnish, **39(4)**

Certificates or declarations of substantial performance, 32(5) Notice of intention to register under Condominium Act, 1998, 33(2) Publication information, duty to

CONTRACT

Generally, 1(1), § 1:5

Abandonment or non-completion, 72

Conformity of, 5(1)

See IMPROVEMENT

Deemed completion, 2(3)

Defined, 1(1), § 1:5

Obligations under, 1(1), § 1:5

meals and incidental services, 1(1), § 1:21

Operation of statute and, 1(1), § 4:1, § 22:2, § 77:1

Performance, 1(1)

Reference to prime contract, 2

CONTRACT SUBTANTIALLY PERFORMED

Generally, 2
Adjudication amounts, 2(2.1)
Deemed complete, 2(3)
Multiple improvements, 2(4)

CONTRACTOR

Agent for owner, deemed, 1(3), § 1:1
Defined, 1(1), § 1:1, § 1:5

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

Accounting, 8(1), § 8:5
Barter agreement, 8(1), § 8:5
Breach of trust, 8(1), § 8:5
liability for
contractor's, 8(1), § 8:5

CONTRACTOR'S AND SUBCONTRACTOR'S TRUST, AMOUNTS RECEIVED A TRUST —Cont'd

Breach of trust, 8(1), § 8:5—Cont'd under Construction Lien Act, 8(1), § 8:5

Construction Lien Act, 8 trust provisions, 8 Duty of care, 8

Fraud, **8(1)**, § **8:5**

General, 8

Holdback, 8(1), § 8:5

Improvident underwriting, 8

Interim certificate of pending litigation, 8(1), § 8:5

Jurisdiction, 8

Bankruptcy and Insolvency act rule, 11

Bankruptcy and Insolvency Act s. 178 and, 8

stay of proceeding, $\mathbf{8}$

trustee

fiduciary capacity, 8

Land Reserved for First Nations, § 8:4

Payment certificate, 8(1), § 8:5 Subrogated rights, 8(1), § 8:5

Tracing order, **8(1)**, § **8:5**

Trust, 8(1), § 8:5

defined by statute, 8(1), § 8:5 payment into court, 8(1), § 8:5 privity of contract, 8(1), § 8:5

Trust funds, 8(1), § 8:5
accounting for, 8(1), § 8:5
conversion to principal's own
use, 8(1), § 8:5

CONVEYANCES

See also SALE OF INTEREST IN PREMISES

Priorities

general priority of liens, **78(1)**, § **78:3**

| CONVEYANCES—Cont'd | COSTS—Cont'd |
|---|---|
| Priorities—Cont'd | Payment, 86(1) , 86(1)(b) |
| prior conveyances, $78(3)$, $78(4)$, | defined, 86(1) , 86(1)(b) |
| § 78:5, § 78:6 | set-off and, 86(1) , 86(1)(b) |
| subsequent conveyances, 78 (6), | Person, 86(1) , 86(1)(b) |
| § 78:8 | defined, 86 (1), 86 (1)(b) |
| Security for lien claim, 80(2) | Set-off, 86 (1), 86 (1)(b) |
| COSTS | record keeping and, 86(1) , 86(1)(b) |
| Generally, $86(1)$, $86(1)(b)$ | Work done, 86(1), 86(1)(b) |
| Action for damages, 86(1) , 86(1)(b) | improvement test, 86(1), 86(1)(b) |
| Costs, 86(1), 86(1)(a), 86(1)(b) | |
| award of, 86(1), 86(1)(a), | COUNTERCLAIM |
| 86(1)(b) | See PLEADINGS |
| exceeding amount of claim, | COURT |
| 86(1), 86(1)(b) | See also PRACTICE |
| full indemnity scale, 86(1) , 86(1)(b) | Defined, 1(1), § 1:1, § 1:7 |
| partial indemnity scale, 86(1), | COURTS OF JUSTICE ACT |
| 86(1)(b) | Generally, 67 |
| power of Master, 86(1) , 86(1)(b) | CROSS-EXAMINATION ON |
| principles, 86(1) , 86(1)(b) | CLAIM FOR LIEN |
| substantial indemnity scale, | Generally, 40 |
| 86(1)(a) | Application of rules of court, 40(4) |
| time for payment, 86(1), 86(1)(b) | Notice requirement, 40(3) |
| timing of motion for, $86(1)$, $86(1)(b)$ | Procedure who may be examined, 40 (1) |
| Holdback, 86(1) , 86(1)(b) | who may be examined, $40(1)$ who may examine, $40(2)$ |
| statutory, 86(1) , 86(1)(b) | |
| contractor's invoice exceeding, | CROSSCLAIM |
| 86(1), 86(1)(b) | See PLEADINGS |
| Holdback funds, 86(1), 86(1)(b) | CROWN |
| retention, 86(1) , 86(1)(b) | Generally, 16(1) , 67 |
| statutory obligation to retain, | Act binding on, 3 (1) |
| 86(1), 86(1)(b) | Contracts prior to April 1990, 3(2) |
| Least expensive course not taken, | Crown agents, 16(1) , 67 |
| 86(1)(a), 86(2) | defined, 16(1) , 67 |
| Liens, 86(1), 86(1)(b) | community college, 16(1), 67 |
| claim in excess of a mount owed, 86(1), 86(1)(b) | lien attachment and, 16(1), 67 |
| liability, 86(1) , 86(1)(b) | Defined, 1(1), § 1:1, § 1:13 |
| registration of claim, 86(1), | Delivery of claim for lien, 34(3) , |
| 86(1)(b) | § 34:5 |
| written notice of, 86(1) , 86(1)(b) | Interest in premises, 16(1) |
| Offers to Settle, 86(1)(a) | registration not required, 16(3) |

CROWN-Cont'd DEFINITIONS—Cont'd Notice provisions under Proceed-Services or materials, 1(1), § 1:1, ings Against the Crown Act, § 1:14 not applicable, 3(3)Subcontract, 1(1), § 1:1, § 1:20 Owner, as, 16(2), 16(3) Subcontractor, 1(1), § 1:1 Substantial performance, 1.1, 2(1), **DEATH OF PERSON HAVING** 2(2) LIEN Suffers damage as a result, 1(1) Generally, 73 Supply of services, 1(1) DECLARATION Wages, 1(1), § 1:1, § 1:22 Declaration of last supply, 31(5), Worker, **1**(**1**) § 31:12, Form 7 Workers' trust fund, 1(1) Declaration of substantial perfor-Written notice of lien, 1(1), § 1:1, mance, 32 § 1:23 Minor irregularities, 6 **DIRECTIONS** DEEMED COMPLETION OF Application to court for, 66 **CONTRACT** DISCHARGE OF LIEN Generally, 2(3) See also LIEN **DEFINITIONS** Corporation, 47 Action, 1(1), § 1:3 action as personal judgment and, Contract, 1(1), § 1:1, § 1:5 47 Contractor, 1(1), § 1:6 charter, 47 Court, 1(1), § 1:7 cancellation, 47 Crown, 1(1), § 1:1 revival, 47 Declaration, 33.1(1) time limits and, 47 Description, 33.1(1) Court, 47 Holdback, 1(1), § 1:8 authority, 47 Home, 1(1), § 1:9 generally, 47 Home buyer, 1(1), § 1:1, § 1:10 Crown agent, 47 Improvement, 1(1), § 1:1, § 1:11 college as, 47 Interest in the premises, 1(1), § 1:12 improper preservation and, 47 Land, 1(1), § 1:1 lien attachment and, 47 Lien claimant, 1(1), § 1:13 General power, 47(1)(a), § 47:3 Materials, 1(1), § 1:14 business, 47(1)(a), § 47:3 Mortgage, 1(1), § 1:1* integrated operation, 47(1)(a), Municipality, 1(1), § 1:1 § 47:3 Owner, 1(1), § 1:1, § 1:15 lien, 47(1)(a), § 47:3 Payer, 1(1), § 1:1, § 1:16 registration, 47(1)(a), § 47:3 Payment certifier, 1(1) error, 47(1)(a), § 47:3 Judicial function, 47 Person having a lien, 1(1), § 1:1, § 1:17 motions judge, 47 trial judge, 47 Premises, 1(1), § 1:1, § 1:18 Price, 1(1), § 1:1, § 1:19 Limitations period, 47 Registered, **33.1**(1) Motion under, 47

DISCHARGE OF LIEN—Cont'd

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

Generally, 87

ENFORCEMENT OF LIEN

See LIEN

EXAGGERATED CLAIMS

Generally, **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

Generally, 75(1)

EXTRAORDINARY REMEDIES

Administrative forms, PD V

Generally, 68

FORMS

Certificate of Action, **36, Form 14**Certificate of Completion of
Subcontract, **33(1), Form 10**Certificate of Substantial Performance of Contract, **32, Form 9**Claim for Lien, **34, Form 12**Contractor Notice of Non-Payment if Dispute under s. 6.5(6),
Form **1.3**

Contractor Notice of Non-Payment Where Owner Does not Pay under s. 6.5(5), Form 1.2

FORMS-Cont'd

Declaration of Last Supply, 31(5), § 31:12, Form 7

Financial Guarantee Bond, 44, Form 21; 78(10), § 78:9, Form 30

Holdback Repayment Bond under s. 22(4), **Form 5**

Judgment at Trial Where Lien Attaches to Premises, **62**, Form **28**

Judgment at Trial Where Lien Does Not Attach to Premises, **62**, Form **29**

Judgment Directing Reference for Trial, **58, Form 22**

Labour and Material Payment Bond under s. 85.1, **Form 31**

Letter of Credit under s. 22(4), Form 4

Notice Given by Defendant, 36(4), Form 15

Notice of Cross-Examination under clause 40(3), Form 16 and 17

Notice of Intention to Register under Condominium Act, 1998, **33.1, Form 11**

Notice of Non-Payment of Holdback under s. 27.1, **Form**

Notice of Postponement of Lien, 43, Form 20

Notice of Settlement Meeting, Form 34

Notice of Termination under s. 31(6), **Form 8**

Notice of Trial, Form 33

Notice to Contractor, 18, Form 2

Notice to Lien Claimant, 19(3), Form 3

Owner Notice of Non-Payment under s. 6.4(2), **Form 1.1**

Performance Bond under s. 85.1, **Form 32**

Release of Lien, 41, Form 19

FORMS—Cont'd HOLDBACK-Cont'd Report Where Lien Attaches to Obligation to retain, 22(3) Premises, 62, Form 26 Owner's personal liability, 23(1) Report Where Lien Does Not determined by an action under Attach to Premises, **62**, **Form** Act, 23(4) limitation, 23(2), (3) Subcontractor Notice of Non-Pay-**Payments** ment if Dispute under s. 6.6(7), basic holdback, 26 **Form 1.5** defaulted subcontract, 30 Subcontractor Notice of Non-Paydirectly to person having lien, 28 ment Where Contractor Does discharge, extent of, 29 not Pay under s. 6.6(6), Form finishing work holdback, 27 1.4 other than holdback. 24 Written Notice of Lien under s. where subcontract certified 1(1), **Form 1** complete, 25 **GENERAL LIEN** Prohibited applications of funds, 30 See LIEN Security, effect of posting, 44(6), (7), § 44:9**HIGHWAY Types** Land dedicated to municipality, basic, 22(1) 17(4) separate for finishing work, 22(2) Lien constituting charge, 16(3) **HOME HOLDBACK** Defined, 1(1), § 1:1, § 1:9 Generally, **22**, **51**(a) Agreement of purchase and sale **HOME BUYER** providing for retention of, 5(2)Defined, 1(1), § 1:1, § 1:10 see also IMPROVEMENT Bonding, **22**(1) **IMPROVEMENT** Generally, 1(1), § 1:1, § 1:11 deficiency holdback and, 22(1) Agreement of purchase and sale financing and, 22(1) first progress draw and, 22(1) providing for, 5(2)Conformity of contracts to Act, 5(1) Charge See LIEN Contaminant Defined, 1(1), § 1:1, § 1:13 **Environmental Protection Act** and, 1(1), § 1:11 Early release of funds on subcontract certified complete, generally, **1(1)**, § **1:11** 25 quality control, § 1:11 General, **22**(1) Generally, § 1:11 breach of trust and, 51(a) alteration and repair of the land, contract and, 22(1) 1(1), § 1:1, § 1:11 estoppel and, 22(1) Construction Lien Act and, 1(1), payment certificate and, 51(a) § 1:1, § 1:11 payments made in trust, 22(1) Lienable improvement, § 1:11 statute and, **22**(1) Substantial part of, 2(2) statutory holdback, 51(a) Transitory, § 1:11

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

Generally, 83

"INTEREST IN THE PREMISES"

Defined, 1(1), § 1:1, § 1:12

INTEREST ON DEBT

No right to lien, 14(2), § 14:4

INTERLOCUTORY PROCEEDINGS

Generally, **67**Security for costs, **67**statutory regime, **67**

JOINT INTEREST

Generally, 18

JUDGMENT

At trial where lien attaches to premises, **62**, **Form 24**

At trial where lien does not attach to premises, **Form 25**

Default, setting aside, 54

Directing a reference for trial, 58, Form 22

JUDGMENT OR REPORT

General, 62

JUDGMENT OR REPORT

-Cont'd

Personal judgment effect, **75(1)** jurisdiction to grant, **63**

LABOUR AND MATERIAL PAYMENT BOND

Generally, 69

LAND

Defined, 1(1), § 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

LEASEHOLD INTEREST

Generally, 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), § 31:9

Charge on holdbacks and additional debts, 21

Charge upon amount paid into court, **44(6)**, **(7)**, § **44:9**

| LIEN—Cont'd | LIEN—Cont'd |
|--|---|
| Condominiums, 33 | Expiry—Cont'd |
| Creation of lien, 14(1), § 14:3 | declaration of last supply, 31(5), |
| materials and service, 14(1), | § 31:12 |
| § 14:3 | requirements of declaration, |
| movable walls/furniture | 31(5)(a), (b), § 31:12 |
| system, 14 (1), § 14:3 | failure to perfect, 36(2) |
| lienable improvement, | failure to preserve, 31(1) , § 31:2 |
| 14(1), § 14:3 | of contractors' liens, 31(2), |
| onus as to what is lien- | § 31:3 to § 31:7 |
| able, 14(1), § 14:3 | for services or materials sup- plied before certification, |
| office work, 14(1), § 14:3 | 31(2)(a), § 31:4, § 31:5 |
| lienable interest and, 14(1), | for services or materials sup- |
| § 14:3 | plied where no certifica- |
| rental of tools, 14(1) , § 14:3 | tion, 31(2)(b), § 31:6, |
| lienable interest and, 14(1), | § 31:7 |
| § 14:3 | of liens, 31(1), § 31:2 |
| when lien arises, 15 | of other persons, $31(3)(b)(i)$, |
| Crown's interest exempt, 16(1) | § 31:9 |
| Direct payment to person having | for services or materials sup- |
| application of, 28 | plied before certification, |
| s. 28 and, 28 | 31(3)(a), § 31:8 |
| Discharge | for services or materials sup- plied where no certifica- |
| court's general power, 47(1)(a), | tion, 31(3)(b), § 31:9, |
| § 47:3 | § 31:10 |
| general lien, 42 | lien, 31(3)(b)(i), § 31:9 |
| irrevocability, 48 | registration of, 31(3)(b)(i), |
| registration of court order, 49 | § 31:9 |
| release, by, 41(1) | timely preservation, |
| Enforcement where contract not | 31(3)(b)(i), § 31:9 |
| completed, 72 | of separate liens when ongoing |
| Exaggerated claim, 35 | supply, 31(4) , § 31:11 |
| Expiry | other rights not affected, 38 |
| corporate charter and, 31(2), | perfected lien, 37 |
| § 31:3 to § 31:7 | motion required, 46 , 37 (2) |
| cancellation of, 31(2), § 31:3 | preserved lien, 36(2) |
| to § 31:7 | registration of court's declara- |
| revival of, 31(2) , § 31:3 to § 31:7 | tion, 49 |
| _ | saving other rights, 38 |
| retroactivity and, 31(2), § 31:3 to § 31:7 | time limit, 31(2), § 31:3 to § 31:7 |
| declaration by court, 45 to 47 | incorporation and, 31(2), |
| • | § 31:3 to § 31:7 |
| orders of court, 45 (3), 46 (3), (4), § 46 :5, § 46 :6 | interpretation of, 31(2), § 31:3 to § 31:7 |

| LIEN—Cont'd | LIEN—Cont'd |
|---|--|
| Expiry—Cont'd | General lien—Cont'd |
| time limit, 31(2), § 31:3 to § 31:7 | preservation, 34 (7)—Cont'd |
| —Cont'd | lien, 34(1)(b) , § 34:3 —Cont'd |
| judicial discretion and, 31(2), | registration, 34(1)(b), § 34:3 |
| § 31:3 to § 31:7 | compliance with statute, |
| liens and, 31(2), § 31:3 to | 34(1)(b), § 34:3 |
| § 31:7 | electronic, 34(1)(b), |
| preserving and perfecting | § 34:3 |
| claim, 31(2), § 31:3 to | procedure, 34 (1)(b), |
| § 31:7 | § 34:3 |
| expiration, 31(2), § 31:3 to | vacating of, 34(1)(b), § 34:3 |
| § 31:7 | posting of security, |
| Expiry of preserved lien | 34(1)(b), § 34:3 |
| corporation and, 37(1) , § 31:2 | release against one or more |
| revived, 37(1), § 31:2 | premises, 74 (2) |
| time limits for preservation | sale of one or more premises, |
| and perfection, 37(1), | 74(1) |
| § 31:2 | subordination, 82 |
| generally, 36(2) | vacating, 44(4) |
| issuance of action, 36(2) | Interest on amount owed, 14(2), |
| counting of days, 36(2) | § 14:4 |
| registration, 36(2) | Jurisdiction for claim, 50(1), § 50:2 |
| in accordance with statute, 36(2) | Labour and materials payment bond, 1 (1) |
| General lien | |
| discharge, 42 | claimant, meaning of, and, 1(1) preservation of, 1(1)* |
| inapplicable to liens arising and | Limitation on value, 17(1), 2(2) |
| expiring on lot-by-lot basis, | liability of municipality, 17(4) |
| 20(2) | See MUNICIPALITY |
| perfection, 36(5) | set-off, 17(3) |
| lien, 36(3) | Not lienable work, 31(3)(b)(i) , |
| excessive claim, 36(3) | § 31:9 |
| perfection, 36(3) | Notice of lien, withdrawal of, 41(2) |
| commencement of an | Perfection |
| action and, 36(3) | expiry of perfected lien, 37 |
| preservation of, 36(3) | extended payment terms, 36(6) |
| procedure, 36(3) | general lien, 36(5) |
| amending statement of | how to perfect lien, 36(3) |
| claim, 36(3) | _ |
| premises, on more than one, | preservation necessary, 36(1) |
| 20(1) | sheltering, 36(4) |
| preservation, 34(7) | Postponement, 43 |
| lien, 34(1)(b), § 34:3 | Preservation |
| crown agents and, $34(1)(b)$, | expiry where no perfection, 36(2) |
| § 34:3 | general lien, 34(7) |

LIEN-Cont'd LIEN CLAIM ENFORCEABLE IN Preservation—Cont'd ACTION—Cont'd how lien is preserved, 34(1), Lien, 50(1), § 50:2—Cont'd § 34:2, § 34:3 costs of action, **50(1)**, § **50:2** lien claimant deemed purchaser, discharge, 50(1), § 50:2 LIEN CLAIMANT lien expires if not preserved, Death, 73 31(1), § 31:2 Deemed purchaser, 76 Right to lien, 14(2), § 14:4 Defined, 1(1), § 1:13 pure construction managers, Information, right to, 39(1), 39(2) § 14:3 Multiple claimants, 50(3), § 50:4 Single contract for more than one Representation in court, **67** premises, 20(1)Supply of services, 31(3)(b)(i), MANDATORY MEDIATION § 31:9 Generally, PD III preparation for the work day as, 31(3)(b)(i), § 31:9 MASTER, REFERENCE TO site closure and, 31(3)(b)(i), General, 58 § 31:9 Report, 62 work done, 31(3)(b)(i), § 31:9 MATERIAL PAYMENT BOND Uniting claims of number of Generally, 69 persons, 34(8), § 34:9 Vacating **MATERIALS** court's general power, 47 Defined, 1(1), § 1:14 expiry of perfected lien under, 37, Improvement, defined, 1(1), § 1:11 Supply of, defined, **1(2)**, **1(3)**, expiry of time to preserve or § 1:24, § 1:25 perfect, 45 MINOR IRREGULARITIES payment into court, 44 see also VACATING LIEN Failure to comply strictly with, 6, 32(2), 32(5), 33(1) registration of order, 49 Lien. 6 When arises, 15 overperfection, 6 LIEN CLAIM ENFORCEABLE IN Lien claim, 6 **ACTION** action seeking personal judgment Generally, 50(1), § 50:2 for breach of contract, 6 Corporation charter, 50(1), § 50:2 claim exceeding amount of, 6 cancellation, **50(1)**, § **50:2** prejudice and, 6 revival, 50(1), § 50:2 proper parties, 6 articles of revival, 50(1), § 50:2 **MORTGAGE** time limits and, 50(1), § 50:2 See also MORTGAGEE Lien, 50(1), § 50:2 Defined, 1(1) claim, **50(1)**, § **50:2** Order for completion of mortgage abeyance, 50(1), § 50:2 by trustee, **68(5)** OBCA s. 241(5) and, 50(1), § 50:2 Priorities, 78

ONTARIO REGULATION MORTGAGE—Cont'd 306/18—ADJUDICATIONS Security for lien claim, 80(2) Adjudicators MORTGAGE PROCEEDINGS certificate of qualification, ADJ 3 Designated counties for commencerequirements for holders of cerment of, PD VI tificates, ADJ 4 suspension, cancellation of certif-MORTGAGEE icate, ADJ 5 See also MORTGAGE Commencement, ADJ 26 Information Consolidation of adjudications, duty to provide, 39(2) **ADJ 18** right to, **39(1)** Definitions, ADJ 1 **MOTIONS** Designation, ADJ 2 See PRACTICE Determinations, ADJ 22 Documents. ADJ 16.1 MUNICIPALITY disclosure, ADJ 20 Defined, 1(1) Duties and powers Public street or highway adjudicator registry, ADJ 6 delivery of claim for lien, 34(3.1) annual report, ADJ 13 improvements done at expense of code of conduct, ADJ 7 others, 17(4) expertise, ADJ 12 liability for payment, 17(4) fee schedule, ADJ 9 lien constituting charge, 16(3) Failure of adjudicator to complete, Railway right-of-way **ADJ 24** copy of claim for lien to be given Labour and material payment to office manager, 34(4) bonds, ADJ 25 lien constituting charge, 16(3) Notice of adjudication, copy to authority, ADJ 16 NOTICE Powers, ADJ 20 Contractor under s. 18, to a, Form 2 Responding to notice, ADJ 17 Cross-examination of person verify-Unable to conduct adjudication, ing claim for lien under s. **ADJ 23** 40(3) of the act, **Form 16** failure of adjudicator to Intention to register under Condocomplete, ADJ 24 minium Act, 1998, 33.1(3), ONTARIO REGULATION Form 11 304/18—GENERAL Postponement of lien under, 43, Alternative financing and procure-Form 20 ment Settlement meeting, Form 34 surety bonds, GR 3 Trial, Form 33 Commencement, GR 16 Definition, GR 1 NOTING IN DEFAULT Expiry, preservation and perfection Generally, 54 of liens General, 54 certificate, declaration of setting aside, **54** substantial performance, GR test under s. 54 CLA, 54

ONTARIO REGULATION PAYMENT CERTIFIER—Cont'd 304/18—GENERAL—Cont'd Determination of whether Expiry, preservation and perfection subcontract completed, 33 of liens—Cont'd PERFECTION OF LIEN claim for lien copy given to See LIEN crown office, GR 11 claim for lien copy given to PERFORMANCE OF CONTRACT municipal clerk, GR 11.1 See SUBSTANTIAL PERFORnotice of contract termination, **MANCE** GR 8 "PERSON HAVING A LIEN" notice of intention to register Defined, 1(1), § 1:17 condominium, GR 10 Forms, GR 2 **PLEADINGS** Holdbacks See also PRACTICE non-payment, GR 7 Counterclaim payment on annual basis, GR 5 beyond limitation period, 67 payment on phased basis, GR 6 leave to amend, 53, 67 Nuclear facilities, non-application, need not be related to making of **GR 13** improvement, 55 Prompt payment time for delivery, 53 notices of non-payment, GR 4 what defendant may do, 55 Surety bonds, application of s. 85.1, Crossclaim **GR 12** must be related to making of improvement, 55 OWNER time for delivery, 53 Defined, 1(1), § 1:15 what defendant may do, 55 Personal liability, 23(2), 33.1(4) Joinder of claims, 55 **PARTIES** Party noted in default, 54 See PRACTICE Statement of claim, 53 Statement of defence **PAYER** default in delivery, 54 Defined, 1(1), § 1:16 time for delivery, 54 Payments that may be made Third party claims, 56 where no written notice of lien received, 24(1) POSTPONEMENT OF CLAIM where subcontract certified General, 43 complete, 25 **Priority**, **78(8)** where written notice of lien received, 24(2) **PRACTICE** See also ACTION and PLEAD-**PAYMENT INGS** See PROMPT PAYMENT Adding parties, 57 PAYMENT CERTIFIER Appeals, 71 Certification of substantial perforprocedure mance, 32 appeal to Divisional Court, Defined, 1(1) 71(1), § 71:3

| PRACTICE—Cont'd | PRACTICE—Cont'd |
|--|---|
| Appeals, 71—Cont'd | Crossclaim—Cont'd |
| procedure—Cont'd | time for delivery, 53 |
| notice of appeal, 71(2), § 71:4 | Declaration that lien has expired |
| stated case and facts, $70(1)$, | court's general power, $47(1)(c)$, |
| (2), § 71:3, § 71:4 | § 47:3 |
| where no appeal, 71(3), § 71:5 | expiry of perfected lien under, 37, |
| Application for directions, 66 | 46 |
| Applications and motions | expiry of time to preserve or |
| adjournments, PD I G | perfect, 45 |
| Civil Practice Court, PD I A | Default judgment, 54 |
| motions in writing, PD I F | Discharging lien, court's general |
| rules applicable to all, PD I B | power, 47(1)(a), § 47:3 |
| scheduling | Dismissing action |
| long application before judge, PD I D | court's general power, 47 (1)(d), § 47:3 |
| long motion before judge, PD | where lien expires, 46 |
| ID | Extraordinary remedies, 68 |
| motions before masters, PD I | application for appointment of |
| \mathbf{E} | trustee, 68(1) |
| short application before judge | powers of trustee, 68(2) |
| or master, PD I C | liens a charge on amounts |
| short motion before judge or | recovered, 68(3) |
| master, PD I C | orders for completion of sale, |
| summary judgment motion | 68(5) |
| before judge, PD I D | sale subject to encumbrances, |
| urgent matter before judge, PD | 68(4) |
| Appointment of trustee, 68 (1) | Factual disclosure, 67 |
| Carriage of action, 59 | Interlocutory steps, 67 |
| Commencing action, 53 | Joinder, 50(3), § 50:4 |
| Completion of sale, orders for, 65 | Judgment or report |
| Consolidation of actions, 59 | general, 62 |
| Costs. 86 | personal judgment, 63 , 75 |
| Counterclaim | Jurisdiction |
| need not be related to making of | court of competent jurisdiction, |
| improvement, 55 | 50(2), § 50:3 |
| time for delivery, 53 | Ontario Court (General Divi- |
| Court to dispose completely of | sion), 50(1), § 50:2 |
| action, 51 | where exclusive jurisdiction not |
| Courts of Justice Act applies, 67 | acquired, 52 |
| Cross-examination on claim for | Mandatory mediation, PD III |
| lien, 40 | Motions, procedure on, 67 |
| Crossclaim | Multiple lien claimants, 50(3), |
| must be related to making of | § 50:4 |
| improvement, 55 | Notice of trial, 57, 60 |

| PRACTICE—Cont'd | PRICE |
|--|--|
| Parties to action, 57 | Defined, 1(1), § 1:19 |
| Party noted in default, 54 | PRIORITIES |
| Payment into court, 67 | Agreements affecting owner's inter- |
| Reference to master, case manage- | est, 78 |
| ment master or person agreed | "Class" |
| on by parties | persons comprising, 79 |
| general, 58 | priority, 80 (1) |
| report, 62 | where conveyance or mortgage |
| Regulations, Lieutenant Governor, | void, 80(2) |
| 88 | Conveyances, 78 |
| Representation of lien claimant in | where void, 80(2) |
| court, 67 | Disposition proceeds, 84 |
| Return of payment into court, 46(4) , § 46:6 | General creditors, 77 |
| • | General liens, 82 |
| Rules of court apply, 67 Security for costs, 67, 71(3), § 71:5 | Insolvency, 85 |
| Service of documents, 87 | Insurance proceeds, 83 |
| Settlement meeting | Lease, 84 |
| conduct of, 61 | Mortgages, 78 |
| fixing date, 60 | building, 78(2) , § 78:4 |
| non-application of Rule 50, 61 | financial guarantee bond, 78(10) , |
| notice, 60 | § 78:9 |
| power of court, 61 | general, 78(1) , § 78:3 |
| statement of settlement, 61 | home buyers, 78 (11) |
| Stated case, 70 | saving provision, 78(9) |
| Statement of claim, 53 | Postponement, 78(8) |
| Summary character of proceedings, | Prior mortgages, prior advances, |
| 67 | 78(3), § 78:5 |
| Technical assistance to court, 67 | Prior mortgages, subsequent |
| Third party claims, 56 | advances, 78(4) , § 78:6 |
| Trial date, fixing, 60 | Proceeds of sale, 84 |
| Trust claim, 50(2), § 50:3 | Subsequent mortgages, general |
| Vacating lien, 44 | priority against, 78(6) , § 78:8 |
| | Subsequent mortgages, special |
| PREMISES | priority against, 78(5) , § 78:7 |
| Defined, 1(1), § 1:18 | Trustees appointed under Part IX, 78 (7) |
| "Interest in the," defined, 1(1), | Worker |
| § 1:12 | |
| Crown's interest, 16(1), (3) joint interest, 18 | device to defeat priority, 81 (3) |
| other person's interest, 16(2) | forty days' wages, 81(1) |
| preservation of lien, 34(7) | trustee to trust fund is subrogated to rights of, 81(2) |
| preservation of hell, 54(1) | to rights 01, 81 (2) |
| PRESERVATION OF LIEN | PROCEEDINGS |
| See LIEN | See PRACTICE |

REDUCTION OF AMOUNT PAID PROCEEDS OF SALE **INTO COURT** Perfected lienholder's right to share, Generally, 44(5), § 44:7 Preservation of lien, 34(7) Holdback funds, 44(5), § 44:7 Priorities, 84 release of, 44(5), § 44:7 Security, 44(5), § 44:7 PROMPT PAYMENT prorate share, 44(5), § 44:7 Definition, 6.1 reduction of, 44(5), § 44:7 Holdback, 6.2 Interest on late payments, 6.9 REFERENCE TO MASTER, CASE Invoice, **6.3**(1) MANAGEMENT MASTER OR PERSON AGREED ON exception, 6.3(4)restriction on condition, **6.3(2) BY PARTIES** Costs, 58(4) revisions, **6.3(5)** Late payments, interest, 6.9 award of, **58(4)** Non-payment, reason, 6.7 power of Master, 58(4) exceeding amount of claim, 58(4) Payment deadline, 6.4 full indemnity scale, 58(4) contractor to subcontractor, 6.5 partial indemnity scale, 58(4) exception, **6.5(5)**, **6.5(6)** General, 58 non-payment, 6.5(4)Holdback funds, 58(4) partial payment, 6.5(2) retention, 58(4) payment deadline once received from owner, statutory obligation to retain, 6.5(8)58(4) timing of notice, 6.5(7)Report, 62 owner to contractor, 6.4(1)REGISTRATION ON TITLE exception, 6.4(2)Court orders, 49 pay remaining amount, 6.4(3)subcontractor to subcontract, 6.6 **REGISTRY ACT** date invoice was given, **6.6(10)** Application to lien, **76** exception, 6.6(6), 6.6(7)RELEASE non-payment, 6.6(4) Of lien under s. 41 of the act. Form partial payment, 6.6(2) 19 payment deadline once received from contractor, REPORTS 6.6(9)Where the lien attaches to the timing of notice, 6.6(8) premises, 62, Form 26 Proper Invoice, 6.1 Where the lien does not attach to Reason for non-payment, 6.7 the premises, **62**, Form **27** Wages, **6.8** REPRESENTATION BY AGENT **RAILWAY RIGHT-OF-WAY** Generally, 67 Copy of claim for lien to be given to office manager, 34(4) RULES OF CIVIL PROCEDURE Lien constituting charge, 16(3) Application where not inconsistent, Preservation of lien, 34(7) 67

RULES OF CIVIL PROCEDURE SET OFF BY TRUSTEE—Cont'd —Cont'd Holdback, 12 Rule 50 not applying to action, 61 statutory, 12 contractor's invoice exceeding, SALE OF INTEREST IN **PREMISES** Lien, 12 See also CONVEYANCES written notice of, 12 Fees and disbursements, 65(3) Payment, 12 General lien, continuation of, 74 defined, 12 Orders for completion of sale, 65, set-off and, 12 68(5)Set-off, 12 Proceeds record keeping and, 12 court's direction as to completion SETTLEMENT MEETING of sale, 65(1) Conduct of, 61 court's direction as to fees and Fixing date, **60** disbursements, 65(3) Notice, 60 court's direction as to whom Statement of settlement, 61 proceeds paid, 65(4) deficiency, 65(5) SHELTERING PRESERVED LIEN payment into court, 65(2) Generally, 36(4) perfected lienholder's right to STATED CASE share, 64 Generally, 70 priorities, 84 Subject to encumbrance that court STATEMENT OF CLAIM directs, 68(4) See PLEADINGS **SECURITY** STATEMENT OF DEFENCE Bond posted under s. 44, Form 21 See PLEADINGS Effect of taking, 75 STATEMENT OF SETTLEMENT Payment in place of lien, 44 Generally, 61 Return where action dismissed, 46 Lien, **61** discharge, 61 SERVICE OF DOCUMENTS perfection of, 61 Generally, 87 preservation, 61 General, 53 vacating of, 61 extending time for service, 53 statement of claim, 53 **STREET** amendment of, 53 Land dedicated to municipality, time limits, 53 Lien constituting charge, 16(3) Services and materials, 53 **SUBCONTRACT** "SERVICES OR MATERIALS" Abandonment or non-completion, Defined, 1(1) **SET OFF BY TRUSTEE** Certificate of completion, 33 Generally, 12 Defined, 1(1), § 1:20

| SUBCONTRACTOR | THIRD PARTY CLAIMS |
|--|--|
| Agent for owner, deemed, 1(3), | Court may give directions, 56 |
| § 1:1 | Leave application, 56 |
| Defined, 1(1), § 1:20 | Third party may be added for |
| SUBROGATION | purpose of claiming contribu- |
| Bankruptcy, 69 | tion or indemnity, 56 |
| Bonds, 69 | TIME |
| payment, 69 | For delivery of pleading, 54 |
| labour and material, 69 | claims, 54 |
| Improvident underwriting, 69 | R. 19.04(1)(a) Rules of Civil |
| Officers and director, 69 | Procedure and time limits, |
| Surety, 69 | 54 |
| Trustee of workers' trust fund, 81(2) | statement of claim and, 54 |
| SUBSTANTIAL PERFORMANCE | TRUST FUNDS |
| Certification and declaration, 32(1) | See also TRUSTEE, WORKERS' |
| see also MINOR IRREGULARI- | TRUST FUND |
| TIES, PAYMENT CERTI- | Beneficiary's right to information, |
| FIER | 39(1), (2) |
| contents of certificate, 32(2) | Breach of trust |
| copies of certificates or declara- | contribution or indemnity, 13(4) |
| tions, 32(5) | corporations, 13(1), (2), § 13:3, |
| liability for failure to furnish | § 13:4 |
| copy of certificate, 32(4) | joint and several liability, 13(3), § 13:5 |
| liability for refusal to certify, | liability of corporations, 13(1), |
| 32(3) | (2), § 13:3, § 13:4 |
| Defined, 2 (1), (2) | Claim not to be joined with lien |
| Of contract defined, 2 (1) | claim, 50(2) , § 50:3 |
| Of improvement, 2(2) | Created by |
| Trust fund created by, 7(3), § 7:5 | amounts payable, 7(2), § 7:4 |
| "SUFFERS DAMAGES AS A | substantial performance, 7(3), |
| RESULT" | § 7:5 ¹ |
| Defined, 1(1) | Insolvency, priorities on, 85 |
| CHMMADV DDOCEDHDE | Payments by trustee |
| SUMMARY PROCEDURE | discharging loan, 11(2) |
| See also CROWN, CITE16 | non-trust monies, 11(1) |
| Generally, 67 | person owed for improvement, 10 |
| "SUPPLY OF SERVICES" | set-off for debts, claims or dam- |
| Defined, 1(1), § 1:21 | ages, 12 |
| "Last supply," 2(3) | trusts created |
| Lienable, 1(1), § 1:13 | see also TRUSTEE |
| Transportation of materials, 1(1), | contractor's and subcontractor's trust, |
| § 1:11 | 8(1), § 8:5 |
| Work done. 1(1), § 1:1 | see also TRUSTEE |

| TRUST FUNDS—Cont'd | VACATING LIEN—Cont'd |
|---|--|
| Payments by trustee—Cont'd | Payment into court of reasonable |
| trusts created—Cont'd | amount, 44(2) , § 44:5 |
| owner's trust, 7(1), § 7:3 | Procedure |
| vendor's trust, 9(1) | consolidation of motions, 44(8) |
| see also TRUSTEE | ex parte proceedings, 44(2), |
| Workers' trust fund, right to infor- | § 44:5 |
| mation, 39 (3) | rules govern, 44(9) , § 44:10 , § 44:11 |
| TRUSTEE | Reduction of amount paid into |
| Appointment, 68 (1) | court, 44(5), § 44:7 |
| Liens a charge on amounts | Security, posting, 44 |
| recovered, 68(3) | Where general lien, 44(4) |
| Obligations | Where lien does not attach to |
| under contractor's and | premises, 44(3) , § 44:6 |
| subcontractor's trust, 8(2), § 8:6 | VENDOR'S TRUST |
| under owner's trust, 7(4) , § 7:6 | Generally, 9(1) |
| under vendor's trust, 9(2) | General security interest, 9(1) |
| Powers, 68(2) | Leasehold interest, 9(1) |
| Priority, 78 (7) | lien claimants and, 9(1) |
| • | Owner's assets, 9(1) |
| TRUSTS | court approval, 9(1) |
| Generally, 7 | Sale proceeds, 9(1) |
| Amounts certified as payable, 7(2) , § 7:4 | definition, 9(1)(a) |
| owners assets, 7(2), § 7:4 | gross, 9 (1) |
| sales proceeds, 7(2) , § 7:4 | net, 9(1) |
| Asset sale, 7(2), § 7:4 | Secured creditors, 9(1) |
| General operating revenues, 7(1), | consent to sell, 9(1) |
| § 7:3 | Trust fund, 9(1) |
| Gross proceeds of sale, 7(2), § 7:4 | defined, 9(1) |
| Net proceeds of sale, 7(2), § 7:4 | WAGES |
| Operating account, 7(2), § 7:4 | Defined, 1(1), § 1:22 |
| intention, 7(2), § 7:4 | WAIVER OF RIGHTS UNDER |
| Secured creditors, 7(2), § 7:4 | ACT |
| Trust monies and, 7(2) , § 7:4 | Generally, 4 |
| VA CAPING I IEN | Holdback, 4 |
| VACATING LIEN | Holdback liability, 4 |
| Court order where lien expires, 45 | estoppel and, 4 |
| Payment into court, without notice, 44(1), § 44:3, § 44:4 | WORKER |
| jurisdiction, 44 | Defined, 1 (1) |
| court. 44 | Device to defeat priority, 81(3) |
| payment of holdback into | Priority of lien, 81(1) |
| court, 44 | registration of, 81 |
| court, 🕶 | registration of, or |

WORKER—Cont'd

Priority of lien, 81(1)—Cont'd 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), § 1:23 Written Notice of Lien under s. 1(1), Form 1