## INDEX

References given are to page numbers.

## Α

#### ALTERNATIVE DISPUTE RESOLUTION

- Alberta mandatory ADR requirement, 318
- American Arbitration Association Construction Arbitration Rules, 312
- apologies legislation, 320
- appeal from arbitration awards, 324
- arbitration and lien claims, 335
- commercial mediation legislation, 314
- conclusion, 336
- dispute review boards
- overview of process, 322
- recent developments, 323
- enforcement of arbitration awards, 328
- IBA Rules on Taking of Evidence in International Arbitration, new, see INTERNATIONAL BAR ASSOCIATION (IBA) RULES
- introduction, 305
- judicial review of arbitration awards, 326
- other expedited procedures, 314
- scope of arbitration agreement, 331
- Singapore International Arbitration Centre, 312
- submission to arbitration, 330
- stay of proceedings, 333

- UNCITRAL Arbitration Rules, revision of, *see* UNCITRAL ARBITRATION RULES
- ARCHITECTURAL SERVICE AGREEMENTS, 32, see also ARCHITECTS AND ENGINEERS; STANDARD FORM CONTRACTS

#### **ARCHITECTS AND ENGINEERS**

- architectural practice handbook, changes in, 135
- architectural service agreements, 32
- architecture, practice of, 133
- duties, *see* **ARCHITECTS AND ENGINEERS, DUTIES OF**
- effects of CCDC-2 2008, 137
- engineering service agreements, 33
- engineering services, 136
- expert witnesses, *see* ARCHITECTS AND ENGINEERS — EXPERT WITNESSES
- lien rights, 158
- professional discipline, 151
- Quebec, 291
- summary, 167
- ARCHITECTS AND ENGINEERS, DUTIES OF, see also ARCHITECTS AND ENGINEERS
- certificates of substantial performance, 142

Review of Construction Law

ARCHITECTS AND ENGINEERS, DUTIES OF (*cont'd*)

- claims in tort for defective, nondangerous structures, 148
- duty of care of supervising engineers, 143
- engineers' misrepresentation and duty to disclose, 148
- interference with contractor's work, 151
- lack of proximity, 146
- payment certificates, 139
- public safety, 147

#### ARCHITECTS AND ENGINEERS — EXPERT WITNESSES, see also ARCHITECTS AND ENGINEERS

- duty of expert, recent rule changes on, 165
- expert's report, 160
- generally, 160
- "hot tubbing", 167
- liability of experts to former clients, 164

## В

#### **BIDDING AND TENDERING**

- bidding and tendering system, protection of, 6
- Broader Public Sector Accountability Act, 2010, 22
- conclusion, 21
- current state of law (generally), 2
- Design Services case, 6
- Double N Earthmovers case
- • divided court, 11
- • duty to investigate bid, 4
- generally, 4

- when tendering authority's obligations end, 5
- honesty and fairness, protection of, 7
- introduction, 1
- Martel Building case, 3
- M.J.B. Enterprises case, 3
  - Naylor Group case, 3
  - Ron Engineering case, 2
  - Tercon Contractors case
  - cases since, 20
  - divided court, 14
  - • generally, 6

# **BUILDERS' RISK POLICIES**, see also **INSURANCE**

- coverage afforded by, 171
- exclusions, *see* **BUILDERS' RISK POLICIES — EXCLUSIONS**
- generally, 171
- standard-form policy wordings, 171

#### BUILDERS' RISK POLICIES — EXCLUSIONS, see also BUILDERS' RISK POLICIES

- faulty or improper design
- foreseeability test, 179
- generally, 173
- • negligence test, 174
- prima facie test, 176
- • state of the art, 180
- faulty or improper material, 184
- faulty or improper workmanship, 183
- generally, 173
- inherent vice, 185
- latent defects, 185
- resultant damage, 184

#### BUILDING INFORMATION MODELING

- AIA Document E202-2008, 75, 77, 97
- commercial barriers, see BUILDING INFORMATION MODELING — COMMERCIAL BARRIERS
- conclusion, 84
- ConsensusDOCS 301 BIM Addendum, 72, 77, 87
- defined, 62
- introduction, 61
- legal issues, see BUILDING INFORMATION MODELING – LEGAL ISSUES
- optimizing contract models, see BUILDING INFORMATION MODELING — OPTIMIZING CONTRACT MODELS
- U.S. supplementary documents (generally), 71
- use of, *see* **BUILDING INFORMATION MODELING USE OF**

#### BUILDING INFORMATION MODELING — COMMERCIAL BARRIERS, see also BUILDING INFORMATION MODELING

- hardware and software costs, 68
- interoperability and standards, 67
- training costs, 68

#### BUILDING INFORMATION MODELING — LEGAL ISSUES, see also BUILDING INFORMATION MODELING

- data loss, 69
- data misuse, 69
- data preservation, 69
- data translation, 69

- design distribution and fluidity, 70
- generally, 69
- insurance, 71
- intellectual property, 70

#### BUILDING INFORMATION MODELING — OPTIMIZING CONTRACT MODELS, see also BUILDING INFORMATION MODELING

- construction management contracts, 80
- design-build contracts, 81
- generally, 79
- integrated project delivery, 82
- public private partnership contracts, 81
- question of certainty, 84

#### BUILDING INFORMATION MODELING, USE OF, see also BUILDING INFORMATION MODELING

- clash detection, 65
- constructability, 65
- estimating, 67
- generally, 64
- prefabrication, 66
- robust design, 64
- sequencing, 65
- take-offs, 67

#### С

#### COMMERCIAL GENERAL LIABILITY POLICIES, see also INSURANCE

- claims-made policies, 188
- coverage afforded by, 187
- duty to defend, 205

## COMMERCIAL GENERAL

LIABILITY POLICIES (cont'd)

- exclusions, *see* COMMERCIAL GENERAL LIABILITY POLICIES — EXCLUSIONS
- occurrence-based policies, see OCCURRENCE-BASED POLICIES
- · property damage
- generally, 194
- Supreme Court of Canada's determination on, 196
- • when occurred, 197

#### COMMERCIAL GENERAL LIABILITY POLICIES — EXCLUSIONS, see also COMMERCIAL GENERAL LIABILITY POLICIES

- · damage to property
- generally, 200
- part of property on which insured or subcontractors worked, 201
- part of property to be repaired or replaced as result of insured's operations, 202
- property owned, rented or occupied by insured, 201
- impaired property and property not physically injured, 203
- own work, 198
- work performed, 198

#### CONSTRUCTION MANAGEMENT CONTRACTS, see also STANDARD FORM CONTRACTS

- AIA, 32
- CCA-5, 31
- CCDC 5A and CCDC 5B, 32
- generally, 31

#### CONTRACTS, see STANDARD FORM CONTRACTS

#### COST-PLUS CONTRACTS, see also STANDARD FORM CONTRACTS

- AIA, 30
- CCDC-3, 30
- generally, 29

#### D

#### DESIGN-BUILD CONTRACTS, see also STANDARD FORM CONTRACTS

- CCDC-14, 31
- Design-Build Institute of America (DBIA), 31
- generally, 31

#### Е

#### ELECTRONIC BONDS, see also SURETY LAW

- conclusion, 225
- electronic delivery, 223
- electronic seals, 220
- electronic signatures, 217
- enforceability, 216
- generally, 215
- U.S. jurisdictions, 224

#### ENGINEERING SERVICE AGREEMENTS, 33, see also ARCHITECTS AND ENGINEERS; STANDARD FORM CONTRACTS

#### ENGINEERS, see ARCHITECTS AND ENGINEERS

#### G

#### **GREEN BUILDING**

• conclusion, 131

GREEN BUILDING (cont'd)

- generally, 107
- insurance issues, see GREEN BUILDING — INSURANCE ISSUES
- legal issues, *see* **GREEN BUILDING** — **LEGAL ISSUES**
- legislative initiatives (Canada), 118
- legislative initiatives (United States), 116
- risk mitigation, see GREEN BUILDING — RISK MITIGATION
- third party rating systems, see GREEN BUILDING — THIRD PARTY RATING SYSTEMS

#### GREEN BUILDING — INSURANCE ISSUES, see also GREEN BUILDING; INSURANCE

- generally, 210
- insurance coverage, 211
- risks, 210

## GREEN BUILDING — LEGAL ISSUES, see also GREEN BUILDING

- breach of contract, 122
- damages, 124
- introduction, 120
- tort, 123

#### GREEN BUILDING — RISK MITIGATION, see also GREEN BUILDING

- contracting, 127
- insurance, 130
- procurement phase, 126

#### GREEN BUILDING — THIRD PARTY RATING SYSTEMS, see also GREEN BUILDING

- BOMA BESt, 114
- Construction Specifications Canada Tek-Aids, 116
- Green Globes, 114
- LEED
- • concerns and criticism, 130
- generally, 109

#### Н

HONESTY AND FAIRNESS, PROTECTION OF, see BIDDING AND TENDERING

## I

#### INSURANCE

- builders' risk policies, *see* **BUILDERS' RISK POLICIES**
- building information modeling, 71
- commercial general liability policies, see COMMERCIAL GENERAL LIABILITY POLICIES
- conclusion, 212
- construction insurance, 171
- controlled insurance programs, 212
- green building issues, see GREEN BUILDING — INSURANCE ISSUES
- introduction, 169
- principles of interpretation, 169
- professional liability policies, see PROFESSIONAL LIABILITY POLICIES
- subcontractor default insurance, *see* SUBCONTRACTOR DEFAULT INSURANCE

Review of Construction Law

#### INTERNATIONAL BAR ASSOCIATION (IBA) RULES, see also ALTERNATIVE DISPUTE RESOLUTION

- confidentiality, 310
- consultation, 310
- e-disclosure, 310
- expert reports, 311
- good faith, 312
- introduction, 309
- privilege, 311

## 0

#### OCCURRENCE-BASED POLICIES, see also COMMERCIAL GENERAL LIABILITY POLICIES

- Canada, 190
- commercial general liability policies vs. performance bonds, 194
- fortuity requirement, 189
- generally, 187
- *Progressive Homes* case (S.C.C.), 191
- United States, 189

## Ρ

#### PROFESSIONAL LIABILITY POLICIES, see also INSURANCE

- generally, 206
- limitation of liability issues, 209
- standard of care, 206

#### PUBLIC PRIVATE PARTNERSHIPS

- building information modeling and, 81
- central figures (generally), 40
- concept of, 38

- conclusion, 56
- construction contractor, 42
- force majeure and supervening events, 53
- gross negligence, 50
- growing significance of, 37
- indemnities, 55
- lenders, 42
- liquidated damages, 55
- litigation, potential for future, 49
- project company, 41
- projects over \$100 million, table of, 57
- public owner, 41
- risk allocation, see RISK ALLOCATION IN PUBLIC PRIVATE PARTNERSHIPS
- services contractor, 42
- · surety law and P3 projects
- generally, 225
- • multiple obligee riders, 226
- surety bonds on P3 projects, 225

#### Q

## QUEBEC, DROIT DE LA CONSTRUCTION EN

- appel d'offres
- *3051226 Canada*, l'affaire, 285
- Alstom Canada, l'affaire, 283
- contrats des organismes publics, 279
- Savoir-faire Linux, l'affaire, 280
- *Tercon Contractors*, application au Québec, 287
- Bureau des soumissions déposés du Québec (BSDQ)
- Association de la construction du Québec, l'affaire, 288
- • généralement, 287

## QUEBEC, DROIT DE LA CONSTRUCTION EN (cont'd)

- cautionnement
- Charles-Auguste Fortier, l'affaire, 289
- • fin des travaux, 289
- • généralement, 289
- · développements législatifs récents
- création d'Infrastructure Québec, 303
- Loi concernant la lutte contre la corruption, adoption de la, 304
- Loi prévoyant certaines mesures afin de lutter contre la criminalité dans l'industrie de la construction, adoption de la, 303
- droit civil et domaine de la construction
- • autres lois, 278
- Code civil du Québec, 277
- garantie légale contre les malfaçons
- • généralement, 295
- • Massif, l'affaire, 295
- garantie quinquennale
- Promutuel Lévisienne-Orléans, l'affaire, 297
- responsabilité du créancier d'un contrat de services quant à la, 296
- · hypothèque légale
- Axor Construction Canada, l'affaire, 302
- • Brouillette-Paradis, l'affaire, 299
- • généralement, 298
- • Groupe Benoît, l'affaire, 301
- •• hypothèque légale sur un bien qui fait partie du domaine de l'État, 301
- substitution de l'hypothèque légale par une sûreté suffisante, 299

- introduction, 277
- responsabilité des architectes et ingénieurs
- • généralement, 291
- • Tecsult, l'affaire, 291
- responsabilité des entrepreneurs
- Développement Tanaka, l'affaire, 293
- • « escomptes » ou « commissions cachées », 294
- • prolongation du chantier, 293

#### R

#### RISK ALLOCATION IN PUBLIC PRIVATE PARTNERSHIPS, see also PUBLIC PRIVATE PARTNERSHIPS

- baseline geotechnical, 45
- change events, 46
- change in law, 45
- cost overruns, 46
- defaults, 48
- delays, 46
- demand risks, 44
- dispute risks, 47
- environmental, 45
- introduction, 42
- operational difficulties, 48
- overview, 43
- permits, 46
- procurement risks, 49
- project revenue, 48
- set-off, 48
- site acquisition, 45
- third party defaults, 48
- warranty items and latent defects, 46

Review of Construction Law

## S

#### STANDARD FORM CONTRACTS

- advantages, 33
- architectural service agreements, 32
- Association of Consulting Engineering Companies Canada, 27
- Canadian Construction Association, 26
- Canadian Construction Documents Committee, 26
- conclusion, 35
- construction management contracts, see CONSTRUCTION MANAGEMENT CONTRACTS
- cost-plus contracts, see COST-PLUS CONTRACTS
- creating organizations (generally), 25
- design-build contracts, see
   DESIGN-BUILD CONTRACTS
- disadvantages, 34
- engineering service agreements, 33
- introduction, 25
- right type of contract, importance of choosing, 28
- Royal Architectural Institute of Canada, 27
- stipulated price contracts, *see* STIPULATED PRICE CONTRACTS
- unit price contracts, 30

#### STIPULATED PRICE CONTRACTS, see also STANDARD FORM CONTRACTS

- CCDC-2, 29
- generally, 29
- other forms of, 29

#### SUBCONTRACTOR DEFAULT INSURANCE, see also INSURANCE; SURETY LAW

- conclusion, 233
- contractor's perspective, 231
- generally, 212, 228, 229
- owner's perspective, 232
- subcontractor's perspective, 233
- surety bond, differentiated from, *see* SURETY BOND vs. SUBCONTRACTOR DEFAULT INSURANCE

#### SURETY BOND vs. SUBCONTRACTOR DEFAULT INSURANCE, see also SUBCONTRACTOR DEFAULT INSURANCE; SURETY LAW

- cost structure, 230
- coverage, 230
- nature of relationship, 229
- prequalification and underwriting, 230

#### SURETY LAW

- bid bonds, 228
- conclusion, 233
- electronic bonds, see ELECTRONIC BONDS
- introduction, 215
- provincial electronic commerce legislation, table of excerpts of, 234
- public private partnership projects
- generally, 225
- multiple obligee riders, 226
- • surety bonds on, 225
- subcontractor default insurance, *see* SUBCONTRACTOR DEFAULT INSURANCE

## Т

**TENDERING**, see BIDDING AND TENDERING

## U

#### UNCITRAL ARBITRATION RULES, see also ALTERNATIVE DISPUTE RESOLUTION

- appointing authorities, 307
- challenge of arbitrators, 308
- exclusion of liability, 309
- expediting arbitrations, 306
- experts appointed by tribunal, 308

- evidence, 309
- introduction, 306
- joinder, 309

UNIT PRICE CONTRACTS, 30, see also STANDARD FORM CONTRACTS