

Publisher's Note

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Previous release was 2018–2

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Thomas G. Heintzman and Immanuel Goldsmith Heintzman and Goldsmith on Canadian Building Contracts

Heintzman and Goldsmith on Canadian Building Contracts provides a systematic analysis of the law of contracts as it applies to building contracts in Canada. The work includes all relevant court decisions dealing with the formation, material provisions, breach and remedies for breach of construction contracts. Separate chapters deal with construction lien legislation, subcontractors, architects and engineers, bonds and arbitration.

This release features updates to the case law and authored commentary in Chapters 4 (The Terms), 9 (Enforcing the Contract: Specific Performance and Damages), 10 (Unjust Enrichment and Oppression), 11 (The Arbitration and Mediation Clauses) and 12 (Subcontractors).

Highlights

Limitation periods: A limitation period for a claim for a consultant's fee relating to a building project starts to run when the cost of construction makes it apparent that the fee being paid to a consultant is not in accordance with the terms of the contract as asserted by the claimant, not at the end of the project: *Riddell Kurczaba Architecture Engineering Interior Design Ltd v. Governors of the University of Calgary*, 2018 ABQB 11, 2018 CarswellAlta 10 (Alta. Q.B.).

If a party has administrative law or other remedies which may eliminate its loss, or criminal or quasi-criminal remedies may be brought against a party which may make it

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unreasonable for it to commence a civil claim in the meantime, then in either case the limitation period may not run in the meantime: *Presidential MSH Corp. v. Marr, Foster & Co. LLP*, 2017 CarswellOnt 5780, 135 O.R. (3d) 321 (Ont. C.A.); *Winmill v. Woodstock (Police Services Board)*, 2017 ONCA 962, 2017 CarswellOnt 19263 (Ont. C.A.).

The principle of discoverability applies to the regime for claims to contribution or indemnity under the Ontario limitations statute. The date of service of the proceedings in the main action establishes a presumed, not an absolute, date that the wrongful act or omission occurred for the purposes of the cause of action for contribution or indemnity. That presumption can be rebutted by the discoverability principles prescribed in the limitations statute: *Mega International Commercial Bank (Canada) v. Yung*, 2018 ONCA 429, 2018 CarswellOnt 6978 (Ont. C.A.).

Due to the conduct of the parties, the limitation period may not commence until the owner rejects the contractor's claim, and the contractor then becomes aware of the necessity to commence an action: *176026 Canada Inc. c. Sa Majesté la Reine*, 2017 ONSC 2640, 2017 CarswellOnt 15451 (Ont. S.C.J.).

Betterment and Mitigation of Damages: If the life expectancy of a defective structure has elapsed and the owner has received its full use in the meantime, then a court may decline to award any damages to the owner: *The Owners, Strata Plan K855 v. Big White Mountain Mart Ltd.*, 2017 BCCA 438, 2017 CarswellBC 3530 (B.C. C.A.).

Quantum Meruit and Unjust Enrichment: A *quantum meruit* award may be made without reference to the need to establish an implication that payment for the work was required, but on the ground of unjust enrichment, namely, that it was unjust for the opposing party to retain the benefit of the services without paying for them: *Consulate Ventures Inc. v. Amico Contracting & Engineering (1992) Inc.*, 2007 ONCA 324, 2007 CarswellOnt 2627 (Ont. C.A.).

Commencement of Arbitration: There is conflicting authority as to whether a single notice to arbitrate can effectively commence separate arbitrations under separate arbitration agreements. In British Columbia, it has been held that under the rules of the British Columbia International Commercial Arbitration Centre, a single notice purporting to commence an arbitration under separate contracts and arbitration agreements was not a nullity and was effective to commence separate arbitral claims: *South Coast British Columbia Transportation Authority v. BMT Fleet Technology Ltd.*, 2017 BCSC 1683, 2017 CarswellBC 2587 (B.C. S.C.).