

SUMMARY TABLE OF CONTENTS

<i>Dedication</i>	iii
<i>Acknowledgments</i>	v
<i>Table of Cases</i>	xvii
Construction Act	1
Part I — General	69
Part I.1 — [Proposed] Prompt Payment (ss. 6.1–6.9)	90
Part II — Trust Provisions	97
Part II.1 — [Proposed] Construction Dispute Interim Adjudication (ss. 13.1–13.22)	185
Part III — The Lien	197
Part IV — Holdbacks	243
Part V — Expiry, Preservation and Perfection of Liens	279
Part VI — Right to Information	364
Part VII — Discharge of Preserved or Perfected Liens	374
Part VIII — Jurisdiction and Procedure	452
Part IX — Extraordinary Remedies	529
Part X — Appeals	537
Part XI — Priorities	552
Part XI.1 — Surety Bonds (ss. 85.1, 85.2)	599
Part XII — Miscellaneous Rules	603
Ont. Reg. 302/18 — Procedures for Actions Under Part VIII	631
Ont. Reg. 303/18 — Forms	699
Ont. Reg. 304/18 — General	785
Ont. Reg. 306/18 — Adjudication Under Part II.1 of the Act	789
Practice Direction	801
Appendix A — Table of Concordance	813
Index	819

TABLE OF CONTENTS

CONSTRUCTION ACT		
1	Definitions	1
1.1	Alternative financing and procurement arrangements	56
2	When contract substantially performed	58
PART I — GENERAL (SS. 3–6)		
3	Act binds crown	69
4	No waiver of rights	70
5	Contracts to conform	75
6	Minor errors, irregularities	76
PART I.1 — [PROPOSED] PROMPT PAYMENT (SS. 6.1–6.9)		
6.1	[Proposed] Definition, “proper invoice”	90
6.2	[Proposed] Subject to holdback requirements	91
6.3	[Proposed] Giving of proper invoices	91
6.4	[Proposed] Payment deadline, owner to contractor	91
6.5	[Proposed] Payment deadlines, contractor to subcontractor	92
6.6	[Proposed] Payment deadlines, subcontractor to subcontractor	93
6.7	[Proposed] Reasons for non-payment	96
6.8	[Proposed] No effect on wages	96
6.9	[Proposed] Interest on late payments	96
PART II — TRUST PROVISIONS (SS. 7–13)		
7	Owner’s trust, amounts received for financing a trust	97
8	Contractor’s and subcontractor’s trust, amounts received a trust	110
8.1	Contractor’s, subcontractor’s duties re trust funds	143
9	Vendor’s trust, amounts received a trust	144
10	Payment discharging trust	149
11	Where trust funds may be reduced	151
12	Set-off by trustee	154
13	Liability for breach of trust by corporation	158
PART II.1 — [PROPOSED] CONSTRUCTION DISPUTE INTERIM ADJUDICATION (SS. 13.1–13.22)		
13.1	[Proposed] Definitions	185
13.2	[Proposed] Authorized Nominating Authority	185
13.3	[Proposed] Duties and powers of Authority	186
13.4	[Proposed] Minister as interim Authority	186
13.5	[Proposed] Availability of adjudication	187
13.6	[Proposed] Adjudication procedures	188
13.7	[Proposed] Notice of adjudication	188
13.8	[Proposed] Consolidated adjudications	188
13.9	[Proposed] Adjudicator	189

Table of Contents

13.10	[Proposed] Adjudicator fee	190
13.11	[Proposed] Documents for adjudication	190
13.12	[Proposed] Conduct of adjudication	191
13.13	[Proposed] Determination	192
13.14	[Proposed] Termination of adjudication	192
13.15	[Proposed] Effect of determination	193
13.16	[Proposed] Costs	193
13.17	[Proposed] Frivolous, vexatious, etc.	193
13.18	[Proposed] Setting aside on judicial review	193
13.19	[Proposed] Amounts payable	194
13.20	[Proposed] Enforcement by court	195
13.21	[Proposed] Immunity	196
13.22	[Proposed] Testimonial immunity	196
13.11.1	[Proposed] Response to notice	191
13.23	[Proposed] Application of Part to surety bonds (Part XI.1)	196
PART III — THE LIEN (SS. 14–21)		
14	Creation of lien	197
15	When lien arises	220
16	Interest of Crown	220
17	Limitation on value of lien	223
18	Joint or common interests	228
19	Leasehold interest	230
20	General lien	237
21	Lien a charge	242
PART IV — HOLDBACKS (SS. 22–30)		
22	Basic holdback	243
23	Personal liability of owner	255
24	Payments that may be made	260
25	Payment where subcontract certified complete	266
26	Payment of basic holdback	268
26.1	Payment of holdback on annual basis	269
26.2	Payment of holdback on phased basis	270
27	Payment of holdback for finishing work	271
27.1	Non-payment of holdback	271
28	Direct payment to person having lien	274
29	Discharge, Extent of	277
30	How holdback not to be applied	277
PART V — EXPIRY, PRESERVATION AND PERFECTION OF LIENS (SS. 31–38)		
31	Expiry of liens	279
32	Rules governing certification or declaration of substantial performance	305
33	Certificate re subcontract	313
33.1	Notice of intention to register in accordance with the <i>Condominium Act, 1998</i>	314
34	How lien preserved	316
35	Exaggerated, false claims	330
36	What liens may be perfected	338
37	Expiry of perfected lien	349
38	Saving other rights	362

Table of Contents

	PART VI — RIGHT TO INFORMATION (SS. 39, 40)	
39	Right to Information	364
40	Cross-examination on claim for lien	370
	PART VII — DISCHARGE OF PRESERVED OR PERFECTED LIENS (SS. 41–49)	
41	Discharge of lien claim by release	374
42	Discharge of general lien	378
43	Postponement of lien claim	379
44	Vacating lien by payment into court; without notice	380
45	Declaration by court that preserved lien has expired	413
46	Order dismissing action, etc.	418
47	General powers of the court	429
48	Discharge irrevocable	448
49	Registration	451
	PART VIII — JURISDICTION AND PROCEDURE (SS. 50–67)	
50	Lien claims and procedures	452
51	Court to dispose completely of action	491
52	Where exclusive jurisdiction not acquired	499
53	[Repealed 2017, c. 24, s. 42(2).]	500
54	[Repealed 2017, c. 24, s. 42(2).]	500
55	[Repealed 2017, c. 24, s. 42(2).]	500
56	[Repealed 2017, c. 24, s. 42(2).]	501
57	[Repealed 2017, c. 24, s. 42(2).]	501
58	Reference	501
59	[Repealed 2017, c. 24, s. 44(3).]	510
60	[Repealed 2017, c. 24, s. 44(3).]	511
61	[Repealed 2017, c. 24, s. 44(3).]	511
62	Judgment or report	511
63	Personal judgment	522
64	Right to share in proceeds	526
65	Orders for completion of sale	527
66	[Repealed 2017, c. 24, s. 46.]	528
67	[Repealed 2017, c. 24, s. 46.]	528
	PART IX — APPOINTMENT OF TRUSTEE (SS. 68, 69)	
68	Application for appointment of trustee	529
69	[Repealed 2017, c. 24, s. 48.]	537
	PART X — APPEALS (SS. 70, 71)	
70	Stated case	537
71	Appeal to Divisional Court	538
	PART XI — PRIORITIES (SS. 72–85)	
72	Enforcement of lien despite default	552
73	Assignment of lien rights	553
74	Continuation of general lien	553
75	Effect of taking security	555
76	Lien claimant deemed purchaser	556
77	Priority of liens over executions, etc.	557
78	Priority over mortgages, etc.	560
79	Persons who comprise class	589

Table of Contents

80	Priority between and within class	589
81	Worker’s priority	592
82	Subordination of general lien claims	595
83	Application of insurance proceeds	595
84	Distribution of proceeds of sale	597
85	Priorities on insolvency	598
	PART XI.1 — SURETY BONDS (SS. 85.1, 85.2)	
85.1	Bonds and public contracts	599
85.2	Rights of action	600
	PART XII — MISCELLANEOUS RULES (SS. 86–88)	
86	Costs	603
87	How documents may be given	624
87.1	Financial Administration Act	626
87.2	Courts of Justice Act	626
87.3	Transition	626
88	Regulations	627
	302/18 — PROCEDURES FOR ACTIONS UNDER PART VIII	
1	Statement of claim	631
2	Statement of defence, crossclaim and counterclaim	637
3	Joinder	643
4	Third party claims	643
5	Noting in default	649
6	Parties	657
7	Carriage of action	662
8	Consolidation of actions	664
9	Motion to fix date for trial or settlement meeting	664
10	Settlement meeting	668
11	Reference of action	671
12	Motion for directions	672
13	Interlocutory steps	673
14	Technical assistance	697
15	Commencement	698
	303/18 — FORMS	
1	Reference to forms	699
2	Forms	699
3	701
4	701
5	Commencement	701
	TABLE OF FORMS [1]	
Form 1	Written Notice of Lien Under Subsection 1(1) of the Act	704
Form 1.1	[Proposed] Notice of Non-Payment Under Subsection 6.4(2) of the Act	705
Form 1.2	[Proposed] Notice of Non-Payment Under Subsection 6.5(5) of the Act	705

Table of Contents

Form 1.3	[Proposed] Notice of Non-Payment Under Subsection 6.5(6) of the Act	706
Form 1.4	[Proposed] Notice of Non-Payment Under Subsection 6.6(6) of the Act	707
Form 1.5	[Proposed] Notice of Non-Payment Under Subsection 6.6(7) of the Act	708
Form 2	Notice to Contractor Under Section 18 of the Act	709
Form 3	Notice to Lien Claimant Under Subsection 19(3) of the Act	710
Form 4	Letter of Credit Under Subsection 22(4) of the Act	711
Form 5	Holdback Repayment Bond Under Subsection 22(4) of the Act	712
Form 6	Notice of Non-Payment of Holdback Under Section 27.1 of the Act	717
Form 7	Declaration of Last Supply Under Subsection 31(5) of the Act	717
Form 8	Notice of Termination Under Subsection 31(6) of the Act	718
Form 9	Certificate of Substantial Performance of the Contract Under Section 32 of the Act	719
Form 10	Certificate of Completion of Subcontract Under Subsection 33(1) of the Act	720
Form 11	Notice of Intention to Register a Condominium in Accordance with the <i>Condominium Act, 1998</i> Under Section 33.1 of the Act	721
Form 12	Claim for Lien Under Section 34 of the Act	722
Form 13	Notice of Preservation of Lien Under Subsection 34(9) of the Act	723
Form 14	Certificate of Action Under Section 36 of the Act	724
Form 15	Notice Given by Defendant Under Subsection 36(4) of the Act	725
Form 16	Notice of Cross-Examination Under Clause 40(3)(a) of the Act	725
Form 17	Notice of Cross-Examination Under Clause 40(3)(b), (c) or (d) of the Act	726
Form 18	Withdrawal of Written Notice of Lien Under Subsection 41(2) of the Act	727
Form 19	Discharge of Lien Under Section 41 or 42 of the Act	727
Form 20	Notice of Postponement of Lien Under Section 43 of the Act	728
Form 21	Financial Guarantee Bond Under Section 44 of the Act	729
Form 22	Order Directing a Reference for Trial Under Section 58 of the Act	730
Form 23	Order Directing a Reference for Trial Under Section 58 of the Act (Small Claims Court)	731
Form 24	Judgment at Trial Under Section 62 of the Act if Lien Attaches to Premises	733
Form 25	Judgment at Trial Under Section 62 of the Act if Lien Does Not Attach to Premises	736
Form 26	Report Under Section 62 of the Act if Lien Attaches to Premises	739
Form 27	Report Under Section 62 of the Act if Lien Does Not Attach to Premises	742
Form 28	Report Under Section 62 of the Act if Lien Attaches to Premises (Small Claims Court)	745
Form 29	Report Under Section 62 of the Act if Lien Does Not Attach to Premises (Small Claims Court)	748
Form 30	Financial Guarantee Bond Under Subsection 78(10) of the Act	751

Table of Contents

Form 31	Labour and Material Payment Bond Under Section 85.1 of the Act . . .	753
Form 32	Performance Bond Under Section 85.1 of the Act	765
Form 33	Notice of Trial	782
Form 34	Notice of Settlement Meeting	783

304/18 — GENERAL

INTERPRETATION

1	Definition	785
2	Forms	785

ALTERNATIVE FINANCING AND PROCUREMENT ARRANGEMENTS

3	Surety bonds, minimum coverage	785
---	--	-----

HOLDBACKS

5	Payment of holdback on annual basis	786
6	Payment of holdback on phased basis	786
7	Non-payment of holdback	786

EXPIRY, PRESERVATION AND PERFECTION OF LIENS

8	Notice of contract termination	786
9	Certificate, declaration of substantial performance	786
10	Notice of intention to register condominium	786
11	Claim for lien copy given to Crown office	786

SURETY BONDS

12	Application of s. 85.1 of the Act	787
----	---	-----

NUCLEAR FACILITIES

13	Non-application of Parts I.1 and II.1	787
----	---	-----

REVOCATION AND COMMENCEMENT

15	788
16	Commencement	788

306/18 — ADJUDICATIONS UNDER PART II.1 OF THE ACT

DEFINITIONS AND DESIGNATION

1	Definitions	789
2	Designation	789

ADJUDICATORS

3	Certificate of qualification to adjudicate	789
4	Requirements for holders of certificates	790
5	Suspension, cancellation of certificate	791

OTHER DUTIES OF AUTHORITY

6	Adjudicator registry	791
7	Code of conduct	792
8	Training programs	792
9	Fee schedule	793
10	Complaints re adjudicators	793
11	Province-wide availability	793

Table of Contents

12	Breadth of adjudicator expertise	793
13	Educational materials	794
14	Annual report	794
15	Public availability	795
ADJUDICATION		
16	Notice of adjudication, copy to Authority	795
17	Response	795
18	Consolidation of adjudications, if required by contractor	795
19	Application of Part to consolidated adjudications	795
20	Disclosure of documents	796
21	Powers of adjudicator	796
22	Determinations	796
23	Adjudicator unable to conduct adjudication	797
24	Failure of adjudicator to complete adjudication	797
25	Application of Part II.1 to labour and material payment bonds	798
26	Commencement	799
PRACTICE DIRECTION		
	Consolidated Practice Direction for Civil Actions, Applications, Motions and Procedural Matters in the Toronto Region	801
	Appendix A — Table of Concordance	813
	Index	819