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Thomas G. Heintzman and Immanuel Goldsmith  
**Heintzman and Goldsmith on Canadian Building Contracts, 5th Ed.**

This fourth release of 2014 completes the major revisions to this product and marks the first release of the 5th edition of *Canadian Building Contracts*. Due to the extensive changes that culminate with this release, *Canadian Building Contracts* continues to be the authoritative text on the topic of building contracts.

This release contains new chapters 14 and 15 dealing with insurance clauses in building contracts and bonds. The redistribution and reauthoring of content is now complete and users can look forward to consulting this classic work with the ease and confidence with which they have in the past.

### Highlights

**Chapter 14 — The Insurance Clause in the Building Contract — Impact of the Insurance Clause on Rights between Owner, Contractor, Subcontractor and Insurers** — When an insurance clause is contained in a building contract, at least two issues will arise if one of the parties, or its insurer, sues the other for damages arising during the project. The first issue is one of contract interpretation: As a result of that clause, did the parties intend that the insurance policies would be the exclusive remedy of the parties and that the party allegedly at fault would be immune from liability? In effect, should a term be implied into the building contract that no such liability arises? The second and inter-related issue is derived from insurance law: an insurer which has paid a claim under an insurance policy is not entitled to maintain a subrogated claim against another insured under the same policy to recover the amount of the claim which it paid. Canadian case law has combined these two issues to establish the principle that, depending on the

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scope and meaning of the particular insurance clause and insurance policy in question, a party to a building contract containing an insurance clause is not entitled to sue another party engaged on the building project and covered by the same insurance policy in respect of loss falling within that insurance clause or policy. Furthermore, that party's insurer is not entitled to do so in a subrogated claim.

**Chapter 15 — Bonds — Legal Implications of a Bond — Incorporation of the Building Contract into the Bond** — Bonds often state that the contract being guaranteed is incorporated into the bond. That statement may cause difficult issues, particularly since the provisions of building contracts may be extremely varied and quite unsuitable for inclusion in the particular bond. In the event of conflict between the terms of the bond and the terms of the underlying contract, then the terms of the bond will prevail, subject to the bond providing otherwise. In these circumstances, the court will have to make sense of what parts of the building contract are included in the bond and for what purpose, if any.

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