

Publisher's Note

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Previous release was 2019-1

From Your Library:

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Construction, Builders' and Mechanics' Liens In Canada 7th Edition

This publication offers an exhaustive analysis of the construction, builders' and mechanics' lien legislation from all Canadian jurisdictions; legislative concordances, guidance on construction lien practice; a comprehensive set of construction law forms and precedents; and summaries and analysis of every significant case in the construction lien area decided in trial and appeal courts throughout Canada.

Release 2019-2 features updates to the case law and commentary in Chapters 1 (Introduction), 2 (The Lienable Interest), 3 (The Lien Claimant), 4 (Holdbacks), 5 (The Mortgagee), 6 (Enforcement of Liens), 7 (Loss, Discharge or Vacating of Lien), 8 (Priorities), 9 (Construction Trusts), 10 (Jurisdiction), 11 (Practice Before Trial), and 12 (Practice After Trial).

Highlights

- **Holdbacks: The Holdback Fund Generally** — Where a general contractor made payments to a subcontractor in financial difficulties by depositing the funds into a jointly controlled bank account, from which the subcontractor was to pay sub-subcontractors, the British Columbia Court of Appeal rejected an argument that the funds constituted a loan and were therefore somehow exempt from the

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holdback obligations imposed by the Act. *Iberdrola Energy Projects Canada Corp. v. Factory Sales Engineering Inc. d.b.a. FSE Energy* (2018), 80 C.L.R. (4th) 1 (B.C. C.A.).

- **The Lienable Interest: Government Property — Crown in the Right of a Province** — The Manitoba Act expressly exempts contracts, or work related to contracts, entered into by Manitoba Hydro with respect to or in any way associated with the construction, repair or maintenance of hydro-electric generating stations or facilities, and plant appurtenant thereto from the application of the Act. That exemption extends to work that is necessarily connected to the use of generating stations. *American Piledriving Equipment, Inc. v. Manitoba Hydro* (2018), 78 C.L.R. (4th) 12 (Man. Q.B.).
- **Enforcement of Lien: Contents of Claim for Lien — Name and Address of Owner** — Newfoundland courts have held that failure to name a defendant against whom the lien is to be enforced is not a procedural defect, but a substantive failure to comply with the requirements of the Act to commence an action within the limitation period that cannot be cured. *Terra Services Inc. v. R.*, 2018 NLSC 221.
- **Construction Trusts: The Trust Fund Generally — Owner's Trust Obligations** — While s. 7 of the Ontario *Construction Act* is broad enough to capture any funds specifically earmarked for financing a construction project or improvement, such as insurance proceeds, funds advanced by landlords, guarantees or inter-company transfers provided they are funds received (or receivable) by the owner for the specific purpose, general revenues of a corporation or even general borrowing on a line of credit are not funds impressed with a trust even if the owner originally intended to use those funds to pay for the construction. The section requires that there is a distinct fund that is identifiably for the purpose of completing the improvement. *Vision Air Conditioning Heating Corp. v. Golden Dragon Ho Inc.*, 2018 ONSC 3520.