

Title: A Guide to Construction Liens in Ontario, 3rd Edition

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Mention “construction lien” and most lawyers cringe. They complain that it is too complicated. The long awaited third edition of “A Guide to Construction Liens in Ontario” is a ‘must have’ reference book for them and for everyone who’s work includes construction liens in Ontario. For this edition Harvey Kirsh collaborates with Matthew Alter, with whom he has teamed on a number of publications. Both are well respected lawyers with a long history of publishing definitive works in their specialty fields. Together Kirsh and Alter, who have a combined experience of over 60 years at the bar, are an information powerhouse. They generously share their expertise and experience with you, the reader, without holdback.

The book provides a thorough examination of the topic, combining practical information with easy-to-follow examples, useful precedents and academic analysis. Whether you are arguing a construction lien case in court, negotiating with the other players in a construction project where liens have been registered or threatened, or managing a large construction project this Kirsh and Alter text will be a helpful resource to add to your library.

The third edition follows sixteen years after the second edition. It provides important legislative updates, judicial interpretation through extensive case law, the authors’ commentary and up-to-date precedents. The historical perspective at the beginning of the work provides valuable insight into how the industry achieved the present form of construction lien legislation. It also describes recent legislative amendments and the resulting changes to construction practice, effective in 2010 and 2011, including e-registration and eliminating the affidavit of verification.

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Aside from interesting reading the legislative background can be helpful as an aid to interpretation in the face of ambiguity.

The book is written in an academic, digest style with concepts explained in paragraph form and frequent footnotes citing cases, examples and other relevant authorities. A detailed Table of Contents, Index and Table of Cases will help the reader find what he or she is looking for.

Kirsh and Alter tackle some of the more confusing construction lien concepts with the use of helpful examples, such as at pages 110 and 113 where the authors use diagrams to illustrate important timelines. Another helpful example is found at page 118 where the authors discuss the complexities of sheltering lien claims. Readers who take the time to work through these examples will be rewarded with clarity.

At page 153 Kirsh and Alter explain clearly the difference between “discharging” and “vacating” a lien, a concept that mysteriously continues to baffle many practitioners. A lawyer who incorrectly registers a discharge of lien, when the court has ordered it vacated, improperly extinguishes a lien claimant’s rights. In the book reviewer’s opinion, this amounts to professional negligence. Lawyers should read this section of the Kirsh and Alter book carefully.

I urge all lawyers who work in this practice area to read and absorb chapter 12 (Electronic Registration). It explains proper procedure and steps to take in a paperless registry system, including how to protect yourself from your client, both critical to a successful practice.

In chapter 9 the authors provide a step-by-step guide if you are taking a lien claim to court or defending such a claim, including identifying the proper court to go to, who must be named as parties to the action, what to do about a bankrupt defendant, when and how to issue a counterclaim or crossclaim, circumstances in which third party proceedings are permitted, court procedure, motions (including when a motion may be brought “as of right” and when leave is required), and the conduct of a lien trial. This chapter is very useful for lawyers and non-lawyers alike. For the latter group it provides insight into what happens if the conflict cannot be resolved short of trial.

In addition to the text the authors provide precedents of forms, pleadings, and other materials that you require to practice in this area. Whether you are newly involved in construction lien practice or a seasoned advocate, or even if you have only the occasional construction lien file, these precedents will be helpful.

The only caution I have for this book is that if the intended audience includes self-represented litigants then much of the text will be too technical and too detailed to meet their needs. On the other hand, self represented litigants should find the precedents useful, if for no other purpose than to illustrate the need for competent counsel experienced in this complex practice area.

In conclusion, if the goal of Kirsh and Alter in publishing a third edition of “A Guide to Construction Liens in Ontario” is to provide an authoritative and definitive, up-to-date guide on construction law in Ontario the authors have succeeded. I recommend the book to lawyers (generalists and specialists alike) who encounter construction lien issues as any component of their practice as well as to those who work in the construction industry.

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