

1984 BILL 94

Second Session, 20th Legislature, 33 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 94

BUILDERS' LIEN AMENDMENT ACT, 1984

MR. GOGO

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 94
Mr. Gogo

BILL 94

1984

BUILDERS' LIEN AMENDMENT ACT, 1984

(Assented to _____, 1984)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1 *The Builders' Lien Act is amended by this Act.*

2 *Section 1 is amended*

(a) *by repealing clause (a) and substituting the following:*

(a) "certificate of substantial performance" means a certificate of substantial performance issued under section 16.3 and includes, where a certificate of substantial performance is not issued pursuant to a demand made under section 16(3) or 16.1(3), an order of the court made under section 16.3(3);

(b) *by adding the following after clause (f):*

(f.1) "lien fund" means

(i) a major lien fund in respect of funds retained or included in it under section 15, and

(ii) a minor lien fund in respect of funds retained or included in it under section 15.1;

(f.2) "major lien fund" means the lien fund created under section 15;

(f.3) "minor lien fund" means the lien fund created under section 15.1;

(c) *by repealing clause (j) and substituting the following:*

(j) "subcontractor" means a person, other than

(i) a labourer,

(ii) a person furnishing materials, or

(iii) a person engaged in the performance of services,

who is not a contractor but is contracted with or employed under a contract;

Explanatory Notes

1 This Bill will amend chapter B-12 of the Revised Statutes of Alberta 1980.

2 Section 1(a) and (j) presently read:

1 In this Act,

(a) "completion of the contract" means substantial performance, not necessarily total performance, of the contract;

(j) "subcontractor" means a person not contracting with or employed directly by an owner or his agent for the doing of any work but contracting with or employed by a contractor, or under him by a subcontractor, but does not include a labourer;

(j.1) "supervisor" means

(i) an architect, engineer or other person on whose certifi-
cates payments are to be made under a contract or sub-
contract, or

(ii) where there is not a person referred to in clause (a),
the owner;

3 *Section 2 is repealed and the following is substituted:*

2(1) For the purposes of this Act, a contract or a subcontract is
substantially performed

(a) when the work or a substantial part of it is ready for use
or is being used for the purpose intended, and

(b) when the work to be done under the contract or subcon-
tract is capable of completion or correction at a cost of not
more than

(i) 3% of the first \$500 000 of the contract price,

(ii) 2% of the next \$500 000 of the contract price, and

(iii) 1% of the balance of the contract price.

(2) For the purposes of this Act, if

(a) the work or a substantial part of it is ready for use or is
being used for the purpose intended, and

(b) the work cannot be completed expeditiously for reasons
beyond the control of the contractor or the subcontractor,

the value of the work to be completed in determining substantial
performance shall be calculated on the basis of the contract price
or, if there is no specific contract price, then on the basis of the
actual value of the work done.

4 *Section 9(1) is amended by striking out "statement of lien is reg-
istered" and substituting "lien arises".*

5 *The following is added after section 9:*

9.1 Where

(a) a search is made of a certificate of title,

(b) that search does not disclose any statement of lien regis-
tered against that certificate of title, and

(c) on the day that search is made, in reliance on that search,

(i) mortgage money is advanced under a mortgage regis-
tered against that certificate of title, or

(ii) money is paid under a contract or subcontract for
work done or materials furnished in respect of the land
for which the certificate of title was issued,

3 Section 2 presently reads:

2(1) For the purposes of this Act, a contract shall be deemed to be substantially performed

(a) when the work or a substantial part of it is ready for use or is being used for the purpose intended, and

(b) when the work to be done under the contract is capable of completion or correction at a cost of not more than

(i) 3% of the first \$250 000 of the contract price,

(ii) 2% of the next \$250 000 of the contract price, and

(iii) 1% of the balance of the contract price.

(2) For the purposes of this Act, if the work or a substantial part of it is ready for use or is being used for the purpose intended and if the work cannot be completed expeditiously for reasons beyond the control of the contractor, the value of the work to be completed shall be deducted from the contract price in determining substantial performance.

4 Section 9(1) presently reads:

9(1) A lien has priority over all judgments, executions, assignments, attachments, garnishments and receiving orders recovered, issued or made after the statement of lien is registered.

5 Advancing of money.

that money shall be deemed to have been advanced prior to the registration of any statement of lien not disclosed by that search notwithstanding that a statement of lien was registered against that certificate of title on the same day that the search was made.

6 *Section 10(1) is amended by striking out "section 15" and substituting "section 15 or 15.1, as the case may be,".*

7 *The following is added after section 10:*

10.1(1) Where

(a) a person does work or furnishes materials pursuant to a contract or a subcontract made under that contract, and

(b) money is paid under the contract or the subcontract for the purpose of satisfying that person's claim for payment for that work or those materials,

that money shall be handled in such a manner by each intervening person to whom it is paid or who receives it so that it will, as soon as practicable, be paid

(c) to the person who did the work or furnished the materials, or

(d) as directed by the person who did the work or furnished the materials.

(2) Any claim by a person referred to in subsection (1)(a) to money referred to in subsection (1)(b) that is paid to or received by an intervening person has priority over any other claim made by or against that intervening person to that money.

8 *Sections 15 and 16 are repealed and the following is substituted:*

15(1) Irrespective of whether a contract provides for instalment payments or payment on completion of the contract, an owner, who is liable on a contract under which a lien may arise, shall, when making payment under the contract, create a major lien fund by retaining for the time limited by section 30 an amount equal to 15% of the value of the work and materials actually done or furnished.

(2) In addition to the amount retained under subsection (1), the major lien fund shall include

(a) any amount payable under the contract that has not been paid by the owner under the contract in good faith prior to the registration of a lien, or

(b) where payment is made under the contract pursuant to a certificate of substantial performance, any amount payable under the contract for work done or materials furnished prior to substantial performance of the contract that has not been

6 Section 10(1) presently reads:

10(1) A lien for the wages of a labourer has priority, to the extent of 6 weeks' wages, over all claims on that portion of the amount retained as required by section 15 to which the contractor or subcontractor through whom the lien is derived is entitled, and all such labourers rank without preference.

7 Priority for money paid to satisfy claims arising out of work performed or materials furnished.

8 Sections 15 and 16 presently read:

15(1) In this section and in section 18, "the lien fund" means the percentage retained by the owner as required by this section, plus any amount payable under the contract which has not been paid by the owner under the contract in good faith prior to the registration of a lien, less any amount permitted by section 16 to be paid.

(2) Irrespective of whether a contract provides for instalment payments or payment on completion of the contract an owner liable on a contract under which a lien may arise shall, when making payment under the contract, retain for the time limited by section 30, an amount equal to 15% of the value of the work actually done.

(3) The value shall be calculated on the basis of the contract price or, if there is no specific contract price, then on the basis of the actual value of the work done.

(4) Every lien is a charge on the lien fund.

(5) An owner is not liable under this Act for more than the amount of the lien fund.

paid by the owner under the contract in good faith prior to the registration of a lien.

(3) The value of the major lien fund shall be calculated on the basis of

(a) the contract price, or

(b) the actual value of the work done and materials furnished, if there is not a specific contract price.

(4) Except as otherwise provided in this Act, when a lien is claimed by a person other than the contractor, it does not attach so as to make the major lien fund liable for a sum greater than the total of

(a) 15% of the value of the work actually done by the contractor or subcontractor for whom and at whose request the work was done or the material was supplied giving rise to the claim of lien, and

(b) any additional sum due and owing but unpaid to that contractor or subcontractor.

(5) When, in respect of liens to which this section applies, there is more than one lien claim arising from work done or material supplied for and at the request of the contractor or the same subcontractor, they do not attach so as to make the major lien fund liable in their cumulative total for a sum greater than the total of

(a) 15% of the value of the work actually done by the contractor or subcontractor, as the case may be, and

(b) any additional sum due and owing but unpaid to that contractor or subcontractor.

(6) A payment, other than of the percentage required by this section to be retained, made in good faith by an owner or mortgagee to a contractor before registration of any liens, is valid so that the major lien fund is reduced by the amount of the payment.

(7) If a contractor or a subcontractor defaults in completing his contract, the major lien fund

(a) shall not, as against a lienholder, be applied to the completion of the contract or for any other purpose than the satisfaction of liens, and

(b) when distributed, shall be distributed in the manner prescribed by section 47.

(8) A person who in good faith underestimates the value of the work actually done at any specific time and retains the percentage of the value required to be retained by this section, calculated on that underestimated value, does not lose the protection afforded by this Act if he provides, for the satisfaction of liens in accordance with this Act, an amount equal to the correct amount that should have been retained pursuant to this section.

(6) Except as otherwise provided in this Act, when a lien is claimed by a person other than the contractor, it does not attach so as to make the lien fund liable for a sum greater than

(a) 15% of the value of the work actually done by the contractor or subcontractor for whom and at whose request the work was done or the material was supplied giving rise to the claim of lien, plus

(b) any additional sum due and owing but unpaid to that contractor or subcontractor.

(7) When there are more lien claims than one arising from work done or material supplied for and at the request of the contractor or the same subcontractor, they do not attach so as to make the lien fund liable in their cumulative total for a sum greater than

(a) 15% of the value of the work actually done by the contractor or subcontractor, as the case may be, plus

(b) any additional sum due and owing but unpaid to that contractor or subcontractor.

(8) A payment, other than of the percentage required by this section to be retained, made in good faith by an owner or mortgagee to a contractor before registration of any liens, is valid so that the lien fund is reduced by the amount of the payment.

(9) If a contractor or subcontractor defaults in completing his contract, the lien fund

(a) shall not, as against a lienholder, be applied to the completion of the contract or for any other purpose than the satisfaction of liens, and

(b) when distributed, shall be distributed in the manner prescribed by section 47.

(10) A person who in good faith underestimates the value of the work actually done at any specific time and retains the percentage of the value required to be retained by this section, calculated on that underestimated value, does not lose the protection afforded by this Act if he provides, for the satisfaction of liens in accordance with this Act, an amount equal to the correct amount that should have been retained pursuant to this section.

16(1) In this section, "supervisor" means an architect, engineer or other person on whose certificates payments are to be made under a contract.

(2) When a contract is under the supervision of a supervisor and a period of 35 days has elapsed after a certificate issued by the supervisor to the effect that the subcontract has been completed has been given to the person primarily liable on that contract and to the person who became a subcontractor by a subcontract made directly under that contract, the amount to be retained by the person primarily liable on that contract shall be reduced

(a) by 15% of the subcontract price, or

(b) if there is no specific subcontract price, by 15% of the actual value of the work done and materials furnished under that subcontract,

but this subsection does not operate if and so long as any lien derived under that subcontract is preserved by anything done under this Act.

(3) The contractor or subcontractor may at any time after the completion of the contract demand a certificate of completion of the contract from the supervisor (which demand shall be made in writing and may be delivered to the supervisor or sent to him by registered mail with postage fully prepaid) and a copy of the demand shall be given to the owner or his agent, or sent to the owner or his agent by registered mail with postage fully prepaid.

15.1(1) When

(a) a contract is substantially performed, and

(b) payment under the contract is made pursuant to a certificate of substantial performance before the total completion of the contract,

the owner who is liable on the contract, with respect to any work or materials done or furnished after substantial performance of the contract and by virtue of which a lien may arise, shall, when making payment under the contract, create a minor lien fund by retaining for the time limited by section 30 an amount equal to 15% of the work and materials actually done or furnished after the substantial performance of the contract.

(2) Where a minor lien fund is created, in addition to the amount retained under subsection (1), the minor lien fund shall include any amount payable under the contract for work done and materials furnished after substantial performance of the contract that has not been paid by the owner under the contract in good faith prior to the registration of a lien.

(3) The value of the minor lien fund shall be calculated on the basis of

(a) an amount that bears the same proportion to the total contract price for the contract that the work remaining to be done and materials to be furnished after substantial performance of the contract bears to the total work to be done and materials to be furnished under the contract, or

(b) the actual value of the work done and materials furnished after substantial performance of the contract, if there is not a specific contract price.

(4) A person may participate in the minor lien fund only if he has done work or furnished materials after substantial performance of the contract.

(5) Payment out of the minor lien fund shall only be made in respect of that work done or those materials furnished after substantial performance of the contract.

(6) Except as otherwise provided in this Act, when a lien to which this section applies is claimed by a person other than the contractor, it does not attach so as to make the minor lien fund liable for a sum greater than the total of

(a) 15% of the value of the work actually done by the contractor or subcontractor for whom and at whose request the work was done or the material was supplied giving rise to the claim of lien, and

(b) any additional sum due and owing but unpaid to that contractor or subcontractor.

(7) When, in respect of liens to which this section applies, there is more than one lien claim arising from work done or material

(4) The supervisor of whom the demand is made shall within 10 days of the making of the demand issue and deliver to the applicant the required certificate of completion and if the supervisor neglects or refuses to issue or deliver the certificate of completion within the 10 days, the court

(a) on the application of the contractor or a subcontractor, and

(b) on being satisfied that the contract has been completed,

may make an order that the contract has been completed on such terms and conditions as to costs or otherwise as seem just, and the order has the same force and effect as a certificate of completion issued by the supervisor would have.

(5) When a certificate issued by a supervisor to the effect that a subcontract by which a subcontractor became a subcontractor has been completed has been given to that subcontractor, then for the purposes of section 30(1), (2), (3) and (4) that subcontract and any work done or to be done under it and any materials furnished or to be furnished under it shall, so far as concerns any lien under it of that subcontractor, be deemed to have been completed, done or furnished not later than the time at which the certificate was so given.

(6) If a contract is not under the supervision of a supervisor, the court,

(a) on the application of the contractor or a subcontractor, and

(b) on being satisfied that the contract has been completed,

may make an order that the contract has been completed on such terms and conditions as to costs or otherwise as seem just, and the order has the same force and effect as a certificate of completion issued by a supervisor would have.

supplied for and at the request of the contractor or the same subcontractor, they do not attach so as to make the minor lien fund liable in their cumulative total for a sum greater than the total of

(a) 15% of the value of the work actually done by the contractor or subcontractor, as the case may be, and

(b) any additional sum due and owing but unpaid to that contractor or subcontractor.

(8) A payment, other than of the percentage required by this section to be retained, made in good faith by an owner or mortgagee to a contractor before registration of any liens, is valid so that the minor lien fund is reduced by the amount of the payment.

(9) If a contractor or subcontractor defaults in completing his contract, the minor lien fund

(a) shall not, as against a lienholder, be applied to the completion of the contract or for any other purpose than the satisfaction of liens, and

(b) when distributed, shall be distributed in the manner prescribed by section 47.

(10) A person who in good faith underestimates the value of the work actually done at any specific time and retains the percentage of the value required to be retained by this section, calculated on that underestimated value, does not lose the protection afforded by this Act if he provides, for the satisfaction of liens in accordance with this Act, an amount equal to the correct amount that should have been retained pursuant to this section.

15.2 Except where an owner makes a payment while a lien is registered against a certificate of title, an owner is not liable under this Act for more than

(a) the total of the major lien fund and the minor lien fund, or

(b) the major lien fund, if a minor lien fund is not created.

15.3(1) A lien arising out of work done or materials furnished prior to the creation of a minor lien fund is a charge on the major lien fund whether or not the lien is registered against a certificate of title.

(2) Where a minor lien fund is created, a lien arising out of work done or materials furnished after substantial performance of the contract is a charge on the minor lien fund whether or not the lien is registered against a certificate of title.

16(1) Notwithstanding section 15, when

(a) a contract is under the supervision of a supervisor, and

(b) a period of 45 days has elapsed after a certificate of substantial performance has been

(i) issued by the supervisor to the effect that the contract has been substantially performed, and

(ii) served on the owner and on the contractor,

the owner shall reduce the amount retained

(c) by 15% of the contract price, or

(d) if there is not a specific contract price, by 15% of the actual value of work done and materials furnished under the contract.

(2) Subsection (1) does not operate during any period of time that any lien derived under the contract is preserved by anything done under this Act.

(3) A contractor may at any time after substantial performance of a contract make a written demand to the supervisor for a certificate of substantial performance.

16.1(1) Notwithstanding section 15, when

(a) a subcontract is under the supervision of a supervisor, and

(b) a period of 45 days has elapsed after a certificate of substantial performance has been

(i) issued by the supervisor to the effect that the subcontract has been substantially performed, and

(ii) served under section 16.2 on the contractor and the subcontractor,

the owner shall reduce the amount retained

(c) by 15% of the subcontract price, or

(d) if there is not a specific subcontract price, by 15% of the actual value of work done and materials furnished under the subcontract.

(2) Subsection (1) does not operate during any period of time that any lien derived under the subcontract is preserved by anything done under this Act.

(3) A subcontractor may at any time after substantial performance of a subcontract make a written demand to the supervisor for a certificate of substantial performance.

16.2 A written demand made under section 16(3) or 16.1(3) shall contain an address for service at which

(a) a certificate issued under section 16.3(2), or

(b) a notice of motion for an application, its supporting documents and an order of the court made under section 16.3(3),

may be served on the person making the written demand.

16.3(1) A copy of a written demand made under section 16(3) or 16.1(3) shall be served on the owner or his agent.

(2) The supervisor on whom a demand is made under section 16(3) or 16.1(3) shall, as soon as practicable in the circumstances, issue and serve on the person making the demand

(a) where the contract or subcontract, as the case may be, is in fact substantially performed, a certificate of substantial performance, or

(b) where the contract or subcontract, as the case may be, is in fact not substantially performed, a certificate to that effect including in the certificate the reasons for not issuing a certificate of substantial performance.

(3) If a supervisor neglects or refuses to comply with subsection (2), the court may

(a) on application of a person making the demand under section 16(3) or 16.1(3), and

(b) on being satisfied that the contract or subcontract, as the case may be, is in fact substantially performed,

make an order, on those terms and conditions that it considers proper, stating that the contract has been substantially performed.

(4) An order of the court made under subsection (3) stands in the place of and has the same effect as a certificate of substantial performance issued by a supervisor.

(5) Where

(a) a person makes a demand under section 16(3) or 16.1(3) for a certificate of substantial performance, and

(b) on the demand being made the supervisor neglects or refuses to comply with subsection (2),

the supervisor is liable for legal and other costs and damages incurred by or resulting to the person making the demand by reason of the supervisor's non-compliance with subsection (2).

16.4 A written demand for a certificate of substantial performance, a certificate of substantial performance or a copy of either of them may be served by personal service or registered mail.

16.5(1) A copy of a certificate of substantial performance issued or an order granted under section 16.3 shall be posted by the supervisor, or by a person on his behalf, in a conspicuous place on the job site to which the certificate or order relates so that persons working or furnishing materials have a reasonable opportunity of seeing it.

(2) A certificate of substantial performance shall be posted under subsection (1) within 3 days from the day that the contract or the subcontract, as the case may be, is substantially performed.

(3) Where a supervisor, or a person on his behalf, fails to comply with this section, that supervisor or person, as the case may be,

is liable for legal and other costs and damages incurred by and resulting to a person by reason of the non-compliance.

16.6 The date when a contract or subcontract, as the case may be, is substantially performed, is the date that the certificate of substantial performance is personally served on or sent by registered mail to the person requesting the certificate of substantial performance.

9 Section 17 is amended by striking out "section 15" and substituting "section 15(1) or 15.1(1), as the case may be,".

10 Section 18(1) is repealed and the following is substituted:

18(1) On the expiration of the time limited by

(a) section 16 or 16.1, in the case where a certificate of substantial performance has been issued, or

(b) section 30, in the case where a certificate of substantial performance is not issued,

payment of the lien fund may be validly made so as to discharge every lien in respect of it unless a statement of lien has been registered.

11 Section 20 is repealed and the following is substituted:

20(1) If an owner, mortgagee, contractor or subcontractor

(a) gives written notice to

(i) the person, or his agent, primarily liable on the contract, and

(ii) the persons, or their agents, primarily liable on any intervening contracts,

of his intention to make payment to a person who has a lien for or on account of a debt due to that person for work done or materials furnished and for which the person giving notice is not primarily liable on the contract, and

(b) does not receive from any person to whom a notice was given under clause (a), or his agent, within 3 days from the day on which the notice was given, an objection to the payment being made,

he may, subject to subsection (2), make the payment and the payment shall be deemed to be a payment on his contract and on the intervening contracts, as the case may be, but not so as to affect the percentage to be retained by the owner as provided by section 15 or 15.1, as the case may be.

(2) A payment shall not be made under subsection (1) if the person intending to make the payment receives from any person

9 Section 17 presently reads:

17 A mortgagee authorized by the owner to disburse money secured by a mortgage may retain the amount required to be retained by the owner as the person primarily liable on the contract and the retention by the mortgagee of that amount shall be deemed to be a compliance with section 15(2) by the owner as the person primarily liable on the contract.

10 Section 18(1) presently reads:

18(1) On the expiration of the time limited by section 30, payment of the lien fund may be validly made so as to discharge every lien in respect of it unless, in the meantime, a statement of lien has been registered.

11 Section 20 presently reads:

20 If an owner, mortgagee, contractor or subcontractor

(a) makes a payment to a person entitled to a lien for or on account of a debt due to the person for work done or materials furnished and for which the owner, mortgagee, contractor or subcontractor is not primarily liable on the contract, and

(b) within 3 days afterwards gives written notice of the payment to the person primarily liable on the contract or his agent,

the payment shall be deemed to be a payment on his contract generally to the contractor or subcontractor primarily liable on the contract, but not so as to affect the percentage to be retained by the owner as provided by section 15.

to whom a notice was given under subsection (1)(a), or his agent, an objection to the payment being made prior to the payment being made.

12 Section 24(1) and (3) are amended by striking out "registered".

13 Section 26(3) is amended by striking out "\$20" and substituting "\$300".

14 Section 29 is repealed and the following is substituted:

29(1) In addition to any other grounds on which he may be liable, a person who

(a) has a lien against a particular estate or interest in land or a particular parcel of land, and

(b) registers a lien against an estate or interest in the land or a parcel of land to which his lien does not attach,

is liable for legal and other costs and damages incurred by or resulting to the owner of any estate or interest in the land or any particular parcel of land by reason of the wrongful registration of the lien against his estate or interest or against his parcel of land.

(2) In addition to any other grounds on which he may be liable, a person who registers a lien against a particular estate or interest in land or a particular parcel of land

(a) for an amount grossly in excess of the amount due to him or that he expects to become due to him, or

12 Section 24(1) and (3) presently read:

24(1) A registered lienholder, by notice in writing, may at any reasonable time demand,

(a) of the owner or his agent, the production for inspection of the contract with the contractor,

(b) of the contractor, the production for inspection of

(i) the contract with the owner, and

(ii) the contract with the subcontractor through whom the lienholder's claim is derived,

and

(c) of the subcontractor through whom his claim is derived, the production for inspection of the contract with the contractor,

and the production for inspection of a statement of the state of accounts between the owner and contractor or contractor and subcontractor, as the case may be.

(3) A registered lienholder, by notice in writing, may at any reasonable time demand of a mortgagee or his agent or unpaid vendor or his agent

(a) the terms of any mortgage on the land or any agreement for sale of the land in respect of which the work is or is to be done or in respect of which materials have been or are to be furnished, and

(b) a statement showing the amount advanced and the amount currently due and owing on the mortgage or the amount owing on the agreement, as the case may be.

13 Section 26(3) presently reads:

(3) No lien shall be registered unless the claim or joined claims amount to or aggregate \$20 or more.

14 Section 29 presently reads:

29 A person who has a lien against a particular estate or interest in land, or a lien against a particular parcel of land, and who registers a lien against an estate or interest in the land to which his lien does not attach, or registers a lien against a parcel of land to which his lien does not attach, is liable for legal and other costs and damages incurred by or resulting to the owner of any estate or interest in the land or the owner of any particular parcel of land by reason of the wrongful registration of the lien against his estate or interest or against his parcel of land.

(b) when he knows or ought reasonably to know that he does not have a lien,

is liable for legal and other costs and damages incurred by any person by reason of the registration of the lien unless that person satisfies the court that the registration of the lien was made and the amount of the lien was calculated in good faith and without negligence.

15 *Section 30 is repealed and the following is substituted:*

30(1) In cases not otherwise provided for, a lien in favour of a contractor or a subcontractor may be registered at any time within the period

(a) commencing when the lien arises, and

(b) terminating 45 days from the day the contract or subcontract, as the case may be, is completed or abandoned.

(2) A lien for materials may be registered at any time within the period

(a) commencing when the lien arises, and

(b) terminating 45 days from the day that the last of the materials is furnished.

(3) A lien for the performance of services may be registered at any time within the period

(a) commencing when the lien arises, and

(b) terminating 45 days from the day that the performance of the services is completed.

(4) A lien for wages may be registered at any time within the period

(a) commencing when the lien arises, and

(b) terminating 45 days from the day that the work is completed for which the wages are claimed.

(5) If, in respect of work performed on or materials furnished for an improvement,

(a) something is improperly done, or

(b) something that should have been done is not done,

at the time when the thing was done or should have been done and if at a later date the thing

(c) improperly done is put right, or

(d) not done is done,

the doing of the thing at the later date shall not be deemed to be completion of the work or the furnishing of the last materials so as to enable a person to extend the time limited by this section for registering a lien.

15 Section 30 presently reads:

30(1) A lien in favour of a contractor or a subcontractor in cases not otherwise provided for, may be registered at any time up to the completion or abandonment of the contract or subcontract, as the case may be, and within 35 days after completion or abandonment.

(2) A claim of lien for materials may be registered at any time during the furnishing of the materials and within 35 days after the last of the materials is furnished.

(3) A lien for the performance of services may be registered at any time during the performance of the services and within 35 days after the performance of the services is completed.

(4) A lien for wages may be registered at any time during the performance of the work for which the wages are claimed and within 35 days after the completion of the work.

(5) If, in respect of work done on or material furnished for an improvement,

(a) something is improperly done, or

(b) something that should have been done is not done,

at the time when the thing should have been done and if at a later date the thing improperly done is put right or the thing not done is done, the doing of the thing at the later date shall not be deemed to be the completion of the work or the furnishing of the last materials so as to enable a person to extend the time limited by this section for registering a lien.

16 *Section 32 is amended*

(a) *by repealing subsection (1) and substituting the following:*

32(1) A lien that has been registered ceases to exist unless, within 180 days from the date it is registered, the lienholder

(a) commences an action to realize on the lien and registers in the appropriate land titles office a certificate of lis pendens in the prescribed form, or

(b) where he is a party to an action commenced by another lienholder to realize on a lien, registers in the appropriate land titles office a certificate of lis pendens in the prescribed form.

(1.1) Notwithstanding subsection (1), if an owner or another person affected by a lien serves written notice on the lienholder to commence an action to realize on his lien and the lienholder does not

(a) commence an action to realize on the lien and pursuant to that action register in the appropriate land titles office a certificate of lis pendens in the prescribed form, or

(b) where he is a party to an action commenced by another lienholder to realize on a lien, register in the appropriate land titles office a certificate of lis pendens,

within 30 days from the day the lienholder is served with the notice, the lien ceases to exist.

(b) *by repealing subsection (4) and substituting the following:*

(4) The Registrar shall cancel a certificate of lis pendens on receiving a certificate of withdrawal of lis pendens made under the seal of the clerk of the court stating that the proceedings as they relate to that certificate of lis pendens are discontinued.

17 *The following is added after section 32:*

32.1 Notwithstanding section 32, if the court has ordered that a lien be removed under section 18(4) or 35(1)(a) the lien, as a charge against the money paid into court or the security given, does not cease to exist by reason that

(a) a certificate of lis pendens is not registered in the appropriate land titles office, or

(b) an action has not been commenced within 180 days from the date the lien is registered.

18 *Section 35 is amended*

(a) *by repealing subsection (1)(a) and substituting the following:*

(a) order that the registration be removed from the title to the land concerned on the giving of security for or the pay-

16 Section 32 presently reads:

32(1) A lien that has been registered ceases to exist unless, within 180 days from the date it is registered,

(a) an action is commenced to realize on the lien or in which the lien may be realized on under this Act, and

(b) a certificate of lis pendens in the prescribed form is registered in the appropriate land titles office.

(2) The clerk of the court in which an action is begun may grant a certificate of lis pendens to any lienholder who is a party to the proceedings.

(3) Any lienholder who is a party to the proceedings may cause a certificate of lis pendens to be registered in the appropriate land titles office.

(4) On receiving

(a) a certificate under the seal of the clerk of the court stating that proceedings for which a certificate of lis pendens was granted are discontinued, or

(b) a withdrawal of a certificate of lis pendens signed by the person on whose behalf the certificate was registered,

the Registrar shall cancel registration of the certificate of lis pendens.

17 Continuation of lien.

18 Section 35 presently reads:

35(1) The court may, on application by originating notice,

(a) order that the registration of a lien be cancelled on the giving of security for or the payment into court of the amount of the claim and any costs that the court may fix, or

ment into court of the amount owing to the lienholder and any costs that the court may fix, or

(b) *in subsection (2) by adding “or security given” after “court”;*

(c) *by adding the following after subsection (2):*

(3) Notwithstanding subsection (2), a person whose lien is removed from a title under subsection (1) is entitled to participate in the lien fund.

(4) At any time following service of an originating notice a party may file with the clerk of the court and serve on the lienholder a notice to prove the lien in the prescribed form.

(5) A lienholder served with a notice to prove lien shall within 15 days from the day of the service of the notice on him, file in the office of the clerk of the court in which the proceedings were commenced an affidavit providing detailed particulars of his lien.

(6) A lienholder on whom a notice to prove lien is served and who does not file his affidavit

(a) within 15 days from the day of the service of the notice, or

(b) within any further period that the court may order on application on notice,

loses his lien.

(7) Any party to the application may examine the lienholder on his affidavit filed pursuant to this section.

19 *Section 37 is repealed and the following is substituted:*

37(1) A statement of claim referred to in section 36 shall be served on all parties to the proceedings and any other persons that the court may direct.

(2) All persons who by the records of the land titles office appear to have an interest in the land in question are parties to the proceedings commenced by a statement of claim referred to in section 36.

20 *Section 38 is amended*

(a) *in subsection (3) by striking out “following service of the statement of claim on him” and substituting “after issuing the statement of claim”;*

(b) *in subsection (4) by adding “from the day” after “days”;*

(c) *in subsection (5)(a) by adding “from the day” after “days”.*

(b) order that the registration of a lien be cancelled on any proper ground.

(2) Money paid into court replaces the land discharged and is subject to the claim of all persons for liens to the same extent as if the money had been realized by a sale of the land in an action to enforce the lien.

19 Section 37 presently reads:

37(1) The statement of claim shall be served on all persons who by the records of the land titles office appear to have an interest in the land in question and on any other persons that the court may direct.

(2) All persons, including lienholders, served with a statement of claim are parties to the proceedings.

20 Section 38(3), (4) and (5) presently read:

(3) At any time following service of the statement of claim on him, a party may file with the clerk of the court and serve on any lienholder a notice to prove lien in the prescribed form.

(4) A lienholder served with a notice to prove lien shall within 15 days of the service of the notice on him, file in the office of the clerk of the court in which the proceedings were commenced an affidavit providing detailed particulars of his lien.

(5) A lienholder on whom a notice to prove lien is served and who does not file his affidavit

(a) within 15 days of the service of the notice, or

21 The following is added after section 52:

52.1 Except as otherwise provided in this Act, any document or statement of claim respecting matters coming under this Act may be served on a lienholder at the address for service set out in the statement of lien.

22 This Act comes into force on Proclamation.

(b) within any further period that the court may order on application on notice,

loses his lien.

21 Address for service.