

1985 BILL 62

Third Session, 20th Legislature, 34 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 62

BUILDERS' LIEN AMENDMENT ACT, 1985

MR. GOGO

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 62
Mr. Gogo

BILL 62

1985

BUILDERS' LIEN AMENDMENT ACT, 1985

(Assented to , 1985)

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 15.1;

(b) by repealing clause (f) and substituting the following:

(f) "lienholder" means a person who has a lien arising under this Act;

(f.1) "lien fund" means, as the case may be, the major lien fund, the minor lien fund or both the major lien fund and the minor lien fund;

(f.2) "major lien fund" means

(i) where a certificate of substantial performance is not issued, the amount required to be retained under section 15(1) plus any amount payable under the contract

(A) that is over and above the 15% referred to in section 15(1), and

(B) that has not been paid by the owner in good faith while there is no lien registered;

(ii) where a certificate of substantial performance is issued, the amount required to be retained under section 15(1) plus any amount payable under the contract

(A) that is over and above the 15% referred to in section 15(1), and

(B) that, with respect to any work done or materials furnished before the date of issue of the certificate of substantial performance, has not been paid by the owner in good faith while there is no lien registered;

Explanatory Notes

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

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

1 In this Act,

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

(f) "lienholder" means a person with an existing lien under this Act;

(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;

(f.3) “minor lien fund” means the amount required to be retained under section 16.2(1) plus any amount payable under the contract

(i) that is over and above the 15% referred to in section 16.2(1), and

(ii) that, with respect to any work done or materials furnished on and after the date of issue of a certificate of substantial performance, has not been paid by the owner in good faith while there is no lien registered;

(c) *by adding the following after clause (h):*

(h.1) “registered lienholder” means a lienholder who has registered a statement of lien in the appropriate land titles office;

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

(j) “subcontractor” means a person other than

(i) a labourer,

(ii) a person engaged only in furnishing materials, or

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

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

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

2 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 subcontract is capable of completion or correction at a cost of not more than

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

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

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

2.1 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 or materials to be furnished shall be deducted from the contract price in determining substantial performance.

2.2 For the purposes of this Act, the value of work actually done and materials actually furnished shall be calculated on the basis of

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.

- (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 *Section 4(4) is repealed and the following is substituted:*

(4) For the purposes of this Act, a person who rents equipment to an owner, contractor or subcontractor shall, while the equipment is on the contract site or in the immediate vicinity of the contract site, be deemed to have performed a service and has a lien for reasonable and just rental of the equipment while it is used or is reasonably required to be available for the purpose of the work.

5 *Section 9 is amended*

(a) *in subsection (1) by striking out “statement of lien is registered” and substituting “lien arises”;*

(b) *by adding the following after subsection (1):*

(1.1) Notwithstanding subsection (1), a payment made pursuant to an assignment, attachment, garnishment or receiving order that is paid, before a lien’s being registered, to a person for whose benefit the assignment, attachment, garnishment or receiving order is made or issued takes priority over the lien.

(1.2) Notwithstanding subsection (1.1), no judgment, execution, assignment, attachment, garnishment or receiving order shall affect the amount required to be retained under sections 15(1) and 16.2(1).

(c) *in subsection (2) by adding “or a mortgage registered by way of a caveat” after “registered mortgage”.*

6 *The following is added after section 9:*

9.1 Where

- (a) a search is made of a certificate of title,
- (b) at the time of the search there is not any statement of lien endorsed on 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 registered 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,

that money shall be deemed to have been advanced before 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 day that the search was made.

7 *Section 10(1) is amended by striking out “section 15” and substituting “section 15 or 16.2, as the case may be.”.*

4 Section 4(4) presently reads:

(4) A person who rents equipment to an owner, contractor or subcontractor for use on a contract site shall be deemed, for the purposes of this Act, to have performed a service and has a lien for a reasonable and just rental of the equipment while used on the contract site.

5 Section 9(1) and (2) presently read:

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.

(2) A registered mortgage has priority over a lien to the extent of the mortgage money in good faith secured or advanced in money prior to the registration of the statement of lien.

6 Advancing of money.

7 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

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 on the contract, retain an amount equal to 15% of the value of the work actually done and materials actually furnished for a period of 45 days from

(a) the date of issue of a certificate of substantial performance of the contract, in a case where a certificate of substantial performance is issued, or

(b) the date of completion of the contract, in a case where a certificate of substantial performance is not issued.

(2) In addition to the amount retained under subsection (1), the owner shall also retain, during any time while a lien is registered, any amount payable under the contract that has not been paid under the contract that is over and above the 15% referred to in subsection (1).

(3) Except as provided in section 10(1), 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 or materials actually furnished by the contractor or subcontractor for whom and at whose request the work was done or the materials were supplied giving rise to the claim of lien, and

(b) any additional sum due and owing but unpaid to that contractor or subcontractor for work done or materials furnished.

(4) Except as provided in section 10(1), when, in respect of liens to which this section applies, there is more than 1 lien claim arising from work done or materials furnished 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 or materials actually furnished 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 for work done or materials furnished.

(5) A payment of an amount, other than that required to be retained under subsection (1), that is made in good faith by an owner or mortgagee to a contractor at a time when there is not any lien registered is valid, so that the major lien fund is reduced by the amount of the payment.

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.

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.

(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

(6) 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 purpose other than the satisfaction of liens, and

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

(7) A person who in good faith underestimates the value of the work actually done or materials actually furnished 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.

15.1(1) Where a contractor is of the opinion that his contract is substantially performed he may issue and deliver to the owner a certificate of substantial performance in respect of the contract.

(2) Where a contractor or a subcontractor is of the opinion that the subcontractor's contract is substantially performed he may issue and deliver to the owner a certificate of substantial performance in respect of that subcontractor's contract.

(3) The certificate of substantial performance shall set forth the date on which the certificate is issued.

15.2(1) A person issuing a certificate of substantial performance under section 15.1 shall, within 3 days from the date of issuing the certificate, post it in a conspicuous place on the job site to which the certificate relates so that persons working or furnishing materials have a reasonable opportunity of seeing the certificate.

(2) Where the person issuing a certificate of substantial performance fails to comply with this section, that person issuing the certificate is liable for legal and other costs and damages incurred by and resulting to a person by reason of the non-compliance.

16(1) Notwithstanding section 15(1), if

(a) a certificate of substantial performance is issued for a contract,

(b) a period of 45 days has expired from the date of issue of the certificate of substantial performance, and

(c) no lien has been registered,

the amount that the owner is required to retain under section 15 is reduced by 15% of the value of the work actually done and materials actually furnished under the contract at the date of issue of the certificate of substantial performance.

(2) Notwithstanding section 15(1), if

(a) a certificate of substantial performance is issued for a subcontract,

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.

(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.

(b) a period of 45 days has expired from the date of issue of the certificate of substantial performance, and

(c) no lien has been registered,

the amount that the owner is required to retain under section 15 is reduced by 15% of the value of the work actually done and materials actually furnished under the subcontract at the date of issue of the certificate of substantial performance.

16.1(1) Where

(a) a certificate of substantial performance is issued, and

(b) a payment is made by the owner after a certificate of substantial performance is issued

the person who receives the payment, to the extent that he owes money to persons who provided work or furnished materials for the work or materials in respect of which the certificate was issued, holds that money in trust for the benefit of those persons.

(2) When a person other than a person who received the payment referred to in subsection (1)

(a) is entitled to the money held in trust under this section, and

(b) receives payment pursuant to that trust,

he, to the extent that he owes money to other persons who provided work or furnished materials for the work or materials in respect of which the payment referred to in clause (b) was made, holds that money in trust for the benefit of those other persons.

(3) A person who is subject to the obligations of a trust established under this section is released from any obligations of the trust when he pays the money to

(a) the person for whom he holds the money in trust, or

(b) another person for the purposes of having it paid to the person for whom the money is held in trust.

16.2(1) When a certificate of substantial performance is issued in respect of a contract, the owner shall retain for a period of 45 days from the date of the completion of the contract an amount equal to 15% of the value of the work actually done and materials actually furnished on or after the date of issue of the certificate of substantial performance.

(2) In addition to the amount retained under subsection (1), the owner shall also retain, during any time while a lien is registered, any amount payable under the contract that has not been paid under the contract that is over and above the 15% referred to in subsection (1) for work done and materials furnished on and after the date of issue of the certificate of substantial performance of the contract.

(3) Except as provided in section 10(1), 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 or materials actually furnished on and after the date of issue of the certificate of substantial performance by the contractor or subcontractor for whom and at whose request the work was done or the materials were furnished giving rise to the claim of lien, and
 - (b) any additional sum due and owing but unpaid to that contractor or subcontractor for work or materials done or furnished on and after the date of issue of the certificate of substantial performance.
- (4) Except as prescribed in section 10(1) when, in respect of liens to which this section applies, there is more than one lien claim arising from work done or materials furnished 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 or materials actually furnished on and after the date of issue of the certificate of substantial performance 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 for work done or materials furnished on and after the date of issue of the certificate of substantial performance.
- (5) A payment of an amount, other than that required to be retained under subsection (1), that is made in good faith by an owner or mortgagee to a contractor at a time when there is not any lien registered, is valid so that the minor lien fund is reduced by the amount of the payment.
- (6) 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 purpose other than the satisfaction of liens, and
 - (b) when distributed, shall be distributed in the manner prescribed by section 47.
- (7) A person who in good faith underestimates the value of the work actually done or materials actually furnished 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.
- 16.3(1)** When a certificate of substantial performance is issued,
 - (a) any lien arising out of work done or materials furnished before the date of issue of a certificate of substantial performance is a charge on the major lien fund, and
 - (b) any lien arising out of work done or materials furnished on and after the date of issue of a certificate of substantial

performance of the contract is a charge on the minor lien fund.

(2) When a minor lien fund does not arise under section 16.2 any lien arising out of work done or materials furnished is a charge on the major lien fund.

16.4 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, where a minor lien fund does not arise under section 16.2.

9 *Section 17 is amended by striking out “section 15(2)” and substituting “section 15(1) or 16.2(1), as the case may be,”.*

10 *Section 18 is amended*

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

18(1) On the expiration of 45 days from the day that the contract is completed, payment of the major lien fund may be validly made so as to discharge the owner’s liability in respect of all liens that are a charge on the major lien fund, unless a statement of lien is registered.

(1.1) Notwithstanding subsection (1), on the expiration of 45 days

(a) from the date of issue of a certificate of substantial performance, payment of the major lien fund may be validly made, and

(b) from the day the contract is completed, payment of the minor lien fund may be validly made,

so as to discharge the owner’s liability in respect of all liens that are a charge on the lien fund in respect of which the payment was made, unless a statement of lien is registered.

(b) in subsection (2) by striking out “pay into court the amount of the lien fund” and substituting “give security for or pay into court the amount of the major lien fund, the minor lien fund or both, as the case may be”.

(c) by repealing subsection (4) and substituting the following:

(4) Security given or payment into court under subsection (2) discharges the owner from any liability in respect of liens and

(a) the security or money when given or paid into court stands in the place of the land, and

(b) the order shall provide that the liens be removed from the title to the land concerned.

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), (2) and (4) presently read:

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.

(2) When a statement of lien has been registered, the owner or a mortgagee authorized by the owner to disburse the money secured by a mortgage may

(a) by interlocutory application in any proceedings that have been commenced to enforce a lien, or

(b) on application by originating notice,

pay into court the amount of the lien fund.

(4) Payment into court ordered under subsection (2) discharges the owner from any liability in respect of liens and

(a) the money when paid into court stands in the place of the land, and

(b) the order shall provide that the liens be removed from the title to the land concerned.

11 Section 19 is amended

- (a) in subsection (1) by adding “or 16.2” after “15”;*
- (b) in subsection (2)*
 - (i) by adding “give security for or” after “18 and”;*
 - (ii) by adding “the security that is to be given or” after “the amount of”.*

12 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 liable on the contract or his agent, and**
 - (ii) the persons liable on any intervening contracts or their agents,**

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 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 5 days from the day on which the notice was given, an objection to the payment’s being made,**

he may, subject to subsection (2), make the payment and the payment is a payment on his contract or, in the case of a mortgagee, an advance on the mortgage, and on the intervening contracts, as the case may be, but not so as to affect the percentage required to be retained by the owner under section 15(1) or 16.2(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 to whom a notice was given under subsection (1)(a), or his agent, an objection to the payment’s being made before the payment is made.**

13 Section 24(1) and (3) are amended by striking out “registered”.

11 Section 19 presently reads:

19(1) If a lien becomes a charge on the amount required to be retained under section 15 and the contract price is not payable in money, the owner or the person primarily liable on the contract shall pay in money the percentage of the value to be retained by him.

(2) When the owner or person primarily liable on the contract desires to avail himself of the provisions of section 18 and pay into court the amount to be retained and the contract price is not payable in money, the court may, on application by the owner on any notice, if any, that the court directs, fix the amount of money that is to be paid into court with respect to the value of the percentage to be retained.

12 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.

13 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

14 Section 26(3) is amended by striking out “\$20” and substituting “\$300”.

15 Section 29 is repealed and the following is substituted:

29 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

(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 as a result thereof unless that person satisfies the court that the registration of the lien was made or the amount of the lien was calculated in good faith and without negligence.

16 Section 30 is repealed and the following is substituted:

30(1) 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 or the contract to furnish the materials is abandoned.

(2) 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 or the contract to provide the services is abandoned.

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

(a) commencing when the lien arises, 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.

14 Section 26(3) presently reads:

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

15 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.

16 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,

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

(4) In cases not referred to in subsections (1) to (3), 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.

(5) Notwithstanding subsections (1) to (4), the time limited by this section for registering a lien is not extended by reason only that something improperly done or omitted to be done in respect of work done or materials furnished is corrected or done, as the case may be, at a later date.

17 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,

(a) an action is commenced under this Act

(i) to realize on the lien, or

(ii) in which the lien may be realized,

and

(b) the lien claimant registers a certificate of *lis pendens* in respect of his lien in the appropriate land titles office.

(b) in subsection (4)(b) by adding “or his agent, if the claim was signed by that agent,” after “registered”;

(c) by adding the following after subsection (4):

(5) The Registrar without charge may on his own initiative, and shall on request, cancel registration of a lien where the lien has ceased to exist under subsection (1).

18 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) 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.

32.2(1) Notwithstanding section 32 or 32.1, if an owner or another person affected by a lien serves written notice on the registered lienholder to commence an action to realize on his lien and the registered lienholder does not

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.

17 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.

18 Section 32.1 provides for the continuation of a lien. Section 32.2 allows a person to require a lienholder to commence an action.

(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, or

(b) where he is a party to an action commenced by another registered 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 registered lienholder is served with the notice, the lien ceases to exist.

(2) Subsection (1) does not apply, with respect to the registration of a certificate of lis pendens, where

(a) security is given or payment is made into court, and

(b) the lien is removed from the title to the land concerned.

19 Section 33(1) is repealed and the following is substituted:

33(1) A lien that has continued to exist by reason of registration of the certificate of lis pendens relating to that lien continues to exist until

(a) the proceedings are concluded, or

(b) the certificate of lis pendens is discharged,

whichever occurs later.

20 Section 35 is repealed and the following is substituted:

35(1) The court may, on application by originating notice, order that the registration of a lien be removed from the title to the land concerned

(a) where security is given or payment is made into court for

(i) the amount of the claim,

(ii) the maximum amount for which the lien may properly attach under section 15(3) or (4) or 16.2(3) or (4), or

(iii) such lesser amount as the court determines,

and any costs that the court may fix,

(b) where the relevant lien fund has been paid out under this Act, or

(c) on any ground not referred to in clause (a) or (b) as the court considers proper.

(2) Money paid into court or any security given under subsection (1)

(a) stands in place of the land,

(b) is subject to the claims of the person whose lien has been removed, and

(c) shall not affect the amount required to be retained under section 15(1) or 16.2(1).

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

19 Section 33(1) presently reads:

33(1) When a certificate of lis pendens is registered in accordance with section 32, any lien which has continued to exist by reason of registration of the certificate of lis pendens continues to exist until the proceedings are concluded.

20 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

(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.

(4) A registered 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.

(5) A registered 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.

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

21 Section 36(3)(c) and (4)(b) are amended by adding “against whom relief is sought” after “encumbrance”.

22 Section 37 is repealed and the following is substituted:

37 All persons named as parties in the statement of claim and all registered lienholders are parties to the proceedings.

37.1(1) Unless otherwise ordered, the statement of claim shall be served on

(a) all persons who are parties to the proceedings,

(b) all persons who by the records of the land titles office appear to have an interest in the land against which the lien is registered, and

(c) any person not referred to in clauses (a) and (b) that the court may direct.

(2) The court may on application dispense with service of the statement of claim on any person subject to those conditions, if any, that it considers proper.

23 Section 38 is amended

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

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

21 Section 36(3) and (4) presently read:

(3) When the party issuing the statement of claim is not the contractor, the statement of claim shall name as defendants

(a) the owner,

(b) the contractor, and

(c) the holder of any prior registered encumbrance.

(4) When the person issuing the statement of claim is the contractor, he shall name as defendants

(a) the owner, and

(b) the holder of any prior registered encumbrance.

22 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.

23 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

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

24 Section 40(1) and (2) are repealed and the following is substituted:

40(1) At any time after a statement of claim has been issued to enforce a lien, any person interested in the property to which the lien attaches or that is otherwise affected by the lien may apply to the court for the appointment of a receiver of the rents and profits from the property against which the claim of lien is registered, and the court may order the appointment of a receiver on any terms and on the giving of any security or without security, as the court considers appropriate.

(2) At any time after a statement of claim has been issued to enforce a lien, any person interested in the property to which the lien attaches or that is otherwise affected by the lien may apply to the court for the appointment of a trustee and the court may, on the giving of any security or without security, as the court considers appropriate, appoint a trustee

(a) with power to manage, sell, mortgage or lease the property subject to the supervision, direction and approbation of the court, and

(b) with power, on approval of the court, to complete or partially complete the improvement.

25 Section 52 is amended by striking out “\$200” wherever it occurs and substituting “\$5000”.

26 The following is added after section 52:

52.1 In addition to any method of service permitted by law, any document or statement of claim respecting matters coming under this Act may be served on a lienholder

(a) by personal service,

(b) by single registered mail sent to the address for service set out in the statement of lien, or

(c) by delivery to the address that is the address for service set out in the statement of lien.

27 The Builders’ Lien Act,

(a) as enacted immediately prior to the coming into force of this Act, applies

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

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

loses his lien.

24 Section 40(1) and (2) presently read:

40(1) At any time after service of the statement of claim, any party may apply to the court for the appointment of a receiver of the rents and profits from the property against which the claim of lien is registered, and the court may order the appointment of a receiver on any terms and on the giving of any security or without security as it considers appropriate.

(2) At any time after service of the statement of claim, any party may apply to the court for the appointment of a trustee and the court may, on the giving of any security or without security as the court considers appropriate, appoint a trustee

(a) with power to manage, sell, mortgage or lease the property subject to the supervision, direction and approbation of the court, and

(b) with power on approval of the court to complete or partially complete the improvement.

25 Section 52 presently reads:

52(1) An appeal lies to the Court of Appeal from a decision of the court under this Act in all matters where the amount of the lien or the total amount of the liens joined in one action or proceedings is \$200 or more.

(2) When the amount of the lien or the total amount of the liens joined is less than \$200 the decision of the court of first instance is final.

26 Service of documents.

27 Application of Act.

(i) to any contract or subcontract entered into before July 1, 1985,

(ii) to any contract for the furnishing of materials, the performance of services or the provision of work by a labourer entered into before July 1, 1985,

(iii) to any subcontract entered into on or after July 1, 1985 that is made under a contract entered into before July 1, 1985, and

(iv) to any contract for the furnishing of materials, the performance of services or the provision of work by a labourer entered into on or after July 1, 1985 that is made in respect of a contract entered into before July 1, 1985,

and

(b) as amended by this Act, applies

(i) to any contract entered into on or after July 1, 1985,

(ii) subject to clause (a)(iii), to any subcontract entered into on or after July 1, 1985, and

(iii) subject to clause (a)(iv), to any contract for the furnishing of materials, the performance of services or the provision of work by a labourer entered into on or after July 1, 1985,

under which a builder's lien may arise.

In accordance with section 4(1) of the Interpretation Act, this Bill comes into force on the date it receives Royal Assent.