



HIGHLIGHTS OF “WHAT WE HEARD”

Results of the Public and Stakeholder Engagement on A Proposed *Builders Lien Act* for the NWT

Background

The *Mechanics Lien Act* governs the payment relationship between owners, contractors, subcontractors, labourers, and providers of materials on a construction project. It provides a dispute resolution mechanism whereby a participant in a construction project can file a claim against the property being improved, and enforce that claim in court in the event that they are not paid what is owed to them as wages or under an invoice. Such legislation exists in every jurisdiction in Canada. In 2020 new legislation was adopted in Alberta and Ontario. A review conducted by the Department of Justice concluded that the NWT *Mechanics Lien Act* should be repealed and replaced with more modern legislation.

The Department of Justice engaged external stakeholders regarding potential areas for change in replacing the Act. An engagement paper on *A Proposed Builders Lien Act for the Northwest Territories* was emailed to NWT stakeholders, municipalities, the legal community, the financial services industry, the construction industry, other GNWT departments, and posted on the Department’s webpage in June 2020. The deadline for submission of comments was extended from August 4, 2020 to September 30, 2020 to allow sufficient time for more substantive feedback.

Purpose of this Document

This summary provides highlights of comments received from the engagement process. It does not include conclusions or recommendations from the Department of Justice based on the feedback received, however the input received will help to inform the legislation as it is developed.

Due to the small number of stakeholders and respondents, privacy considerations prevent the Department from sharing a more detailed breakdown of what we heard; however, all comments have been noted and are being considered in the development of a new *Builders Lien Act*.

Results – Highlights of What We Heard¹

- All respondents who answered this question were in favour of the change in name from *‘Mechanics’ Lien Act* to *‘Builders’ Lien Act*
- Several respondents emphasized the need for clarity around definitions including “improvements” in relation to services provided. Comments were also received regarding the definition of “material”, “labourer”, and “property”.

¹ Some responses received were in-depth while others focussed solely on specific issues of interest to the respondent. Not all respondents answered all questions. Where a proportion of respondents is stated this is in reference to those who responded to a specific question, not respondents overall.



- Most respondents stated that the current period of 45 days for filing claims of lien is reasonable. All respondents supported extending timelines for the perfection of liens – some to the proposed period of 90 days, others for longer.
- A range of responses were received regarding the need for Court remedies for discharge of a registration with some in favour of the proposed two year limit, and some against – either wholly or just the two year period.
- A majority of respondents stated that a trust regime is necessary and that the funds should be retained by the owner in trust. However, there were opposing views on the proposal that a beneficiary only be able to claim against their direct trustee, so each payer under the contract only becomes a trustee for its payee.
- A majority of respondents were in favour of introducing the concept of “substantial completion”. A smaller majority supported linking substantial completion to a percentage of the contract price with a focus on objective determination, and recognition that where the deficiency is mechanical, a larger value for substantial completion is required. Most respondents felt that substantial completion is best determined by a professional consultant/third party on a project (such as an engineer or architect). Responses on the proposal to include a finishing holdback in the legislation varied from in favour to against.
- Most responses stated that a release of holdback in large contracts is not required.
- A majority of respondents favoured adding a set-off mechanism for the release of trust funds in the legislation.
- A majority of respondents were in favour of eliminating the existing posting of payroll at site of building requirement.
- A majority of respondents were in favour of liens for condominiums.
- A majority of respondents stated that a “prompt payment” remedy isn’t an issue or required and that the payment period should be around 30 days. Respondents were in favour of mediation and/or arbitration to avoid wasting court time.
- Most respondents agreed with the proposed changes regarding priority among lien holders.
- A general query was received as to whether the new legislation would apply to both public and private projects.

Next Steps

The Department of Justice greatly appreciates all of the feedback received. The Department intends to bring forward a Bill that will repeal and replace the current *Mechanics Lien Act* with a new *Builders Lien Act* which will be informed by what we heard during the engagement. It is anticipated the legislation will be formally introduced later in 2021, at which point it will be available for public review.