
EXECUTIVE SUMMARY

*The Builders' Liens Act*¹ (the “Act” or the “Manitoba Act”) has long been relied upon by those involved in the construction industry, including property owners, financiers of construction projects, contractors, subcontractors, and suppliers of construction material to ensure that persons contributing to the improvement of land are paid for that contribution in accordance with their contractual entitlements. To achieve its fundamental purpose, the Act includes two statutory remedies: trust provisions and lien provisions.

Pursuant to the statutory mandate of the Manitoba Law Reform Commission (“the Commission”) to improve and modernize the law, the Commission has chosen to study Manitoba’s construction remedies legislation for several reasons. First, Manitoba’s construction industry has expanded and changed significantly since the current legislation was enacted in 1982. While the Act was extensively reviewed in the 1970’s by this Commission, there have been no substantive changes to the legislation in almost 40 years. Additionally, recent judicial criticisms of the Act have identified a need for a thoughtful and comprehensive review of the separate remedies available under the statute to improve its cohesion. Finally, this review has been undertaken during a growing national conversation over whether legislative solutions should be enacted to address delays in payment within the construction industry.

The Commission released a Consultation Report in February 2018 that identified issues for discussion and invited stakeholders to comment on proposed reforms. Through written submissions and in-person meetings, the Commission received thoughtful and comprehensive input from organizations and individuals in the construction industry (both local and national organizations) as well as professional associations, legal practitioners, potential owner representatives, and other interested bodies. The feedback received was given careful consideration by the Commission and helps to inform this report.

In this Final Report, the Commission recommends streamlining the Act to make it more accessible and user-friendly while also refocusing the Act on its original purpose of providing payment protections for those within the construction contract pyramid. With respect to the current lien and trust remedies contained in the Act, the Commission recommends reforms that would clarify the purposes and processes of these remedies as well as reforms to improve their interaction. In addition, the Commission recommends the addition of two new remedies, namely, (1) a prompt payment legislative regime to ensure that construction project funds flow down the construction payment chain on a timely basis, and (2) mandatory surety bonding on public contracts to provide additional funds for completion of projects in the event of contractor default.

The Commission recognizes that different segments of the construction industry have varying and often competing interests. The Commission’s role is not to favor one group or segment of the industry over any other but to conduct a comprehensive review of the legislative history of

¹ CCSM c B91 [*Builders' Liens Act*].

Manitoba's construction lien legislation, including consideration of the purpose of liens and trusts within the industry, identify and analyze issues within the legislative scheme as it currently stands, and develop recommendations that modernize the laws intended to support Manitoba's construction industry.

In making its recommendations, the Commission seeks to modernize and expand Manitoba's approach to legislating payment remedies for use by the construction industry while also preserving the province's longstanding and entrenched legislative history.