

# Construction ~~Lien~~ Act

R.S.O. 1990, CHAPTER C.30

**Consolidation Period:** From ~~July 1, 2011~~ June 14, 2017 to the e-Laws currency date.

Last amendment: ~~2010, c. 16, Sched. 2, s. 2~~ Sched. 2, s. 2, 2017, c. X

Legislative History: 1994, c. 27, s. 42; 1996, c. 25, s. 4; 1997, c. 19, s. 30; 1997, c. 23, s. 4; 1999, c. 12, Sched. B, s. 3; [2002, c. 17, Sched. F, Table](#); [2006, c. 19, Sched. C, s. 1 \(1\)](#); [2006, c. 21, Sched. C, s. 102](#); [2010, c. 16, Sched. 2, s. 2](#).

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## Interpretation

### Definitions

~~1.1~~ (1) In this Act,

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“action” means an action under Part VIII; (“action”)

~~“construction trade newspaper” means a newspaper having circulation generally throughout Ontario, that is published no less frequently than on all days except Saturdays and holidays, and in which calls for tender on construction contracts are customarily published, and that is primarily devoted to the publication of matters of concern to the construction industry; (“journal de l’industrie de la construction”)~~  
“broader public sector organization” has the same meaning as in the *Broader Public Sector Accountability Act, 2010*; (“organisme du secteur parapublic”)

“contract” means the contract between the owner and the contractor, and includes any amendment to that contract; (“contrat”)

“contractor” means a person contracting with or employed directly by the owner or an agent of the owner to supply services or materials to an improvement and includes a joint venture entered into for the purposes of an improvement or improvements; (“entrepreneur”)

“court” means the Superior Court of Justice; (“tribunal”)

“Crown” includes a Crown agency to which the *Crown Agency Act* applies; (“Couronne”)

“holdback” means the 10 per cent of the value of the services or materials supplied under a contract or subcontract required to be withheld from payment by Part IV; (“retenue”)

“home” means,

- (a) a self-contained one-family dwelling, detached or attached to one or more others by a common wall,
  - (b) a building composed of two self-contained, one-family dwellings under one ownership, or
  - (c) a condominium one-family dwelling unit, including the common interests appurtenant thereto,
- and includes any structure or works used in conjunction therewith; (“logement”)

“home buyer” means a person who buys the interest of an owner in a premises that is a home, whether built or not at the time the agreement of purchase and sale in respect thereof is entered into, provided,

- (a) not more than 30 per cent of the purchase price, excluding money held in trust under section 81 of the *Condominium Act, 1998*, is paid prior to the conveyance, and
- (b) the home is not conveyed until it is ready for occupancy, evidenced in the case of a new home by the issuance of a municipal permit authorizing occupancy or the issuance under the *Ontario New Home Warranties Plan Act* of a certificate of completion and possession; (“acquéreur d’un logement”)

“improvement” means, in respect of any land,

- (a) any alteration, addition or capital repair to the land,
- (b) any construction, erection or installation on the land, including the installation of industrial, mechanical, electrical or other equipment on the land or on any building, structure or works on the land that is essential to the normal or intended use of the land, building, structure or works, or
- (c) the complete or partial demolition or removal of any building, structure or works on the land; (“améliorations”)

“interest in the premises” means an estate or interest of any nature, and includes a statutory right given or reserved to the Crown to enter any lands or premises belonging to any person or public authority for the purpose of doing any work, construction, repair or maintenance in, upon, through, over or under any lands or premises; (“intérêt sur le local”)

“land” includes any building, structure or works affixed to the land, or an appurtenance to any of them, but does not include the improvement; (“bien-fonds”)

“lien claimant” means a person having a preserved or perfected lien; (“créancier privilégié”)

“materials” means every kind of movable property,

- (a) that becomes, or is intended to become, part of the improvement, or that is used directly in the making of the improvement, or that is used to facilitate directly the making of the improvement,
- (b) that is equipment rented without an operator for use in the making of the improvement; (“matériaux”)

“mortgage” includes a charge and “mortgagee” includes a chargee; (“hypothèque”, “créancier hypothécaire”)

“municipality” means —

- (a) a municipality ~~or within the meaning of the Municipal Act, 2001.~~
- (b) a local board, ~~both as defined in the Municipal Affairs within the meaning of the Municipal Act, 2001, and~~
- (c) a conservation authority established by or under the ~~Conservation Authorities Act~~, or a predecessor of that Act;  
(“municipalité”)

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“owner” means any person, including the Crown, having an interest in a premises at whose request and,

- (a) upon whose credit, or
- (b) on whose behalf, or
- (c) with whose privity or consent, or
- (d) for whose direct benefit,

an improvement is made to the premises but does not include a home buyer; (“propriétaire”)

“payer” means the owner, contractor or subcontractor who is liable to pay for the services or materials ~~or services~~ supplied to an improvement under a contract or subcontract; (“responsable du paiement”)

“payment certifier” means an architect, engineer or any other person upon whose certificate payments are made under a contract or subcontract; (“personne qui autorise le paiement”)

“person having a lien” includes both a lien claimant and a person with an unpreserved lien; (“titulaire d’un privilège”)

“premises” includes,

- (a) the improvement,
- (b) all materials supplied to the improvement, and
- (c) the land occupied by the improvement, or enjoyed therewith, or the land upon or in respect of which the improvement was done or made; (“local”)

~~“priceprescribed” means the contract or subcontract price, prescribed by the regulations; (“prescrit”)~~

“price” means,

- (a) the contract or subcontract price,
- (i) agreed ~~upon~~ between the parties, or
- (b) ~~whereif~~ no specific price has been agreed ~~upon~~ between them, the actual market value of the services or materials that have been supplied to the improvement under the contract or subcontract; ~~(“prix, and~~
- (b) any direct costs incurred as a result of an extension of the duration of the supply of services or materials to the improvement for which the contractor or subcontractor, as the case may be, is not responsible; (“prix”).

“regulations” means the regulations made under this Act; (“règlements”)

“services or materials” includes both services and materials; (“services ou matériaux”)

“subcontract” means any agreement between the contractor and a subcontractor, or between two or more subcontractors, relating to the supply of services or materials to the improvement and includes any amendment to that agreement; (“contrat de sous-traitance”)

“subcontractor” means a person not contracting with or employed directly by the owner or an agent of the owner but who supplies services or materials to the improvement under an agreement with the contractor or under the contractor with another subcontractor and includes a joint venture entered into for the purposes of an improvement or improvements;  
(“sous-traitant”)

“suffers damages as a result” means suffers damages that could be reasonably foreseen to result; (“subir des dommages en conséquence”)

“supply of services” means any work done or service performed upon or in respect of an improvement, and includes,

- (a) the rental of equipment with an operator, and

(b) where the making of the planned improvement is not commenced, the supply of a design, plan, drawing or specification that in itself enhances the value of the owner's interest in the land,

and a corresponding expression has a corresponding meaning; ("prestation de services")

"wages" means the money earned by a worker for work done by time or as piece work, and includes all monetary supplementary benefits, whether provided for by statute, contract or collective bargaining agreement; ("salaire")

"worker" means a person employed for wages in any kind of labour; ("ouvrier")

"workers' trust fund" means any trust fund maintained in whole or in part on behalf of any worker on an improvement and into which any monetary supplementary benefit is payable as wages for work done by the worker in respect of the improvement; ("fonds en fiducie des ouvriers")

"written notice of a lien" ~~includes means~~ a claim for lien ~~and any or a~~ written notice of a lien in the prescribed form, given by a person having a lien ~~that~~,

~~—(a) identifies the payer and identifies the premises; and~~

~~—(b) states the amount that the person has not been paid and is owed to the person by the payer.~~ ("avis écrit d'un privilège")  
R.S.O. 1990, c. C.30, s. 1 (1); 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. C, s. 1 (1); 2010, c. 16, Sched. 2, s. 2 (1, 2).

#### Capital repair

(1.1) For the purposes of clause (a) of the definition of "improvement" in subsection (1), a capital repair to land is any repair intended to extend the normal economic life of the land or of any building, structure or works on the land, or to improve the value or productivity of the land, building, structure or works, but does not include maintenance work performed in order to prevent the normal deterioration of the land, building, structure or works or to maintain the land, building, structure or works in a normal, functional state.

#### Direct costs

(1.2) For the purposes of clause (b) of the definition of "price" in subsection (1), the direct costs incurred are the reasonable costs of performing the contract or subcontract during the extended period of time, including costs related to the additional supply of services or materials (including equipment rentals), insurance and surety bond premiums, and costs resulting from seasonal conditions, that, but for the extension, would not have been incurred, but do not include indirect damages suffered as a result, such as loss of profit, productivity or opportunity, or any head office overhead costs.

#### **When materials supplied**

(2) For the purposes of this Act, materials are supplied to an improvement when they are,

(a) placed on the land on which the improvement is being made;

(b) placed upon land designated by the owner or an agent of the owner that is in the immediate vicinity of the premises, but placing materials on the land so designated does not, of itself, make that land subject to a lien; or

(c) in any event, incorporated into or used in making or facilitating directly the making of the improvement. R.S.O. 1990, c. C.30, s. 1 (2).

#### **Idem**

(3) A contractor or subcontractor to whom materials are supplied and who designates land under clause (2) (b) is deemed to be the owner's agent for that purpose, unless the person supplying the materials has actual notice to the contrary. R.S.O. 1990, c. C.30, s. 1 (3).

#### **Section Amendments with date in force (d/m/y)**

2002, c. 17, Sched. F, Table - 01/01/2003

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

2010, c. 16, Sched. 2, s. 2 (1, 2) - 25/10/2010

#### Alternative financing and procurement arrangements

1.1 (1) This section applies if the Crown, a municipality or a broader public sector organization, as the owner of a premises, enters into an agreement with a special purpose entity that requires the entity to finance and undertake an improvement on

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behalf of the Crown, municipality or broader public sector organization, as the case may be, and, for the purpose, to enter into an agreement with a contractor in respect of the improvement.

Where entity deemed to be owner

(2) In the following portions and provisions of this Act and any regulations made for the purposes of them, the special purpose entity is deemed to be the owner of the premises in place of the Crown, municipality or broader public sector organization, and the agreement between the entity and the contractor is deemed to be the contract:

1. Part I.1.
2. Part II.1.
3. Section 32.
4. Section 39.
5. Any other portion or provision that may be prescribed.

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Crown, etc., as owner

(3) Except in the portions and provisions referred to in subsection (2), the Crown, municipality or broader public sector organization continues to be the owner of the premises for the purposes of this Act, which applies with the following modifications:

1. For the purposes of section 22, holdbacks shall be determined in reference to the agreement between the contractor and the special purpose entity.
2. For the purposes of section 85.1, the agreement between the contractor and the special purpose entity is deemed to be a public contract.

Contracts, substantial performance and completion

When contract substantially performed

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

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- (a) when the improvement to be made under that contract or a substantial part thereof is ready for use or is being used for the purposes intended; and
- (b) when the improvement to be made under that contract is capable of completion or, where there is a known defect, correction, at a cost of not more than,
  - (i) 3 per cent of the first \$~~500,000~~1,000,000 of the contract price,
  - (ii) 2 per cent of the next \$~~500,000~~1,000,000 of the contract price, and
  - (iii) 1 per cent of the balance of the contract price. R.S.O. 1990, c. C.30, s. 2 (1).

Idem

(2) For the purposes of this Act, where the improvement or a substantial part thereof is ready for use or is being used for the purposes intended and ~~the remainder of the improvement cannot be completed expeditiously for reasons beyond the control of the contractor or, where~~ the owner and the contractor agree not to complete the improvement expeditiously, the price of the services or materials remaining to be supplied and required to complete the improvement shall be deducted from the contract price in determining substantial performance. R.S.O. 1990, c. C.30, s. 2 (2).

When contract deemed completed

(3) For the purposes of this Act, a contract shall be deemed to be completed and services or materials shall be deemed to be last supplied to the improvement when the price of completion, correction of a known defect or last supply is not more than the lesser of,

- (a) 1 per cent of the contract price; and
- (b) \$~~1,000~~5,000. R.S.O. 1990, c. C.30, s. 2 (3).

Multiple improvements under a contract

(4) If more than one improvement is to be made under a contract and each of the improvements is to lands that are not contiguous, then, if the contract so provides, each improvement is deemed for the purposes of this section to be under a separate contract.

## **PART I GENERAL**

### **Act binds Crown**

~~3.3~~ (1) Subject to section 16 (where lien does not attach to the premises), this Act binds the Crown. R.S.O. 1990, c. C.30, s. 3 (1).

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### **Exception re certain payments**

~~(2) This Act does not apply in respect of labour, material or services supplied as a result of a contract, as defined in the Ministry of Transportation and Communications Creditors Payment Act, being chapter 290 of the Revised Statutes of Ontario, 1980, made before the 1st day of April, 1990. R.S.O. 1990, c. C.30, s. 3 (2).~~

(2) REPEALED: 2017, c. XX, s. 5.

### **Exception re notice of claim**

(3) Section 7 of the *Proceedings Against the Crown Act* does not apply in respect of an action against the Crown under this Act. R.S.O. 1990, c. C.30, s. 3 (3).

(4) REPEALED: 1997, c. 23, s. 4 (1).

### **Section Amendments with date in force (d/m/y)**

1997, c. 23, s. 4 (1) - 28/11/1997

### **No waiver of rights**

~~4.4~~ An agreement by any person who supplies services or materials to an improvement that this Act does not apply to the person or that the remedies provided by it are not available for the benefit of the person is void. R.S.O. 1990, c. C.30, s. 4.

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### **Contracts to conform**

~~5.5~~ (1) Every contract or subcontract related to an improvement is deemed to be amended in so far as is necessary to be in conformity with this Act. R.S.O. 1990, c. C.30, s. 5 (1).

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### **Retention of holdbacks authorized**

(2) Without restricting the generality of subsection (1), where the purchaser is an owner, an agreement of purchase and sale that provides for the making or completion of an improvement shall be deemed to provide for the retention of holdbacks by the purchaser, and tender by the purchaser on closing is not defective by reason only that the purchaser does not tender the amount of the holdbacks. R.S.O. 1990, c. C.30, s. 5 (2).

### **Minor irregularities**

~~6.6~~ (1) No certificate, declaration or claim for lien is invalidated by reason only of a failure to comply strictly with subsection 32 (2) or (5), subsection 33 (1) or subsection 34 (5), unless in the opinion of the court a person has been prejudiced thereby, and then only to the extent of the prejudice suffered. R.S.O. 1990, c. C.30, s. 6.

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(2) Minor irregularities to which subsection (1) applies include,

(a) a minor error or irregularity in the name of an owner of a premises or of a person for whom services or materials were supplied;

(b) a minor error or irregularity in the legal description of a premises; and

(c) including an owner's name in the wrong portion of a claim for lien.

Part i.1

prompt payment

Definition, "proper invoice"

6.1 In this Part,

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“proper invoice” means a written bill or other request for payment for services or materials in respect of an improvement under a contract, if it contains the following information and, subject to subsection 6.2 (2), meets any other requirements that the contract specifies:

1. The contractor’s name and address.
2. The date of the proper invoice and the period during which the services or materials were supplied.
3. Information identifying the authority, whether in the contract or otherwise, under which the services or materials were supplied.
4. A description, including quantity where appropriate, of the services or materials that were supplied.
5. The amount payable for the services or materials that were supplied, and the payment terms.
6. The name, title, telephone number and mailing address of the person to whom payment is to be sent.
7. Any other information that may be prescribed.

#### Giving of proper invoices

6.2 (1) Proper invoices shall be given to an owner on a monthly basis, unless the contract provides otherwise.

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#### Restriction on conditions

(2) A provision in a contract that makes the giving of a proper invoice conditional on the prior certification of a payment certifier or on the owner’s prior approval is of no force or effect.

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(3) For greater certainty, subsection (2) has no application to a provision in a contract that provides for the certification of a payment certifier or the owner’s approval after a proper invoice is given.

#### Payment deadline, owner to contractor

6.3 (1) Subject to the giving of a notice of non-payment under subsection (2), an owner shall pay the amount payable under a proper invoice no later than 28 days after receiving the proper invoice from the contractor.

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#### Exception, notice of non-payment if dispute

(2) An owner who disputes a proper invoice may refuse to pay all or any portion of the amount payable under the proper invoice within the time specified in subsection (1) if, no later than 14 days after receiving the proper invoice from the contractor, the owner gives to the contractor a notice of non-payment, in the prescribed form and manner, specifying the amount of the proper invoice that is not being paid and detailing all of the reasons for non-payment.

#### Requirement to pay remaining amount

(3) Subsection (1) continues to apply to any amount payable under the proper invoice that is not the subject of a notice under subsection (2).

#### Payment deadlines, contractor to subcontractor

#### Full payment

6.4 (1) Subject to the giving of a notice of non-payment under subsection (6), a contractor who receives full payment of a proper invoice within the time specified in subsection 6.3 (1) shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract with the contractor that were included in the proper invoice the amount payable to the subcontractor.

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#### Partial payment, paid amount

(2) Subject to the giving of a notice of non-payment under subsection (6), if the payment received by the contractor from the owner is only for a portion of the amount payable under a proper invoice, the contractor shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract with the contractor that were included in the proper invoice from the amount paid by the owner.

#### Same

(3) For the purposes of subsection (2), if more than one subcontractor is entitled to payment, payment shall be made in accordance with the following rules:

1. If the amount not paid by the owner is specific to services or materials supplied by a particular subcontractor or subcontractors, the remaining subcontractors shall be paid, with any amount paid by the owner in respect of the subcontractor or subcontractors who are implicated in the dispute payable to them on a rateable basis, as applicable.

2. In any other case, subcontractors shall be paid on a rateable basis.

#### Non or partial payment, unpaid amount

(4) Subject to the giving of a notice of non-payment under subsection (5) or (6), if the owner does not pay some or all of a proper invoice within the time specified in subsection 6.3 (1), the contractor shall, no later than 35 days after giving the proper invoice to the owner, pay each subcontractor who supplied services or materials under a subcontract with the contractor that were included in the proper invoice the amount payable to the subcontractor, to the extent that he or she was not paid fully under subsection (2).

#### Exception, notice of non-payment if owner does not pay

(5) Subsection (4) does not apply in respect of a subcontractor if, no later than the date specified in subsection (7), the contractor gives to the subcontractor, in the prescribed manner,

(a) a notice of non-payment, in the prescribed form,

(i) stating that some or all of the amount payable to the subcontractor is not being paid within the time specified in subsection (4) due to non-payment by the owner,

(ii) specifying the amount not being paid, and

(iii) providing an undertaking to refer the matter to adjudication under Part II.1 no later than 14 days after giving the notice to the subcontractor; and

(b) a copy of any notice of non-payment given by the owner under subsection 6.3 (2).

#### Exception, notice of non-payment if dispute

(6) A contractor who disputes, in whole or in part, the entitlement of a subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the time specified in subsection (1), (2) or (4), as the case may be, if, no later than the date specified in subsection (7), the contractor gives to the subcontractor a notice of non-payment, in the prescribed form and manner, specifying the amount that is not being paid and detailing all of the reasons for non-payment.

#### Timing of notice

(7) For the purposes of subsections (5) and (6), the contractor must give notice no later than,

(a) seven days after receiving a notice of non-payment from the owner under subsection 6.3 (2); or

(b) if no notice was given by the owner, before the expiry of the period referred to in subsection (4).

#### Payment deadline once payment received from owner

(8) Subsections (1) and (2) apply, with necessary modifications, in respect of any amount that is the subject of a notice under subsection (5), once the amount is paid by the owner.

#### Payment deadlines, subcontractor to subcontractor

#### Full payment

6.5 (1) Subject to the giving of a notice of non-payment under subsection (7), a subcontractor who receives full payment from a contractor in respect of a proper invoice within the time specified in subsection 6.4 (1) shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract between them that were included in the proper invoice the amount payable to the subcontractor.

#### Partial payment, paid amount

(2) Subject to the giving of a notice of non-payment under subsection (7), if the payment received by the subcontractor from the contractor is only for a portion of the amount payable to the subcontractor in respect of a proper invoice, the subcontractor shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract between them that were included in the proper invoice from the amount paid by the contractor.

#### Same

(3) For the purposes of subsection (2), if more than one subcontractor is entitled to payment, payment shall be made in accordance with the following rules:

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1. If the amount not paid by the contractor is specific to services or materials supplied by a particular subcontractor or subcontractors, the remaining subcontractors shall be paid, with any amount paid by the contractor in respect of the subcontractor or subcontractors who are implicated in the dispute payable to them on a rateable basis, as applicable.

2. In any other case, subcontractors shall be paid on a rateable basis.

Non or partial payment, unpaid amount

(4) Subject to the giving of a notice of non-payment under subsection (6) or (7), if the contractor does not pay some or all of the amount payable to a subcontractor in respect of a proper invoice within the time specified in section 6.4, the subcontractor shall, no later than the date specified in subsection (5), pay each subcontractor who supplied services or materials under a subcontract between them that were included in the proper invoice the amount payable to the subcontractor, to the extent that he or she was not paid fully under subsection (2).

Same, payment deadline

(5) For the purposes of subsection (4), the subcontractor shall pay the amounts no later than,

(a) seven days after the subcontractor receives payment from the contractor; or

(b) if no payment is made by the contractor to the subcontractor, 42 days after the proper invoice was given to the owner.

Exception, notice of non-payment if contractor does not pay

(6) Subsection (4) does not apply in respect of a subcontractor if, no later than the date specified in subsection (8), the subcontractor required to pay under subsection (4) gives to the other subcontractor, in the prescribed manner,

(a) a notice of non-payment, in the prescribed form,

(i) stating that some or all of the amount payable to the subcontractor is not being paid within the time specified in subsection (4) due to non-payment by the contractor, and

(ii) specifying the amount not being paid; and

(b) a copy of any notices of non-payment received by the subcontractor in relation to the proper invoice.

Exception, notice of non-payment if dispute

(7) A subcontractor who disputes, in whole or in part, the entitlement of another subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the time specified in subsection (1), (2) or (4), as the case may be, if, no later than the date specified in subsection (8), the subcontractor gives to the other subcontractor a notice of non-payment, in the prescribed form and manner, specifying the amount that is not being paid and detailing all of the reasons for non-payment.

Timing of notice

(8) For the purposes of subsections (6) and (7), the subcontractor must give notice no later than,

(a) seven days after receiving a notice of non-payment from the contractor under subsection 6.4 (5) or (6); or

(b) if no notice was given by the contractor, before the expiry of the period referred to in clause (5) (b).

Payment deadline once payment received from contractor

(9) Subsections (1) and (2) apply, with necessary modifications, in respect of any amount that is the subject of a notice under subsection (6), once the amount is paid by the contractor.

Date proper invoice was given

(10) On the request of a subcontractor who is required to make payments in accordance with this section, a contractor shall, as soon as possible, provide to the subcontractor confirmation of the date on which the contractor gave a proper invoice to the owner.

Further application

(11) This section applies, with necessary modifications, in respect of a subcontractor who is entitled to payment in accordance with this section and any amounts payable by that subcontractor to any other subcontractor under a subcontract in respect of the improvement.

No effect on wages

6.6 Nothing in this Part in any way reduces, derogates from or alters the obligations of a contractor or subcontractor to pay wages as provided for by statute, contract or collective bargaining agreement.

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#### Interest on late payments

6.7 If an amount is not paid when it is due under this Part, interest shall be paid on the outstanding balance at the prejudgment interest rate determined under subsection 127 (2) of the *Courts of Justice Act* or, if the contract or subcontract specifies a different interest rate for the purpose, the greater of the prejudgment interest rate and the interest rate specified in the contract or subcontract.

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#### Transition

6.8 This Part applies to payments made under contracts entered into on or after the day section 7 of the *Construction Lien Amendment Act, 2017* comes into force.

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## **PART II TRUST PROVISIONS**

### **Owner's trust**

#### **Amounts received for financing a trust**

~~7.2~~ (1) All amounts received by an owner, other than the Crown or a municipality, that are to be used in the financing of the improvement, including any amount that is to be used in the payment of the purchase price of the land and the payment of prior encumbrances, constitute, subject to the payment of the purchase price of the land and prior encumbrances, a trust fund for the benefit of the contractor. R.S.O. 1990, c. C.30, s. 7 (1).

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#### **Amounts certified as payable**

(2) Where amounts become payable under a contract to a contractor by the owner on a certificate of a payment certifier, an amount that is equal to an amount so certified that is in the owner's hands or received by the owner at any time thereafter constitutes a trust fund for the benefit of the contractor. R.S.O. 1990, c. C.30, s. 7 (2).

#### **Where substantial performance certified**

(3) Where the substantial performance of a contract has been certified, or has been declared by the court, an amount that is equal to the unpaid price of the substantially performed portion of the contract that is in the owner's hands or is received by the owner at any time thereafter constitutes a trust fund for the benefit of the contractor. R.S.O. 1990, c. C.30, s. 7 (3).

#### **Obligations as trustee**

(4) The owner is the trustee of the trust fund created by subsection (1), (2) or (3), and the owner shall not appropriate or convert any part of a fund to the owner's own use or to any use inconsistent with the trust until the contractor is paid all amounts related to the improvement owed to the contractor by the owner. R.S.O. 1990, c. C.30, s. 7 (4).

### **Contractor's and subcontractor's trust**

#### **Amounts received a trust**

~~8.2~~ (1) All amounts,

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- (a) owing to a contractor or subcontractor, whether or not due or payable; or
- (b) received by a contractor or subcontractor,

on account of the contract or subcontract price of an improvement constitute a trust fund for the benefit of the subcontractors and other persons who have supplied services or materials to the improvement who are owed amounts by the contractor or subcontractor. R.S.O. 1990, c. C.30, s. 8 (1).

#### **Obligations as trustee**

(2) The contractor or subcontractor is the trustee of the trust fund created by subsection (1) and the contractor or subcontractor shall not appropriate or convert any part of the fund to the contractor's or subcontractor's own use or to any use inconsistent with the trust until all subcontractors and other persons who supply services or materials to the improvement are paid all amounts related to the improvement owed to them by the contractor or subcontractor. R.S.O. 1990, c. C.30, s. 8 (2).

#### Contractor's, subcontractor's duties re trust funds

8.1 (1) Every person who is a trustee under section 8 shall comply with the following requirements respecting the trust funds of which he or she is trustee:

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1. The trust funds shall be deposited into a bank account in the trustee's name. If there is more than one trustee of the trust funds, the funds shall be deposited into a bank account in all of the trustees' names.

2. The trustee shall maintain written records respecting the trust funds, detailing the amounts that are received into and paid out of the funds, any transfers made for the purposes of the trust, and any other prescribed information.

3. If the person is a trustee of more than one trust under section 8, the trust funds may be deposited together into a single bank account, as long as the trustee maintains the records required under paragraph 2 separately in respect of each trust.

#### Multiple trust funds in single account

(2) Trust funds from separate trusts that are deposited together into a single bank account in accordance with subsection (1) are deemed to be traceable, and the depositing of trust funds in accordance with that subsection does not constitute a breach of trust.

#### **Vendor's trust**

#### **Amounts received a trust**

~~9.2~~ (1) Where the owner's interest in a premises is sold by the owner, an amount equal to,

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(a) the value of the consideration received by the owner as a result of the sale,  
less,

(b) the reasonable expenses arising from the sale and the amount, if any, paid by the vendor to discharge any existing mortgage indebtedness on the premises,

constitutes a trust fund for the benefit of the contractor. R.S.O. 1990, c. C.30, s. 9 (1).

#### **Obligations as trustee**

(2) The former owner is the trustee of the trust created by subsection (1), and shall not appropriate or convert any part of the trust property to the former owner's own use or to any use inconsistent with the trust until the contractor is paid all amounts owed to the contractor that relate to the improvement. R.S.O. 1990, c. C.30, s. 9 (2).

#### **Payment discharging trust**

~~10.10~~ Subject to Part IV (holdbacks), every payment by a trustee to a person the trustee is liable to pay for services or materials supplied to the improvement discharges the trust of the trustee making the payment and the trustee's obligations and liability as trustee to all beneficiaries of the trust to the extent of the payment made by the trustee. R.S.O. 1990, c. C.30, s. 10.

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#### **Where trust funds may be reduced**

~~11.11~~ (1) Subject to Part IV, a trustee who pays in whole or in part for the supply of services or materials to an improvement out of money that is not subject to a trust under this Part may retain from trust funds an amount equal to that paid by the trustee without being in breach of the trust. R.S.O. 1990, c. C.30, s. 11 (1).

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#### **Application of trust funds to discharge loan**

(2) Subject to Part IV, where a trustee pays in whole or in part for the supply of services or materials to an improvement out of money that is loaned to the trustee, trust funds may be applied to discharge the loan to the extent that the lender's money was so used by the trustee, and the application of trust money does not constitute a breach of the trust. R.S.O. 1990, c. C.30, s. 11 (2).

#### **Set-off by trustee**

~~12.12~~ Subject to Part IV, a trustee may, without being in breach of trust, retain from trust funds an amount that, as between the trustee and the person the trustee is liable to pay under a contract or subcontract related to the improvement, is equal to the balance in the trustee's favour of all outstanding debts, claims or damages, ~~whether or not~~ related to the improvement. R.S.O. 1990, c. C.30, s. 12.

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#### **Liability for breach of trust**

**By corporation**

~~13.13~~ (1) In addition to the persons who are otherwise liable in an action for breach of trust under this Part,

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- (a) every director or officer of a corporation; and
- (b) any person, including an employee or agent of the corporation, who has effective control of a corporation or its relevant activities,

who assents to, or acquiesces in, conduct that he or she knows or reasonably ought to know amounts to breach of trust by the corporation is liable for the breach of trust. R.S.O. 1990, c. C.30, s. 13 (1).

**Effective control of corporation**

(2) The question of whether a person has effective control of a corporation or its relevant activities is one of fact and in determining this the court may disregard the form of any transaction and the separate corporate existence of any participant. R.S.O. 1990, c. C.30, s. 13 (2).

**Joint and several liability**

(3) Where more than one person is found liable or has admitted liability for a particular breach of trust under this Part, those persons are jointly and severally liable. R.S.O. 1990, c. C.30, s. 13 (3).

**Contribution**

(4) A person who is found liable, or who has admitted liability, for a particular breach of a trust under this Part is entitled to recover contribution from any other person also liable for the breach in such amount as will result in equal contribution by all parties liable for the breach unless the court considers such apportionment would not be fair and, in that case, the court may direct such contribution or indemnity as the court considers appropriate in the circumstances. R.S.O. 1990, c. C.30, s. 13 (4).

11 (1) The Act is amended by adding the following Part:

part ii.1  
construction dispute interim adjudication

Definitions

13.1 In this Part,

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“adjudication” means construction dispute interim adjudication under this Part with respect to a matter referred to in section 13.5; (“arbitrage intérimaire”)

“adjudicator” means a person who is qualified by the Authority as an adjudicator; (“arbitre intérimaire”)

“Authority” means the Authorized Nominating Authority designated under section 13.2; (“Autorité”)

“notice of adjudication” means a notice that meets the requirements of section 13.7. (“avis d’arbitrage intérimaire”)

Authorized Nominating Authority

13.2 (1) The Lieutenant Governor in Council may, by regulation, designate an entity to act as Authorized Nominating Authority for the purposes of this Part.

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Criteria

(2) An entity may not be designated under subsection (1), or act as Authorized Nominating Authority, unless it meets the prescribed criteria, if any.

Duties and powers of Authority

Duties

13.3 (1) The Authority shall,

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- (a) develop and oversee programs for the training of persons as adjudicators;
- (b) qualify persons who meet the prescribed requirements as adjudicators;
- (c) establish and maintain a publicly available registry of adjudicators;
- (d) appoint adjudicators for the purposes of subsection 13.9 (5); and

(e) perform any other duties of the Authority set out in this Part or that may be prescribed for the purposes of this Part.

#### Powers

(2) The Authority may,

(a) subject to the regulations, set fees for the training and qualification of persons as adjudicators and for the appointment of adjudicators, and require their payment; and

(b) exercise any other power of the Authority set out in this Part or that may be prescribed for the purposes of this Part.

#### Minister as interim Authority

13.4 (1) The Lieutenant Governor in Council may designate the Minister responsible for the administration of this Act to act as Authorized Nominating Authority in accordance with subsection (2) on an interim basis, for any period during which an entity is not designated under section 13.2.

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#### Same

(2) If a designation is made under subsection (1), the Minister,

(a) shall, subject to subsection (3), perform the duties of the Authority, other than the duty set out in clause 13.3 (1) (a); and

(b) may exercise the powers of the Authority, other than the power set out in clause 13.3 (2) (a).

#### Same

(3) A duty of the Authority that is set out in the regulations for the purposes of clause 13.3 (1) (e) must only be performed by the Minister if the regulations prescribed for the purposes of this section so provide.

#### Availability of adjudication

##### Contract

13.5 (1) Subject to subsection (3), a party to a contract may refer to adjudication a dispute with the other party to the contract respecting any of the following matters:

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1. The valuation of services or materials provided under the contract.

2. Payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order.

3. Disputes that are the subject of a notice of non-payment under Part I.1.

4. Amounts retained under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off).

5. Non-payment of holdback under section 27.1.

6. Any other matter that the parties to the adjudication agree to, or that may be prescribed.

##### Subcontract

(2) Subject to subsection (3), a party to a subcontract may refer to adjudication a dispute with the other party to the subcontract respecting any of the matters referred to in subsection (1), with necessary modifications.

##### Expiry of adjudication period

(3) An adjudication may not be commenced if the notice of adjudication is given after the date the contract or subcontract is completed, unless the parties to the adjudication agree otherwise.

##### Multiple matters

(4) An adjudication may only address a single matter, unless the parties to the adjudication and the adjudicator agree otherwise.

##### Application despite other proceeding

(5) A party may refer a matter to adjudication under this Part even if the matter is the subject of a court action or of an arbitration under the *Arbitration Act, 1991*, unless the action or arbitration has been finally determined.

##### Adjudication procedures

13.6 (1) Subject to subsection (2), an adjudication is subject to the adjudication procedures set out in the contract or subcontract, if they comply with the requirements of this Part.

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#### Same

(2) If the contract or subcontract does not address adjudication procedures, or if the adjudication procedures set out in the contract or subcontract do not comply with the requirements of this Part, the adjudication is subject to the adjudication procedures set out in this Part and in the regulations.

#### Notice of adjudication

13.7 (1) A party to a contract or subcontract who wishes to refer a dispute to adjudication shall give to the other party a written notice of adjudication that includes,

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- (a) the names and addresses of the parties;
- (b) the nature and a brief description of the dispute, including details respecting how and when it arose;
- (c) the nature of the redress sought; and
- (d) the name of a proposed adjudicator to conduct the adjudication.

#### Copies

(2) If the regulations so provide, a party who gives notice under subsection (1) shall give a copy of the notice, in the prescribed manner, to the prescribed persons or entities.

#### Consecutive adjudication

13.8 (1) If the same matter or related matters in respect of an improvement are the subject of disputes to be adjudicated in separate adjudications under subsections 13.5 (1) and (2), the parties to each of the adjudications may agree to the adjudication of the disputes consecutively, by a single adjudicator.

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#### May be required by contractor

(2) If the same matter or related matters in respect of an improvement are the subject of disputes to be adjudicated in separate adjudications under subsections 13.5 (1) and (2) but the parties to each of the adjudications do not agree to consecutive adjudication, the contractor may, in accordance with the regulations, nevertheless require that the disputes be adjudicated consecutively, by a single adjudicator.

#### Adjudicator

13.9 (1) An adjudication may only be conducted by an adjudicator listed in the registry established under clause 13.3 (1) (c).

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#### Selection of adjudicator

(2) The parties to the adjudication may agree to an adjudicator, or may request that the Authority appoint an adjudicator.

#### Contract, subcontract may not name adjudicator

(3) A provision in a contract or subcontract that purports to name a person to act as an adjudicator in the event of an adjudication is of no force or effect.

#### Requirement to request appointment

(4) If an adjudicator does not consent to conduct the adjudication within four days after the notice of adjudication is given, the party who gave the notice shall request that the Authority appoint an adjudicator.

#### Appointment

(5) The Authority shall appoint an adjudicator, subject to his or her prior consent, to conduct an adjudication no later than seven days after receiving a request for the appointment.

#### No requirement to act

(6) Nothing in this Part or the regulations shall be read as requiring an adjudicator to agree to conduct an adjudication or to accept an appointment by the Authority to conduct an adjudication.

#### Adjudicator fee

13.10 (1) An adjudicator shall be paid a fee for conducting the adjudication, which shall be determined in accordance with subsection (2) before the adjudication commences.

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#### Fee amount

(2) The fee payable to an adjudicator is,

- (a) the fee agreed to by the parties to the adjudication and the adjudicator; or

(b) if the parties and the adjudicator do not agree to a fee amount, the amount determined by the Authority, in accordance with the regulations, if any, on the adjudicator's request.

#### Equal apportionment

(3) The parties to the adjudication shall split payment of the adjudication fee equally, subject to a different determination under section 13.17.

#### Documents for adjudication

**13.11** No later than five days after an adjudicator agrees or is appointed to conduct the adjudication, the party who gave the notice of adjudication shall give to the adjudicator a copy of the notice, together with,

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(a) a copy of the contract or subcontract; and

(b) any documents the party intends to rely on during the adjudication.

#### Conduct of adjudication

##### Powers of adjudicator

**13.12** (1) In conducting an adjudication, an adjudicator may exercise the following powers and any other power of an adjudicator that may be specified in the contract or subcontract:

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1. Issuing directions respecting the conduct of the adjudication.

2. Taking the initiative in ascertaining the relevant facts and law.

3. Drawing inferences based on the conduct of the parties to adjudication.

4. Subject to subsection (2), conducting an on-site inspection of the improvement that is the subject of the contract or subcontract.

5. Obtaining the assistance of a merchant, accountant, actuary, building contractor, architect, engineer or other person in such a way as the adjudicator considers fit, to enable him or her to determine better any matter of fact in question.

6. Making a determination in the adjudication.

7. Any other power that may be prescribed.

##### On-site inspection

(2) The exercise of the power to conduct an on-site inspection under paragraph 4 of subsection (1) is subject to the prior consent of,

(a) the owner, if he or she is not a party to the adjudication; and

(b) any other person who has the legal authority to exclude others from the premises.

##### Costs of assistance

(3) If the adjudicator obtains the assistance of a person under paragraph 5 of subsection (1), the adjudicator may fix the remuneration of the person and direct payment of the remuneration by either or both of the parties to the adjudication.

##### Conduct

(4) Subject to this section, the adjudicator may conduct the adjudication in the manner he or she determines appropriate in the circumstances.

##### Impartiality

(5) An adjudicator shall conduct an adjudication in an impartial manner.

##### Statutory Powers Procedure Act

(6) The *Statutory Powers Procedure Act* does not apply to adjudications.

##### Determination

**13.13** (1) Subject to subsection (2), an adjudicator shall make a determination of the matter that is the subject of an adjudication no later than 30 days after receiving the documents required by section 13.11.

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##### Extension

(2) The deadline for an adjudicator's determination may be extended, at any time before its expiry and after the giving of documents to the adjudicator under section 13.11.

(a) on the adjudicator's request, with the written consent of the parties to the adjudication, for a period of no more than 14 days; or

(b) on the written agreement of the parties to the adjudication, subject to the adjudicator's consent, for the period specified in the agreement.

#### Delayed determination

(3) A determination made by an adjudicator after the date determined under subsection (1) or (2) is of no force or effect.

#### Written reasons

(4) The adjudicator's determination shall be in writing and shall include reasons for the determination.

#### Termination of adjudication

13.14 At any time after the notice of adjudication is given and before the adjudicator makes his or her determination, the parties to the adjudication may agree to terminate the adjudication, on notice to the adjudicator and subject to the payment of the adjudicator's fee.

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#### Effect of determination

13.15 The determination of a matter by an adjudicator is binding on the parties to the adjudication until a determination of the matter by a court or any determination of the matter by way of an arbitration conducted under the *Arbitration Act, 1991*.

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#### Costs

13.16 Subject to section 13.17, the parties to an adjudication shall bear their own costs of the adjudication.

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#### Frivolous, vexatious, etc.

13.17 If an adjudicator determines that a party to the adjudication has acted in respect of the improvement in a manner that is frivolous, vexatious, an abuse of process or other than in good faith, the adjudicator may provide, as part of his or her determination of the matter, that the party be required to pay some or all of the other party's costs, any part of the fee amount determined under section 13.10 that would otherwise be payable by the other party, or both.

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#### Application to set aside

13.18 (1) A court may set aside the determination of an adjudicator, on application by a party to the adjudication made no later than 30 days after the determination is communicated to the parties, on any of the following grounds:

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1. A party participated in the adjudication while under a legal incapacity.
2. The contract or subcontract is invalid or has ceased to exist.
3. The determination dealt, in whole or in part, with a matter that may not be the subject of adjudication under this Part, or with a matter entirely unrelated to the subject of the adjudication.
4. The adjudication was conducted by someone other than an adjudicator.
5. The procedures followed in the adjudication did not comply with the procedures to which the adjudication was subject under this Part.
6. There is a reasonable apprehension of bias on the part of the adjudicator.
7. The determination was made as a result of fraud.

#### Same, amounts paid

(2) In setting aside a determination under subsection (1), the court may require that any or all amounts paid in compliance with the determination be returned.

#### No stay

(3) An application under subsection (1) does not operate as a stay of the operation of the determination unless a court orders otherwise.

#### Enforcement of amounts payable

13.19 (1) A party who is required under the determination of an adjudicator to pay an amount to another person shall pay the amount no later than 10 days after the determination has been communicated to the parties to the adjudication.

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#### Application to consecutive adjudications

(2) In the case of consecutive adjudications held in accordance with section 13.8, amounts payable under the determination of the adjudicator in any of the adjudications shall be paid no later than 10 days after the determination of the last of the adjudications has been communicated to the parties to that adjudication.

#### Interest on late payment

(3) Subject to subsection (4), if an amount is not paid when it is due under this section, interest shall be paid on the outstanding balance at the prejudgment interest rate determined under subsection 127 (2) of the *Courts of Justice Act* or, if the contract or subcontract specifies a different interest rate for the purpose, the greater of the prejudgment interest rate and the interest rate specified in the contract or subcontract.

#### No interest on interest

(4) Subsection (3) does not apply in respect of any amount payable under section 6.7.

#### Suspension of work

(5) If an amount payable to a contractor or subcontractor under a determination is not paid by the party when it is due under this section, the contractor or subcontractor may suspend further work under the contract or subcontract until the party pays the following amounts:

1. The amount required to be paid under the determination.
2. Any interest accrued on that amount under subsection (3).
3. Any reasonable costs incurred by the contractor or subcontractor as a result of the suspension of work.

#### Same, costs of resumption

(6) A contractor or subcontractor who suspends work under subsection (5) is entitled to payment, by the party, of any reasonable costs incurred by him or her as a result of the resumption of work following the payment of the amounts referred to in that subsection.

#### Enforcement by court

**13.20** (1) A party to an adjudication may, no later than the date referred to in subsection (2), apply to the court for enforcement of the resulting determination.

#### Deadline

(2) An application under subsection (1) may not be made after the later of,

- (a) the second anniversary of the communication of the determination to the parties; and
- (b) if applicable, the second anniversary of the final determination of an application under section 13.18 that did not result in the setting aside of the adjudicator's determination.

#### Procedures

(3) An application under subsection (1) shall be made on notice to the person against whom enforcement is sought, in accordance with the rules of court, and shall be supported by the original determination or a certified copy.

#### Duty of court

(4) The court shall make an order enforcing the determination.

#### Immunity

**13.21** No action or other proceeding shall be commenced against an adjudicator or his or her employees for any act done in good faith in the execution or intended execution of any duty or power under this Part or the regulations, or for any alleged neglect or default in the execution in good faith of that duty or power.

#### Testimonial immunity

**13.22** An adjudicator shall not be compelled to give evidence in any action or other proceeding in respect of a matter that was the subject of an adjudication that he or she conducted.

#### Transition

**13.23** This Part applies in respect of contracts and subcontracts entered into on or after the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force.

#### Application of Part to surety bonds (Part XI.1)

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13.24 If the regulations so provide, this Part applies, with such modifications as the regulations specify, to disputes in respect of such surety bonds to which Part XI.1 applies as are specified by the regulations.

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### PART III THE LIEN

#### Creation of lien

~~14.~~ 14 (1) A person who supplies services or materials to an improvement for an owner, contractor or subcontractor, has a lien upon the interest of the owner in the premises improved for the price of those services or materials. R.S.O. 1990, c. C.30, s. 14 (1).

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~~Note: Subsection (1) applies to services and materials supplied by architects, holders of certificates of practice under the Architects Act and their employees under contracts made on or after November 28, 1997, and under subcontracts made under such contracts. See: 1997, c. 23, s. 4 (2).~~

#### No lien for interest

(2) No person is entitled to a lien for any interest on the amount owed to the person in respect of the services or materials that have been supplied by the person, but nothing in this subsection affects any right that the person may otherwise have to recover that interest. R.S.O. 1990, c. C.30, s. 14 (2).

#### Architects

(3) For greater certainty, subsection (1) applies to services or materials supplied by an architect as defined in the Architects Act and any employees of the architect.

#### When lien arises

~~15.~~ 15 A person's lien arises and takes effect when the person first supplies services or materials to the improvement. R.S.O. 1990, c. C.30, s. 15.

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#### ~~Interest of Crown, municipal interest in premises~~

16 (1) A lien does not attach to the interest in a premises of,

16. (1) A lien does not attach to the interest of the Crown in a premises. R.S.O. 1990, c. C.30, s. 16 (1):(a) the Crown; or

#### ~~Interest of person other than Crown~~

(b) a municipality.

#### Interest of other person

(2) Where an improvement is made to a premises in which the Crown or a municipality has an interest, but the Crown or municipality is not an owner within the meaning of this Act, the lien may attach to the interest of any other person in the premises. R.S.O. 1990, c. C.30, s. 16 (2).

#### Where lien does not attach to premises

(3) A lien does not attach to a premises, but constitutes a charge under section 21, if,

(3) Where the Crown is a) the owner of a premises within the meaning of this Act, or where the premises is,

(a) a public street or highway owned by the Crown or a municipality; or

(b) the premises is a railway right-of-way.

the lien does not attach to the premises but constitutes a charge as provided in section 21, and the provisions of this Act shall have effect without requiring the registration of a claim for lien against the premises. R.S.O. 1990, c. C.30, s. 16 (3).

#### Limitation on value of lien

~~17.~~ 17 (1) The lien of a person is limited to the amount owing to the person in relation to the improvement and, subject to Part IV (holdbacks), it is further limited to the least amount owed in relation to the improvement by a payer to the contractor or to any subcontractor whose contract or subcontract was in whole or in part performed by the supply of services or materials giving rise to the lien. R.S.O. 1990, c. C.30, s. 17 (1).

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#### Idem

(2) Subject to Part IV, the total value of the liens of all members of a class, as defined in section 79, is limited to the least amount owed in relation to the improvement by a payer to the contractor or to any subcontractor whose contract or subcontract was in whole or in part performed by the supply of services or materials made by the members of the class. R.S.O. 1990, c. C.30, s. 17 (2).

#### Set-off

(3) Subject to Part IV, in determining the amount of a lien under subsection (1) or (2), there may be taken into account the amount that is, as between a payer and the person the payer is liable to pay, equal to the balance in the payer's favour of all outstanding debts, claims or damages, ~~whether or not~~ related to the improvement. R.S.O. 1990, c. C.30, s. 17 (3).

#### Public highway, liability of municipality re

(4) Despite subsection (1), where land is dedicated to a municipality as a public street or highway and an improvement is made to the land at the written request of, or under an agreement with, the municipality, but not at its expense, the municipality shall nevertheless, on default of payment by the proper payer, be liable to the value of the holdbacks under Part IV that would have been required were the improvement made at the expense of the municipality, and the procedure for making a claim under this subsection shall be the same as for enforcing a claim for lien against a municipality ~~in respect of a public street or highway~~. R.S.O. 1990, c. C.30, s. 17 (4).

#### Joint or common interests

~~18.~~ **18** Where the interest of the owner in the premises is held jointly or in common with another person who knew or ought reasonably to have known of the making of the improvement, the joint or common interest in the premises of that person is also subject to the lien unless the contractor receives actual notice, before the supply of services or materials to the improvement is commenced, that the person having the joint or common interest assumes no responsibility for the improvement to be made. R.S.O. 1990, c. C.30, s. 18.

#### ~~Where owner's leasehold interest leasehold~~

**19.** (1) ~~Where~~ If the interest of the owner to which ~~the~~ lien attaches is leasehold, ~~the interest of the landlord shall also be and if payment for all or part of the improvement is accounted for under the terms of the lease or any renewal of it, or under any agreement to which the landlord is a party that is connected to the lease, the landlord's interest is also~~ subject to the lien, to the same extent as the interest of the owner if the contractor gives the landlord written notice of the improvement to be made, unless the landlord, within fifteen days of receiving the notice from the contractor, gives the contractor written notice that the landlord assumes no responsibility for the improvement to be made. ~~R.S.O. 1990, c. C.30, s. 19 (1) extent of 10 percent of the amount of such payment.~~

#### Forfeiture or termination of lease, effect of

(2) No forfeiture of a lease to, or termination of a lease by, a landlord, except for non-payment of rent, deprives any person having a lien against the leasehold of the benefit of the person's lien. R.S.O. 1990, c. C.30, s. 19 (2).

#### Notice to lien claimants

(3) Where a landlord intends to enforce forfeiture or terminate a lease of the premises because of non-payment of rent, and there is a claim for lien registered against the premises in the proper land registry office, the landlord shall give notice in writing of the intention to enforce forfeiture or terminate the lease and of the amount of the unpaid rent to each person who has registered a claim for lien against the premises. R.S.O. 1990, c. C.30, s. 19 (3).

#### Payment of unpaid rent

(4) A person receiving notice under subsection (3) may, within ten days thereafter, pay to the landlord the amount of the unpaid rent, and the amount so paid may be added by that person to the person's claim for lien. R.S.O. 1990, c. C.30, s. 19 (4).

#### Landlord as owner

(5) Nothing in this section prevents a determination in respect of a premises that the landlord is instead its owner, if he or she meets the criteria set out in the definition of "owner" in subsection 1 (1).

#### General lien, more than one premises

~~20.~~ **20** (1) Where an owner enters into a single contract for improvements on more than one premises of the owner, any person supplying services or materials under that contract, or under a subcontract under that contract, may choose to have the

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person's lien follow the form of the contract and be a general lien against each of those premises for the price of all services and materials the person supplied to all the premises. R.S.O. 1990, c. C.30, s. 20 (1).

**Where subs. (1) does not apply**

(2) Subsection (1) does not apply and no general lien arises under or in respect of a contract that provides in writing that liens shall arise and expire on a lot-by-lot basis. R.S.O. 1990, c. C.30, s. 20 (2).

**Lien a charge**

~~21.~~ **21** The lien of a person is a charge upon the holdbacks required to be retained by Part IV, and subject to subsection 17 (3), any additional amount owed in relation to the improvement by a payer to the contractor or to any subcontractor whose contract or subcontract was in whole or in part performed by the supply of services or materials giving rise to the lien. R.S.O. 1990, c. C.30, s. 21.

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## **PART IV HOLDBACKS**

**Holdbacks**

**Basic holdback**

~~22.~~ **22** (1) Each payer upon a contract or subcontract under which a lien may arise shall retain a holdback equal to 10 per cent of the price of the services or materials as they are actually supplied under the contract or subcontract until all liens that may be claimed against the holdback have expired ~~as provided in Part V, or have~~ been satisfied, discharged or ~~otherwise~~ provided for under ~~section 44 (payment into court) this Act~~. R.S.O. 1990, c. C.30, s. 22 (1).

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**Separate holdback for finishing work**

(2) Where the contract has been certified or declared to be substantially performed but services or materials remain to be supplied to complete the contract, the payer upon the contract, or a subcontract, under which a lien may arise shall retain, from the date certified or declared to be the date of substantial performance of the contract, a separate holdback equal to 10 per cent of the price of the remaining services or materials as they are actually supplied under the contract or subcontract, until all liens that may be claimed against the holdback have expired ~~as provided in Part V, or have~~ been satisfied, discharged or ~~otherwise~~ provided for under ~~section 44 this Act~~. R.S.O. 1990, c. C.30, s. 22 (2).

**When obligation to retain applies**

(3) The obligation to retain the holdbacks under subsections (1) and (2) applies irrespective of whether the contract or subcontract provides for partial payments or payment on completion. R.S.O. 1990, c. C.30, s. 22 (3).

**Permissible forms of holdback**

~~(4) Some or all of any holdbacks may, instead of being retained in the form of funds, be retained in one or more of the following forms:~~

- ~~1. A letter of credit in the prescribed form.~~
- ~~2. A demand-worded holdback repayment bond in the prescribed form.~~
- ~~3. Any other form that may be prescribed.~~

**Personal liability of owner**

~~23.~~ **23** (1) Subject to subsections (2), (3) and (4), an owner is personally liable for holdbacks that the owner is required to retain under this Part to those lien claimants who have valid liens against the owner's interest in the premises. R.S.O. 1990, c. C.30, s. 23 (1).

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**Limitation**

(2) Where the defaulting payer is the contractor, the owner's personal liability to a lien claimant or to a class of lien claimants as defined by section 79 does not exceed the holdbacks the owner is required to retain. R.S.O. 1990, c. C.30, s. 23 (2).

**Idem**

(3) Where the defaulting payer is a subcontractor, the owner's personal liability to a lien claimant or to a class of lien claimants as defined by section 79 does not exceed the lesser of,

- (a) the holdbacks the owner is required to retain; and
- (b) the holdbacks required to be retained by the contractor or a subcontractor from the lien claimant's defaulting payer. R.S.O. 1990, c. C.30, s. 23 (3).

#### How determined

(4) The personal liability of an owner under this section may only be determined by an action under this Act. R.S.O. 1990, c. C.30, s. 23 (4).

#### Transition

~~(5) This section does not affect the rights acquired by any person from a judgment or order of any court before the 28th day of June, 1990. R.S.O. 1990, c. C.30, s. 23 (5).~~

(5) REPEALED: 2017, c. XX, s. 18.

#### Payments that may be made

~~24.24~~ (1) A payer may, without jeopardy, make payments on a contract or subcontract up to 90 per cent of the price of the services or materials that have been supplied under that contract or subcontract unless, prior to making payment, the payer has received written notice of a lien. R.S.O. 1990, c. C.30, s. 24 (1).

#### Idem

(2) Where a payer has received written notice of a lien and has retained, in addition to the holdbacks required by this Part, an amount sufficient to satisfy the lien, the payer may, without jeopardy, make payment on a contract or subcontract up to 90 per cent of the price of the services ~~and/or~~ materials that have been supplied under that contract or subcontract, less the amount retained. R.S.O. 1990, c. C.30, s. 24 (2).

#### Payment where subcontract certified complete

~~25.25~~ Where a subcontract has been certified complete under section 33, each payer upon the contract and any subcontract may, without jeopardy, make payment reducing the holdbacks required by this Part to the extent of the amount of holdback the payer has retained in respect of the completed subcontract, where all liens in respect of the completed subcontract have expired ~~as provided in Part V~~, or ~~have~~ been satisfied, discharged or otherwise provided for under ~~section 44 (payment into court) this Act~~. R.S.O. 1990, c. C.30, s. 25.

#### Payment of basic holdback

~~26. Each~~ 26 Subject to section 27.1, each payer upon the contract or a subcontract ~~may, without jeopardy, shall~~ make payment of the holdback the payer is required to retain by subsection 22 (1) (basic holdback), so as to discharge all claims in respect of that holdback, where all liens that may be claimed against that holdback have expired ~~as provided in Part V~~, or ~~have~~ been satisfied, discharged or otherwise provided for under ~~section 44 this Act~~. R.S.O. 1990, c. C.30, s. 26.

#### Payment of holdback on annual basis

26.1 (1) If the conditions in subsection (2) are met, a payer may make payment of the accrued holdback he or she is required to retain under subsection 22 (1) on an annual basis, in relation to the services or materials supplied during the applicable annual period.

#### Conditions

(2) Subsection (1) applies if,

- (a) the contract provides for a completion schedule that is longer than one year;
- (b) the contract provides for the payment of accrued holdback on an annual basis;
- (c) the contract price at the time the contract is entered into exceeds the prescribed amount; and
- (d) as of the applicable payment date,
  - (i) there are no preserved or perfected liens in respect of the contract, or
  - (ii) all liens in respect of the contract have expired or been satisfied, discharged or otherwise provided for under this Act.

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#### Payment of holdback on phased basis

26.2 (1) If the conditions in subsection (2) are met, a payer may make payment of the accrued holdback he or she is required to retain under subsection 22 (1) on the completion of phases of an improvement, in relation to the services or materials supplied during each phase.

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#### Conditions

(2) Subsection (1) applies if:

- (a) the contract provides for the payment of accrued holdback on a phased basis and identifies each phase;
- (b) the contract price at the time the contract is entered into exceeds the prescribed amount; and
- (c) as of the applicable payment date,
  - (i) there are no preserved or perfected liens in respect of the contract, or
  - (ii) all liens in respect of the contract have expired or been satisfied, discharged or otherwise provided for under this Act.

#### Payment on completion of design phase

(3) If a contract provides for payment of accrued holdback on a phased basis but only with respect to a specified design phase, clause (2) (b) does not apply.

#### Payment of holdback for finishing work

~~27. Each~~ 27 Subject to section 27.1, each payer upon the contract or a subcontract ~~may, without jeopardy, shall~~ make payment of the holdback the payer is required to retain by subsection 22 (2) (holdback for finishing work), so as to discharge all claims in respect of that holdback, where all liens that may be claimed against that holdback have expired ~~as provided in Part V,~~ or ~~have~~ been satisfied, discharged or otherwise provided for under ~~section 44 this Act.~~ R.S.O. 1990, c. C.30, s. 27.

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#### Non-payment of holdback

27.1 A payer may refuse to pay some or all of the amount required to be paid under section 26 or 27, as the case may be, if, no later than 40 days after publication of the applicable certification or declaration of substantial performance under section 32, the payer publishes, in the manner set out in the regulations, a notice in the prescribed form, specifying the amount of the holdback that the payer refuses to pay.

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#### Direct payment to person having lien

~~28. 28~~ Where an owner, contractor or subcontractor makes a payment without obligation to do so to any person having a lien for or on account of any amount owing to that person for services or materials supplied to the improvement and gives written notice of the payment or the intention to pay to the proper payer of that person, the payment shall be deemed to be a payment by the owner, contractor or subcontractor to the proper payer of that person, but no such payment reduces the amount of the holdback required to be retained under this Part or reduces the amount that must be retained in response to a written notice of lien given by a person other than the person to whom payment is made. R.S.O. 1990, c. C.30, s. 28.

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#### Discharge of lien

~~29. 29~~ Payments made in accordance with this Part operate as a discharge of the lien to the extent of the amount paid. R.S.O. 1990, c. C.30, s. 29.

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#### How holdback not to be applied

~~30. 30~~ Where the contractor or a subcontractor defaults in the performance of a contract or subcontract, a holdback shall not be applied by any payer toward obtaining services or materials in substitution for those that were to have been supplied by the person in default, nor in payment or satisfaction of any claim against the person in default, until all liens that may be claimed against that holdback have expired ~~as provided in Part V,~~ or ~~have~~ been satisfied, discharged or otherwise provided for under ~~section 44 (payment into court) this Act.~~ R.S.O. 1990, c. C.30, s. 30.

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### PART V EXPIRY, PRESERVATION AND PERFECTION OF LIENS

#### Expiry of liens

~~31. 31~~ (1) Unless preserved under section 34, the liens arising from the supply of services or materials to an improvement expire as provided in this section. R.S.O. 1990, c. C.30, s. 31 (1).

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#### Contractor's liens

- (2) Subject to subsection (4), the lien of a contractor,
- (a) for services or materials supplied to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the ~~forty-five~~60-day period next following the occurrence of the earlier of,
- (i) the date on which a copy of the certificate or declaration of the substantial performance of the contract is published as provided in section 32, and
- (ii) the date the contract is completed ~~or~~, abandoned or terminated; and
- (b) for services or materials supplied to the improvement where there is no certification or declaration of the substantial performance of the contract, or for services or materials supplied to the improvement after the date certified or declared to be the date of substantial performance, expires at the conclusion of the ~~forty-five~~60-day period next following the occurrence of the earlier of,
- (i) the date the contract is completed, and
- (ii) the date the contract is abandoned or terminated. R.S.O. 1990, c. C.30, s. 31 (2).

#### Workers' trust fund lien

(2.1) Subject to subsection (4), the lien of the trustee of a workers' trust fund on behalf of a worker or workers,

- (a) for services or materials supplied to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the 60-day period next following the occurrence of the earliest of,
- (i) the date on which a copy of the certificate or declaration of the substantial performance of the contract is published, as provided in section 32,
- (ii) the date on which the final worker who is a beneficiary of the workers' trust fund last supplies services or materials to the improvement,
- (iii) the date the contract is completed, abandoned or terminated, and
- (iv) the date a subcontract is certified to be completed under section 33, where the services or materials were supplied under or in respect of that subcontract; and
- (b) for services or materials supplied to the improvement where there is no certification or declaration of the substantial performance of the contract, or for services or materials supplied to the improvement after the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the 60-day period next following the occurrence of the earlier of,
- (i) the date on which the final worker who is a beneficiary of the workers' trust fund last supplied services or materials to the improvement,
- (ii) the date the contract is completed, abandoned or terminated, and
- (iii) the date a subcontract is certified to be completed under section 33, where the services or materials were supplied under or in respect of that subcontract.

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#### Liens of other persons

- (3) Subject to subsection (4), the lien of any other person,
- (a) for services or materials supplied to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the ~~forty-five~~60-day period next following the occurrence of the earliest of,
- (i) the date on which a copy of the certificate or declaration of the substantial performance of the contract is published, as provided in section 32, ~~and~~
- (ii) the date on which the person last supplies services or materials to the improvement,
- (ii.1) the date the contract is completed, abandoned or terminated, and

(iii) the date a subcontract is certified to be completed under section 33, where the services or materials were supplied under or in respect of that subcontract; and

(b) for services or materials supplied to the improvement where there is no certification or declaration of the substantial performance of the contract, or for services or materials supplied to the improvement after the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the ~~forty-five~~60-day period next following the occurrence of the earlier of,

(i) the date on which the person last supplied services or materials to the improvement,

(i.1) the date the contract is completed, abandoned or terminated, and

(ii) the date a subcontract is certified to be completed under section 33, where the services or materials were supplied under or in respect of that subcontract. R.S.O. 1990, c. C.30, s. 31 (3).

#### Separate liens when ongoing supply

(4) Where a person has supplied services or materials to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract and has also supplied, or is to supply, services or materials after that date, the person's lien in respect of the services or materials supplied on or before the date of substantial performance expires without affecting any lien that the person may have for the supply of services or materials after that date. R.S.O. 1990, c. C.30, s. 31 (4).

#### Declaration of last supply

(5) Where a person who has supplied services or materials under a contract or subcontract makes a declaration in the prescribed form declaring,

(a) the date on which the person last supplied services or materials under that contract or subcontract; and

(b) that the person will not supply any further services or materials under that contract or subcontract,

then the facts so stated shall be deemed to be true against the person making the declaration. R.S.O. 1990, c. C.30, s. 31 (5).

#### Notice of termination

(6) If a contract is terminated, either the owner or the contractor or other person whose lien is subject to expiry shall publish, in the manner set out in the regulations, a notice of the termination in the prescribed form and, for the purposes of this section, the date on which the contract is terminated is the termination date specified in the notice for the contract.

#### Validity of termination

(7) Subsection (6) does not prevent a person from contesting the validity of a termination.

#### Rules governing certification or declaration of substantial performance

~~32.~~ **32** (1) The following rules govern the certification and declaration of the substantial performance of a contract:

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1. On the application of the contractor, the payment certifier shall determine whether the contract has been substantially performed in accordance with section 2, and, if the payment certifier so determines, shall certify the substantial performance of the contract by signing a certificate in the prescribed form. If there is no payment certifier, the owner and contractor shall make the determination jointly and shall both sign the certificate.
2. The payment certifier or the owner and the contractor jointly, as the case may be, shall set out in the certificate the date on which the contract was substantially performed.
3. The date set out in the certificate as the date on which the contract was substantially performed is deemed for the purpose of this Act to be the date on which that event occurred.
4. Where the payment certifier certifies the substantial performance of a contract the payment certifier shall within seven days of the day the certificate is signed give a copy of the certificate to the owner and to the contractor.
5. The contractor shall publish a copy of the certificate ~~once in a construction trade newspaper~~ in the manner set out in the regulations.
6. Where the contractor does not publish a copy of the certificate within seven days of receiving a copy of the certificate signed by the payment certifier or, where there is no payment certifier, signed by the owner, any person may publish a copy of the certificate.

7. Where there is a failure or refusal to certify substantial performance of the contract within a reasonable time, any person may apply to the court, and the court, upon being satisfied that the contract is substantially performed, and upon such terms as to costs or otherwise as it considers fit, may declare that the contract has been substantially performed, and the declaration has the same force and effect as a certificate of substantial performance of the contract.
8. Unless the court otherwise orders, the day the declaration is made shall be deemed to be the date the contract was substantially performed.
9. The person who applied to the court shall publish a copy of the declaration of substantial performance ~~once in a construction trade newspaper~~ in the manner set out in the regulations.
10. For the purposes of this Part, a certificate or declaration of the substantial performance of a contract has no effect until a copy of the certificate or declaration is published. R.S.O. 1990, c. C.30, s. 32 (1).

#### Contents of certificate

- (2) Every certificate or declaration made or given under this section shall include,
  - (a) the name and address for service of the owner and of the contractor;
  - (b) the name and address of the payment certifier, where there is one;
  - (c) a short description of the improvement;
  - (d) the date on which the contract was substantially performed;
  - (e) ~~where the lien attaches to the premises, a concise description containing a reference to lot and plan or instrument registration number sufficient to identify~~ a legal description of the premises, including all property identifier numbers and addresses for the premises; and
  - (f) ~~the street address, if any, of the premises; if the lien does not attach to the premises, the name and address of the person or body to whom a copy of the claim for lien must be given under section 34.~~ R.S.O. 1990, c. C.30, s. 32 (2); 2010, c. 16, Sched. 2, s. 2 (3).

#### Liability for refusal to certify

(3) Any person who is required by this section to make a determination of the substantial performance of a contract, and who after receiving an application fails or refuses within a reasonable time to certify the substantial performance of the contract, even though there is no reasonable doubt that the contract has, in fact, been substantially performed, is liable to anyone who suffers damages as a result. R.S.O. 1990, c. C.30, s. 32 (3).

#### Liability for failure to furnish copy of certificate

(4) A payment certifier who fails to comply with paragraph 4 of subsection (1) is liable to anyone who suffers damages as a result. R.S.O. 1990, c. C.30, s. 32 (4).

#### Manner of publication

~~—(5) A construction trade newspaper shall publish upon commercially reasonable terms copies of certificates or declarations of substantial performance in the prescribed form and manner. R.S.O. 1990, c. C.30, s. 32 (5); (5) REPEALED: 2017, c. XX, s. 27 (3).~~

#### Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 2, s. 2 (3) - 25/10/2010

#### Certificate re subcontract

~~—33.33~~ (1) Upon the request of the contractor, the payment certifier on the contract may determine whether a subcontract has been completed, and, if the payment certifier so determines, shall certify the completion of the subcontract in the prescribed form; alternatively, the owner and the contractor may jointly make the declaration and certify completion in the prescribed form. R.S.O. 1990, c. C.30, s. 33 (1).

#### Date subcontract deemed completed

(2) Where a subcontract is certified to be completed, the subcontract shall be deemed to have been completed on the date of certification. R.S.O. 1990, c. C.30, s. 33 (2).

#### Services or materials supplied after subcontract certified completed

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(3) If services or materials are supplied to the improvement under or in respect of a subcontract after the date the subcontract is certified to be completed, those services or materials shall be deemed to have been last supplied on the date of certification. R.S.O. 1990, c. C.30, s. 33 (3).

#### Copy of certificate

(4) Within seven days of the date the subcontract is certified to be completed, the payment certifier or the owner and the contractor, as the case may be, shall give a copy of the certificate,

- (a) to the subcontractor whose subcontract has been certified as complete; and
- (b) to the owner and the contractor, where certification is by the payment certifier. R.S.O. 1990, c. C.30, s. 33 (4).

#### Notice of intention to register in accordance with the *Condominium Act, 1998*

##### Definitions

**33.1** (1) In this section,

“declaration” means a declaration as defined in the *Condominium Act, 1998*; (“déclaration”)

“description” means a description as defined in the *Condominium Act, 1998*; (“description”)

“registered” means registered as defined in the *Condominium Act, 1998*. (“enregistré”) 2010, c. 16, Sched. 2, s. 2 (4).

##### Notice required

(2) An owner of land described in a description that is intended to be registered together with a declaration in accordance with the *Condominium Act, 1998* shall publish notice of the intended registration in ~~a construction trade newspaper at least five and not more than 15 days, excluding Saturdays and holidays, before the description is submitted for approval under subsection 9 (3) of the Condominium Act, 1998, the manner set out in the regulations.~~ 2010, c. 16, Sched. 2, s. 2 (4).

##### Contents

- (3) The notice shall be in the prescribed form and shall include,
- (a) the owner’s name and address for service;
  - (b) a concise overview of the land described in the description, including reference to the lot and plan number and the parcel number or numbers of the land; and
  - (c) if, to the best of the owner’s knowledge, information and belief, a contractor supplied services or materials to an improvement in respect of the land during the 90-day period preceding the day on which the description is to be submitted for approval under subsection 9 (3) of the *Condominium Act, 1998*, the contractor’s name, address and, if known, address for service. 2010, c. 16, Sched. 2, s. 2 (4).

##### Liability for failure to comply

(4) An owner who fails to comply with this section is liable to any person entitled to a lien who suffers damages as a result. 2010, c. 16, Sched. 2, s. 2 (4).

#### Section Amendments with date in force (d/m/y)

[2010, c. 16, Sched. 2, s. 2 \(4\)](#) - 01/07/2011

##### How lien preserved

- ~~34.~~ **34** (1) A lien may be preserved during the supplying of services or materials or at any time before it expires,
- (a) where the lien attaches to the premises, by the registration in the proper land registry office of a claim for lien on the title of the premises in accordance with this Part; and
  - (b) where the lien does not attach to the premises, by giving to the owner a copy of the claim for lien. R.S.O. 1990, c. C.30, s. 34 (1); 2010, c. 16, Sched. 2, s. 2 (5).

##### Public highway

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~~—(2) Where a claim for lien is in respect of a public street or highway owned by a municipality, the copy of the claim for lien shall be given to the clerk of the municipality. R.S.O. 1990, c. C.30, s. 34 (2); 2010, c. 16, Sched. 2, s. 2 (6); (2) REPEALED: 2017, c. XX, s. 29 (2).~~

#### Premises owned by Crown

(3) Where the owner of the premises is the Crown, the copy of the claim for lien shall be given to the ~~office~~ prescribed by ~~regulation~~office, or, where no office has been prescribed, to the ministry or Crown agency for whom the improvement is made. R.S.O. 1990, c. C.30, s. 34 (3); 2010, c. 16, Sched. 2, s. 2 (7).

#### Premises owned by municipality

(3.1) Where the owner of the premises is a municipality, the copy of the claim for lien shall be given to the clerk of the municipality.

#### Railway right-of-way

(4) Where the premises is a railway right-of-way, the copy of the claim for lien shall be given to the manager or any person apparently in charge of any office of the railway in Ontario. R.S.O. 1990, c. C.30, s. 34 (4); 2010, c. 16, Sched. 2, s. 2 (7).

#### Contents of claim for lien

(5) Every claim for lien shall set out,

(a) the name and address for service of the person claiming the lien ~~and or, in the case of a claim on behalf of a worker by a workers' trust fund, the name and address of the trustee;~~

(a.1) the name and address of the owner of the premises and of the person for whom the services or materials were supplied and;

(a.2) the time within which ~~those~~the services or materials were supplied;

(b) a short description of the services or materials that were supplied;

(c) the contract price or subcontract price;

(d) the amount claimed in respect of services or materials that have been supplied; and

(e) a description of the premises,

(i) where the lien attaches to the premises, sufficient for registration under the *Land Titles Act* or the *Registry Act*, as the case may be, or

(ii) where the lien does not attach to the premises, being the address or other identification of the location of the premises. R.S.O. 1990, c. C.30, s. 34 (5); 2010, c. 16, Sched. 2, s. 2 (8).

(6) REPEALED: 2010, c. 16, Sched. 2, s. 2 (9).

#### Preservation of general lien

(7) Subject to subsection 44 (4) (apportionment), a general lien shall be preserved against each of the premises that the person having the lien desires the lien to continue to apply against, and the claim against each premises may be for the price of the services or materials that have been supplied to all the premises. R.S.O. 1990, c. C.30, s. 34 (7).

#### Who may join in claim

(8) Any number of persons having liens upon the same premises may unite in a claim for lien. R.S.O. 1990, c. C.30, s. 34 (8); 2010, c. 16, Sched. 2, s. 2 (10).

#### Notice of preservation of lien re common elements of condominium

(9) A person who preserves a lien under this section that relates, in whole or in part, to an improvement to the common elements of a corporation under the *Condominium Act, 1998* shall give notice of the lien's preservation, in the prescribed form, to the corporation and to each person who is,

(a) in the case of a corporation that is not a common elements condominium corporation, as defined in that Act, an owner of a unit in the corporation; and

(b) in the case of a common elements condominium corporation, an owner of a parcel of land mentioned in subsection 139 (1) of that Act to which a common interest is attached and which is described in the declaration of the corporation.

(10) If the matter that is the subject of a lien is also the subject of an adjudication under Part II.1, the lien is deemed, for the purposes of this section only, to have expired on the later of the date on which the lien would expire under section 31 and the conclusion of the 45-day period next following.

(a) the receipt by the adjudicator of documents under section 13.11; or

(b) in the case of consecutive adjudications held in accordance with section 13.8, the receipt by the adjudicator of documents under section 13.11 for the last of the adjudications.

#### Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 2, s. 2 (5-7, 9, 10) - 01/07/2011; 2010, c. 16, Sched. 2, s. 2 (8) - 25/10/2010

#### Exaggerated, false claims

##### Liability for exaggerated claim, etc.

~~—35.35 (1)~~ In addition to any other ground on which the person may be liable, any person who preserves a claim for lien or who gives written notice of a lien,

~~—(a) for an amount which the person knows or ought to know is grossly in excess of the amount which the person is owed; or~~

~~—(b) where the person knows or ought to know that the person does not have a lien,~~

in the following circumstances is liable to any person who suffers damages as a result. ~~R.S.O. 1990, c. C.30, s. 35;~~

1. The person knows or ought to know that the amount of the lien has been wilfully exaggerated.

2. The person knows or ought to know that he or she does not have a lien.

#### Reduction of lien amount

(2) In the circumstances described in paragraph 1 of subsection (1), the court may, on motion, order that the lien amount be reduced by the exaggerated portion, as determined in accordance with section 17, if it finds that the person has acted in good faith.

#### What liens may be perfected

~~—36.36 (1)~~ A lien may not be perfected unless it is preserved. R.S.O. 1990, c. C.30, s. 36 (1).

#### Expiry of preserved lien

(2) A lien that has been preserved expires unless it is perfected prior to the end of the ~~forty-five~~90-day period next following the last day, under section 31, on which the lien could have been preserved. R.S.O. 1990, c. C.30, s. 36 (2).

#### How lien perfected

(3) A lien claimant perfects the lien claimant's preserved lien,

(a) where the lien attaches to the premises, when the lien claimant commences an action to enforce the lien and, except where an order to vacate the registration of the lien is made, the lien claimant registers a certificate of action in the prescribed form on the title of the premises; or

(b) where the lien does not attach to the premises, when the lien claimant commences an action to enforce the lien. R.S.O. 1990, c. C.30, s. 36 (3).

#### Rules re sheltering

(4) A preserved lien becomes perfected by sheltering under a lien perfected by another lien claimant in respect of the same improvement in accordance with the following rules:

1. The preserved lien of a lien claimant is perfected by sheltering under the perfected lien of another lien claimant in respect of the same improvement where,

i. the lien of that other lien claimant was a subsisting perfected lien at the time when the lien of the lien claimant was preserved, or

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ii. the lien of that other lien claimant is perfected in accordance with clause (3) (a) or (b) between the time when the lien of the lien claimant was preserved and the time that the lien of the lien claimant would have expired under subsection (2).

2. The validity of the perfection of a sheltered lien does not depend upon the validity, proper preservation or perfection of the lien under which it is sheltered.
3. A sheltered ~~claim for~~ lien is perfected only as to the defendants and the nature of the relief claimed in the statement of claim under which it is sheltered.
4. Upon notice given by a defendant named in a statement of claim, any lien claimant whose lien is sheltered under that statement of claim shall provide the defendant with further particulars of the claim for lien or of any fact alleged in the claim for lien. R.S.O. 1990, c. C.30, s. 36 (4).

#### General lien

(5) Subject to subsection 44 (4) (apportionment), a preserved general lien that attaches to the premises shall be perfected against each premises to which the person having the lien desires the lien to continue to apply. R.S.O. 1990, c. C.30, s. 36 (5).

#### Where period of credit extended

(6) A person who has preserved a lien, but who has extended a period of credit for the payment of the amount to which the lien relates, may commence an action for the purpose of perfecting the lien even though the period of credit has not at the time expired. R.S.O. 1990, c. C.30, s. 36 (6).

#### Expiry of perfected lien

~~—37.37~~ (1) A perfected lien expires immediately after the second anniversary of the commencement of the action that perfected the lien, unless one of the following occurs on or before that anniversary:

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1. An order is made for the trial of an action in which the lien may be enforced.
2. An action in which the lien may be enforced is set down for trial. 1994, c. 27, s. 42 (1).

**Note:** Subsection 37 (1), as re-enacted by the Statutes of Ontario, 1994, chapter 27, subsection 42 (1), does not affect any rights acquired by a person under a judgment or court order before December 9th, 1994. See: 1994, c. 27, s. 42 (3).

#### Motion under s. 46

(2) Where a lien has expired under subsection (1), a motion may be made under section 46. R.S.O. 1990, c. C.30, s. 37 (2).

#### Section Amendments with date in force (d/m/y)

1994, c. 27, s. 42 (1) - 02/04/1983

#### Saving other rights

~~—38.38~~ The expiration of a lien under this Act shall not affect any other legal or equitable right or remedy otherwise available to the person whose lien has expired. R.S.O. 1990, c. C.30, s. 38.

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### PART VI RIGHT TO INFORMATION

#### Right to information;

~~—39.39~~ (1) Any person having a lien or who is the beneficiary of a trust under Part II or who is a mortgagee may, at any time, by written request, require information to be provided within a reasonable time, not to exceed twenty-one days, as follows:

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#### from owner or contractor

1. By the owner or contractor, other than a landlord described in paragraph 4. with,
  - i. the names of the parties to the contract,
  - ii. the contract price,

- iii. ~~the~~ state of accounts between the owner and the contractor containing the information listed in subsection (4.1).
- iv. a copy of any labour and material payment bond in respect of the contract posted by the contractor with the owner, ~~and~~
- v. a statement of whether the contract provides in writing that liens shall arise and expire on a lot-by-lot basis, and
- vi. a statement of whether the contract provides that payment under the contract shall be based on the completion of specified phases or the reaching of other milestones in its completion.

**from contractor or subcontractor**

- 2. By the contractor or a subcontractor, with,
  - i. the names of the parties to a subcontract,
  - ii. ~~the~~ state of accounts between the contractor and a subcontractor, or between a subcontractor and another subcontractor, containing the information listed in subsection (4.1),
  - iii. a statement of whether there is a provision in a subcontract providing for certification of the subcontract,
  - iv. a statement of whether a subcontract has been certified as complete, and
  - v. a copy of any labour and material payment bond posted by a subcontractor with the contractor or by a subcontractor with another subcontractor.

**from owner**

- 3. By an owner who is selling the owner's interest in a premises that is a home, with,
  - i. the name and address of the purchaser, the sale price, the amount of the purchase price paid or to be paid prior to the conveyance, the scheduled date of the conveyance and the lot and plan number or other legal description of the premises as contained in the agreement of purchase and sale, and
  - ii. the date on which a permit authorizing occupancy or a certificate of completion and possession has been issued. R.S.O. 1990, c. C.30, s. 39 (1).

**from landlord**

- 4. By a landlord whose interest in a premises is subject to a lien under subsection 19 (1), with,
  - i. the names of the parties to the lease,
  - ii. the amount of the payment referred to in subsection 19 (1), and
  - iii. the state of accounts between the landlord and the tenant containing the information listed in subsection (4.1).

**from mortgagee or unpaid vendor**

(2) Any person having a lien or any beneficiary of a trust under Part II may, at any time, by written request, require a mortgagee or unpaid vendor to provide the person within a reasonable time, not to exceed twenty-one days, with,

- (a) sufficient details concerning any mortgage on the premises to enable the person who requests the information to determine whether the mortgage was taken by the mortgagee for the purposes of financing the making of the improvement;
- (b) a statement showing the amount advanced under the mortgage, the dates of those advances, and any arrears in payment including any arrears in the payment of interest; or
- (c) a statement showing the amount secured under the agreement of purchase and sale and any arrears in payment including any arrears in the payment of interest. R.S.O. 1990, c. C.30, s. 39 (2).

**by trustee or workers' trust fund**

(3) The trustee of a workers' trust fund may at any time by written request require any contractor or subcontractor to permit the trustee, within a reasonable time after making the request, not to exceed twenty-one days, to inspect the payroll records of all workers who are beneficiaries of the fund, and who have supplied labour to the making of the improvement, and who are employed by the contractor or the subcontractor. R.S.O. 1990, c. C.30, s. 39 (3).

**respecting publication of certificate of substantial performance**

(4) REPEALED: 2017, c. XX, s. 32 (8).

#### State of accounts

(4.1) A state of accounts under subsection (1) shall contain the following information, as of a specified date:

(4) A contractor shall, upon written request whenever made to the contractor by any person, within a reasonable time furnish in writing to the person the date of publication and the name of the construction trade newspaper in which a copy of a certificate of substantial performance has been published under subsection 32 (1). R.S.O. 1990, c. C.30, s. 39 (4), 1. The price of the services or materials that have been supplied under the contract or subcontract.

2. The amounts paid under the contract or subcontract.
3. In the case of a state of accounts under paragraph 4 of subsection (1), which of the amounts paid under the contract or subcontract constitute any part of the payment referred to in subsection 19 (1).
4. The amount of the applicable holdbacks.
5. The balance owed under the contract or subcontract.
6. Any amount retained under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off).
7. Any other information that may be prescribed.

#### Information provided by mortgagee

(4.2) For the purposes of clause (2) (b), if amounts have been advanced under the mortgage for the purposes of financing both the purchase price of the land and the making of the improvement, the statement must show the amount advanced under the mortgage for each of those purposes.

#### Liability for failure to provide information

(5) Where a person, who is required under subsection (1), (2), (3) or (4) to provide information or access to information, does not provide the information or access to information as required or knowingly or negligently mis-states that information, the person is liable to the person who made the request for any damages ~~sustained by reason thereof~~ suffered as a result. R.S.O. 1990, c. C.30, s. 39 (5).

#### Order by court to comply with request

(6) Upon motion, the court may at any time, whether or not an action has been commenced, order a person to comply with a request that has been made to the person under this section and, when making the order, the court may make any order as to costs as it considers appropriate in the circumstances, including an order for the payment of costs on a substantial indemnity basis. R.S.O. 1990, c. C.30, s. 39 (6); 2006, c. 21, Sched. C, s. 102 (1).

#### Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. C, s. 102 (1) - 01/05/2007

#### Cross-examination on claim for lien

~~40.40~~ (1) Any of the following persons is liable to be cross-examined without an order on a claim for lien at any time, regardless of whether an action has been commenced:

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1. The lien claimant.
2. An agent or assignee of the lien claimant.
3. A trustee of the workers' trust fund, where subsection 81 (2) applies. 2010, c. 16, Sched. 2, s. 2 (11).

#### Who may participate

(2) There shall be only one examination under subsection (1), but the contractor, the payer of the lien claimant, and every person named in the claim for lien who has an interest in the premises are entitled to participate therein. R.S.O. 1990, c. C.30, s. 40 (2).

#### Notice

(3) Any person intending to examine a person under subsection (1) shall give at least seven days notice of the examination specifying the time and place for the examination to,

- (a) the person to be examined or the person's solicitor;
- (b) every other person named in the claim for lien as having an interest in the premises;
- (c) the contractor; and
- (d) the payer of the lien claimant. R.S.O. 1990, c. C.30, s. 40 (3).

#### Application of rules of court

(4) The rules of court pertaining to examinations apply, with necessary modifications, to cross-examinations under this section. R.S.O. 1990, c. C.30, s. 40 (4).

#### Section Amendments with date in force (d/m/y)

[2010, c. 16, Sched. 2, s. 2 \(11\)](#) - 01/07/2011

### PART VII DISCHARGE OF PRESERVED OR PERFECTED LIENS

#### Discharge of lien and withdrawal of written notice of lien

##### Discharge of lien claim by release

- ~~41.41~~ (1) A preserved or perfected lien may be discharged,
- (a) where the lien attaches to the premises, by the registration of a ~~released~~ **discharge of lien** in the prescribed form on the title to the premises and the ~~released~~ **discharge** shall, except where the lien claimant is a corporation, be supported by an affidavit of execution; or
  - (b) where the lien does not attach to the premises, by giving a ~~released~~ **discharge of lien** in the prescribed form to the owner, in the manner set out in section 34 for the giving of copies of the claim for lien. R.S.O. 1990, c. C.30, s. 41 (1).

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##### Withdrawal of written notice of lien

- (2) A written notice of a lien may be withdrawn by giving a withdrawal in ~~writing~~ **the prescribed form** to the person to whom the written notice of a lien was given, and a payer given the withdrawal shall, in respect of the operation of subsection 24 (2), be in the same position as if the written notice of a lien had never been given. R.S.O. 1990, c. C.30, s. 41 (2).

##### Discharge of general lien

- ~~42.42~~ A preserved or perfected general lien may be discharged against any one or more of the premises that are subject to it, without affecting its application to any other premises to which it applies, by the registration of a ~~released~~ **discharge of lien** in the prescribed form on the title to the ~~applicable~~ **premises** ~~released~~. R.S.O. 1990, c. C.30, s. 42.

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##### Postponement of lien claim

- ~~43.43~~ A preserved or perfected lien may be postponed in favour of the interest of another person in the premises by the registration on the title to the premises of a notice of postponement in the prescribed form, and, in that case, subsection 78 (8) applies (priorities in event of postponement). R.S.O. 1990, c. C.30, s. 43.

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##### Vacating lien by payment into court

##### Without notice

- ~~44.44~~ (1) Upon the motion of any person, without notice to any other person, the court shall make an order vacating,
- (a) where the lien attaches to the premises, the registration of a claim for lien and any certificate of action in respect of that lien; or
  - (b) where the lien does not attach to the premises, the claim for lien,
- where the person bringing the motion pays into court, or posts security in an amount equal to, the total of,
- (c) the full amount claimed as owing in the claim for lien; and
  - (d) the lesser of ~~\$50,000~~ **250,000** or 25 per cent of the amount described in clause (c), as security for costs. R.S.O. 1990, c. C.30, s. 44 (1).

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##### On payment in of reasonable amount

(2) Upon the motion of any person, the court may make an order vacating the registration of a claim for lien, and any certificate of action in respect of that lien, upon the payment into court or the posting of security of an amount that the court determines to be reasonable in the circumstances to satisfy the lien. R.S.O. 1990, c. C.30, s. 44 (2).

#### Condominium

(2.1) The owner of a condominium unit under the *Condominium Act, 1998* may make a motion under clause (1) (a) or subsection (2) regarding a lien respecting an improvement to common elements that include the common interest appurtenant to the owner's unit, and, for the purpose, the full amount claimed as owing in the claim for lien is deemed to be that portion of the lien amount that is attributable to the owner's common interest as specified in the applicable declaration registered under that Act.

#### Common elements condominium corporation

(2.2) An owner of a parcel of land mentioned in subsection 139 (1) of the *Condominium Act, 1998* to which a common interest is attached, in the case of a common elements condominium corporation, may make a motion under clause (1) (a) or subsection (2) regarding a lien respecting an improvement to common elements that include the common interest appurtenant to the owner's parcel of land, and, for the purpose, the full amount claimed as owing in the claim for lien is deemed to be that portion of the lien amount that is attributable to the owner's common interest as specified in the applicable declaration registered under that Act.

#### **Where lien does not attach to premises**

(3) Where the lien does not attach to the premises, the court may make an order, upon the motion of any person, vacating a claim for lien given to the owner, upon the payment into court or the posting of security of an amount that the court determines to be reasonable in the circumstances to satisfy the lien. R.S.O. 1990, c. C.30, s. 44 (3).

#### Vacating written notice of lien

(3.1) The court shall, on motion, vacate a written notice of a lien if any of the circumstances in subsection (1), (2) or (3) apply.

#### **Where general lien**

(4) Where a motion is made to vacate the registration of a general lien against one or more of the premises subject to that lien, the court may apportion the general lien between the premises in respect of which the motion is made and all other premises that are subject to the lien. R.S.O. 1990, c. C.30, s. 44 (4).

#### **Reduction of amount paid into court**

(5) Where an amount has been paid into court or security has been posted with the court under this section, the court, upon notice to such persons as it may require, may order where it is appropriate to do so,

- (a) the reduction of the amount paid into court, and the payment of any part of the amount paid into court to the person entitled; or
- (b) the reduction of the amount of security posted with the court, and the delivery up of the security posted with the court for cancellation or substitution, as the case may be. R.S.O. 1990, c. C.30, s. 44 (5).

#### Letters of credit

(5.1) A letter of credit containing reference to an international commercial convention is acceptable as security for the purposes of this section, as long as the convention text is written into the terms of the credit and the letter of credit is unconditional and accepted by a bank listed in Schedule I to the *Bank Act (Canada)* that is operating in Ontario.

#### **Lien a charge upon amount paid into court**

(6) Where an order is made under clause (1) (a) or subsection (2), the lien ceases to attach to the premises and ceases to attach to the holdbacks and other amounts subject to a charge under section 21, and becomes instead a charge upon the amount paid into court or security posted, and the owner or payer shall, in respect of the operation of sections 21, 23 and 24, be in the same position as if the lien had not been preserved or written notice of the lien had not been given. R.S.O. 1990, c. C.30, s. 44 (6).

#### **Idem**

(7) Where an order is made under clause (1) (b) or subsection (3), the lien ceases to attach to the holdbacks and other amounts subject to a charge under section 21 and becomes instead a charge upon the amount paid into court or security

posted and the owner or payer shall, in respect of the operation of sections 21, 23 and 24, be in the same position as if the lien had not been preserved or written notice of the lien had not been given. R.S.O. 1990, c. C.30, s. 44 (7).

#### Consolidation of motions

(8) Where more than one motion is made under subsection (1), (2) or (3) for the payment into court or posting of security to obtain an order vacating the registration of one or more preserved or perfected liens arising from the same improvement, the court may consolidate the motions and require that the amount paid into court or security posted be adequate to satisfy all the liens that are the subject of each of the motions, or make any other order that it considers appropriate. R.S.O. 1990, c. C.30, s. 44 (8).

#### Rules

(9) Where an order is made under subsection (1), (2) or (3), the following rules apply:

1. The lien claimant whose lien was the subject of the order may proceed with an action to enforce the claim against the amount paid into court or security posted in accordance with the procedures ~~set out in~~ under Part VIII, but no certificate of action shall be registered against the premises.
2. The amount paid into court or security posted is subject to the claims of all persons having a lien to the same extent as if the amount paid into court or security posted was realized by the sale of the premises in an action to enforce the lien and shall be distributed among all lien claimants in accordance with the priorities provided for in section 80.
3. Where any amount is realized in a lien action by the sale of the premises or otherwise, it shall be pooled into a common fund with the amount paid into court or security posted under this section, and shall be distributed among all lien claimants in accordance with the priorities provided for in section 80.
4. A lien claimant whose lien is sheltered, in accordance with subsection 36 (4), under the lien that was the subject of the order may proceed with an action to enforce the sheltered lien as if the order had not been made. R.S.O. 1990, c. C.30, s. 44 (9); 2010, c. 16, Sched. 2, s. 2 (12).

#### Section Amendments with date in force (d/m/y)

[2010, c. 16, Sched. 2, s. 2 \(12\)](#) - 01/07/2011

#### Declaration by court that preserved lien has expired

~~45.45~~ (1) Where a lien that attaches to the premises is not preserved or is not perfected within the time allowed for doing so under section 31 or 36, the court upon,

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- (a) the motion of any person without notice to any other person;
- (b) proof that the lien has not been preserved or perfected within the time allowed; and
- (c) production of,
  - (i) a certificate of search under the *Land Titles Act*, or
  - (ii) a registrar's abstract under the *Registry Act*,together with a certified copy of the claim for lien,

shall declare that the lien has expired and order that the registration of the claim for lien be vacated. R.S.O. 1990, c. C.30, s. 45 (1).

#### Idem

(2) Where the court is satisfied that a lien that does not attach to the premises has not been preserved or perfected within the time allowed for doing so under section 31 or 36, the court upon the motion of any person without notice to any other person shall declare that the lien has expired. R.S.O. 1990, c. C.30, s. 45 (2).

#### Order returning amount paid into court or cancelling security

- (3) Where a declaration is made under subsection (1) or (2), the court shall order that,
  - (a) any amount that has been paid into court under section 44 in respect of that lien be returned to the person who paid the amount into court; and
  - (b) any security that has been posted under section 44 in respect of that lien be cancelled. R.S.O. 1990, c. C.30, s. 45 (3).

**Order dismissing action, etc.**

~~46. 46~~ (1) Where a perfected lien that attaches to the premises has expired under section 37, the court, upon the motion of any person, shall declare that the lien has expired and shall make an order dismissing the action to enforce that lien and vacating the registration of a claim for lien and the certificate of action in respect of that action. R.S.O. 1990, c. C.30, s. 46 (1).

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**Idem**

(2) Where a perfected lien that does not attach to the premises has expired under section 37, the court, upon the motion of any person, shall declare that the lien has expired and shall make an order dismissing the action to realize upon that lien. R.S.O. 1990, c. C.30, s. 46 (2).

**Costs**

(3) A motion under subsection (1) or (2) may be brought without notice, but no order as to costs in the action may be made upon the motion unless notice of that motion was given to the person against whom the order for costs is sought. R.S.O. 1990, c. C.30, s. 46 (3).

**Order returning money paid into court or cancelling security**

(4) Where an action is dismissed under subsection (1) or (2), the court shall order that,

(a) any amount that has been paid into court under section 44 in respect of that action be returned to the person who paid the amount into court; and

(b) any security that has been posted under section 44 in respect of that action be cancelled. R.S.O. 1990, c. C.30, s. 46 (4).

**General ~~power to discharge lien~~ powers of the court**

**Power to discharge**

**47 (1) The court may, on motion, order the discharge of a lien.**

~~47. (1) Upon motion, the court may (a) on the basis that the claim for the lien is frivolous, vexatious or an abuse of process; or~~

~~(a) order the discharge of a lien; (b) on any other proper ground.~~

**Power to vacate, etc.**

**(1.1) The court may, on motion, make any of the following orders, on any proper ground:**

~~(b) — 1. An order that the registration of;~~

~~—— (i) a claim for lien, or~~

~~—— (ii) a certificate of action;~~

~~or both; be vacated;~~

~~(c) declare, where 2. If written notice of a lien has been given, a declaration that the lien has expired; or that the written notice of the lien shall no longer bind the person to whom it was given; or~~

~~(d) dismiss 3. An order dismissing an action.~~

**Conditions**

~~upon any proper ground and subject to (1.2) An order under subsection (1) or (1.1) may include any terms and/or conditions that the court considers appropriate in the circumstances. R.S.O. 1990, c. C.30, s. 47 (1).~~

**Direction by court**

(2) Where a certificate of action is vacated under **paragraph 1 of** subsection ~~(+1.1)~~, and there remain liens which may be enforced in the action to which that certificate relates, the court shall give any directions that are necessary in the

circumstances in respect of the continuation of that action subject to paragraph 4 of subsection 44 (9). R.S.O. 1990, c. C.30, s. 47 (2); 2010, c. 16, Sched. 2, s. 2 (13).

#### Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 2, s. 2 (13) - 01/07/2011

#### Discharge irrevocable

~~48.~~ **48** A discharge of a lien under this Part is irrevocable and the discharged lien cannot be revived, but no discharge affects the right of the person whose lien was discharged to claim a lien in respect of services or materials supplied by the person subsequent to the preservation of the discharged lien. R.S.O. 1990, c. C.30, s. 48.

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#### Registration of orders

~~49.~~ **49** Where the lien attaches to the premises, an order declaring that a lien has expired, or discharging a lien, or vacating the registration of a claim for lien or a certificate of action, may be registered by registering on the title to the premises a certified copy of the order that includes a description of the premises sufficient for registration under the *Registry Act* or the *Land Titles Act*, as the case may be, and a reference to the registration number of every preserved or perfected claim for lien and certificate of action thereby affected. R.S.O. 1990, c. C.30, s. 49.

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### PART VIII JURISDICTION AND PROCEDURE

#### Lien claims and ~~trust claims~~ procedures

#### ~~Lien claim enforceable in action~~

~~50.~~ **50** (1) A lien claim is enforceable in an action in the Superior Court of Justice ~~in accordance with the procedure set out in this Part.~~ R.S.O. 1990, c. C.30, s. 50 (1); 2006, c. 19, Sched. C, s. 1 (1).

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#### ~~Trust claim and lien claim not to be joined~~

~~(2) A trust claim shall not be joined with a lien claim but may be brought in any court of competent jurisdiction.~~ R.S.O. 1990, c. C.30, s. 50 (2).

#### ~~Joinder in action~~

~~(3) Any number of lien claimants whose liens are in respect of the same owner and the same premises may join in the same action.~~ R.S.O. 1990, c. C.30, s. 50 (3).

#### Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

#### Procedures

(2) Except to the extent that they are inconsistent with this Act and the procedures prescribed for the purposes of this Part, the Courts of Justice Act and the rules of court apply to actions under this Part.

#### Summary procedure

(3) The procedure in an action shall be as far as possible of a summary character, having regard to the amount and nature of the liens in question.

#### Court to dispose completely of action

~~51.~~ **51** The court, whether the action is being tried by a judge or on a reference ~~by a master, a case management master or a person agreed on by the parties, under section 58,~~

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- (a) shall try the action, including any set-off, crossclaim, counterclaim and ~~subject to section 56,~~ third party claim, and all questions that arise therein or that are necessary to be tried in order to dispose completely of the action and to adjust the rights and liabilities of the persons appearing before it or upon whom notice of trial has been served; and
- (b) shall take all accounts, make all inquiries, give all directions and do all things necessary to dispose finally of the action and all matters, questions and accounts arising therein or at the trial and to adjust the rights and liabilities of, and give all necessary relief to, all parties to the action. R.S.O. 1990, c. C.30, s. 51; 1994, c. 27, s. 42 (4); 1996, c. 25, s. 4 (1).

## Section Amendments with date in force (d/m/y)

1994, c. 27, s. 42 (4) - 09/12/1994; 1996, c. 25, s. 4 (1) - 31/10/1996.

Where exclusive jurisdiction not acquired

~~—52. 52~~ A judge, master or case management master does not acquire exclusive jurisdiction over the trial of an action or reference by reason only of appointing the time and place for the trial of the action or reference, ~~or for holding a settlement meeting.~~ R.S.O. 1990, c. C.30, s. 52; 1996, c. 25, s. 4 (2).

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## Section Amendments with date in force (d/m/y)

1996, c. 25, s. 4 (2) - 31/10/1996

### Statement of claim and defence

#### How action commenced

~~—53. (1) An action shall be commenced by issuing a statement of claim in the office of the local registrar of the court for the area in which the premises or a part thereof are situate. R.S.O. 1990, c. C.30, s. 53 (1).~~

#### Service of statement of claim

~~—(2) The statement of claim shall be served within ninety days after it is issued, but the court may, upon a motion made before or after the expiration of that period of time, extend the time for service. R.S.O. 1990, c. C.30, s. 53 (2).~~

#### Crossclaim or counterclaim

~~—(3) A crossclaim or counterclaim by any person shall accompany the person's statement of defence, but on motion the court may grant leave to deliver a crossclaim or counterclaim after this time where it is appropriate to do so, and where leave is granted, the court may,~~

~~—(a) make any order as to costs that it considers appropriate; and~~

~~—(b) give directions as to the conduct of the action. R.S.O. 1990, c. C.30, s. 53 (3).~~

#### Time for delivery of pleadings

~~—54. (1) The time for delivering a statement of defence to a lien claim, crossclaim, counterclaim or third party claim shall be twenty days. R.S.O. 1990, c. C.30, s. 54 (1).~~

#### Noting in default

~~—(2) Where a person against whom a claim is made in a statement of claim, counterclaim, crossclaim or third party claim defaults in the delivery of a defence to that claim, the person against whom the claim is made may be noted in default. R.S.O. 1990, c. C.30, s. 54 (2).~~

#### Effect of default in defence

~~—(3) Where a defendant or third party has been noted in default under subsection (2), the defendant or third party shall not be permitted to contest the claim of the person who named the defendant or third party as a defendant or third party, or to file a statement of defence, except with leave of the court, to be given only where the court is satisfied that there is evidence to support a defence, and where leave is granted, the court,~~

~~—(a) may make any order as to costs that it considers appropriate; and~~

~~—(b) may give directions as to the conduct of the action. R.S.O. 1990, c. C.30, s. 54 (3).~~

#### Allegations of fact deemed admitted

~~—(4) Except where leave has been granted under subsection (3), a defendant or third party who has been noted in default under subsection (2) shall be deemed to admit all allegations of fact made in the statement of claim, counterclaim, crossclaim or third party claim, as the case may be, and shall not be entitled to notice of or to participate in the trial of the action or any step in the action and judgment may be given against the defendant or third party. R.S.O. 1990, c. C.30, s. 54 (4).~~

#### Accommodating multiple claims

#### Joinder of claims

~~—55. (1) A plaintiff in an action may join with a lien claim a claim for breach of contract or subcontract. R.S.O. 1990, e. C.30, s. 55 (1).~~

#### **Counterclaims and crossclaims**

~~—(2) A defendant in an action may,~~

~~—(a) counterclaim against the person who named the defendant as a defendant in respect of any claim that the defendant may be entitled to make against that person, whether or not that claim is related to the making of the improvement;~~

~~—(b) crossclaim against a co-defendant in respect of any claim that the defendant may be entitled to make against that person related to the making of the improvement. R.S.O. 1990, e. C.30, s. 55 (2).~~

#### **Rules re third party claims**

~~—56. The following rules govern third party claims:~~

~~—1. Subject to paragraph 2, a person against whom a claim is made in a statement of claim, crossclaim, counterclaim or third party claim may join a person who is not a party to the action as a third party for the purpose of claiming contribution or indemnity from the third party in respect of that claim.~~

~~—2. A person may only be joined as a third party with leave of the court upon a motion made with notice to the owner and all persons having subsisting preserved or perfected liens at the time of the motion, but such leave shall not be given unless the court is satisfied that the trial of the third party claim will not,~~

~~—i. unduly prejudice the ability of the third party or of any lien claimant or defendant to prosecute a claim or conduct a defence, or~~

~~—ii. unduly delay or complicate the resolution of the lien action.~~

~~—3. The court may give such directions as it considers appropriate in the circumstances in respect of the conduct of third party claims. R.S.O. 1990, e. C.30, s. 56.~~

#### **Parties**

~~—57. (1) The person serving the notice of trial and all persons served with notice of trial are parties to the action. R.S.O. 1990, e. C.30, s. 57 (1).~~

#### **Adding parties**

~~—(2) Subject to section 54, the court may at any time add or join any person as a party to the action. R.S.O. 1990, e. C.30, s. 57 (2).~~

~~53-57 REPEALED: 2017, c. XX, s. 42 (2).~~

#### **Reference to master, etc.**

~~—58. 58 (1) On motion made after the delivery of all statements of defence, or the statement of defence to all crossclaims, counterclaims or third party claims, if any, or after the time for their delivery has expired, a judge may refer the whole action or any part of it for trial,~~

~~(a) to a master assigned to the area in which the premises or part of the premises are situate;~~

~~(a.1) to a case management master; ~~or~~~~

~~(b) to a person agreed on by the parties; or~~

~~(c) if the action is for an amount that is within the monetary jurisdiction of the Small Claims Court, as set out in section 23 of the Courts of Justice Act, to a deputy judge of that Court or to the Small Claims Court Administrative Judge. 1994, c. 27, s. 42 (5); 1996, c. 25, s. 4 (3).~~

#### **Notice**

~~(1.1) Notice of a motion for a reference under clause (1) (b) shall be given to every person ~~who is or would be entitled to a notice of settlement meeting under subsection 60 (2)~~ specified by the procedures prescribed for the purposes of this Part. 1994, c. 27, s. 42 (5).~~

#### **Requirement for consent**

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(1.2) A reference under clause (1) (b) shall not be made unless the persons entitled to notice under subsection (1.1) consent to the reference. 1994, c. 27, s. 42 (5).

#### Deemed consent

(1.3) A person given notice under subsection (1.1) who does not oppose the motion or does not appear at the hearing of the motion shall be deemed to consent to the reference under clause (1) (b). 1994, c. 27, s. 42 (5).

#### Master not to hear motion

(2) A master or a case management master shall not hear or dispose of a motion made under subsection (1). R.S.O. 1990, c. C.30, s. 58 (2); 1996, c. 25, s. 4 (4).

#### Reference directed

(3) At the trial, a judge may direct a reference to a master assigned to the area in which the premises or part of the premises are situate, to a case management master ~~or~~, to a person agreed on by the parties or, if the action is for an amount that is within the monetary jurisdiction of the Small Claims Court, as set out in section 23 of the Courts of Justice Act, to a deputy judge of that Court or to the Small Claims Court Administrative Judge. 1996, c. 25, s. 4 (5).

#### Powers of master on reference

(4) A master or case management master to whom a reference has been directed has all the jurisdiction, powers and authority of the court to try and completely dispose of the action and all matters and questions arising in connection with the action, including the giving of leave to amend any pleading and the giving of directions to a receiver or trustee appointed by the court. R.S.O. 1990, c. C.30, s. 58 (4); 1996, c. 25, s. 4 (6).

#### Powers of person agreed on by parties

(4.1) Subsection (4) also applies to a person who is agreed on by the parties and to whom a reference has been directed. 1994, c. 27, s. 42 (7).

#### Powers of Small Claims Court judge

(4.2) Subsection (4) also applies to a deputy judge of the Small Claims Court or to the Small Claims Court Administrative Judge, if a reference is directed to him or her.

#### Application to set aside order of reference

~~—(5) Where under subsection (1) the~~(5) If all or part of an action has been referred ~~to a master, to a case management master or to a person agreed on by the parties~~ for trial under subsection (1), any person who subsequently becomes a party to the action may, within seven days after becoming a party to the action, make a motion to a judge of the court that directed the reference to set aside the judgment directing the reference. 1996, c. 25, s. 4 (7).

#### Effect on subsequent party to action

(6) Where no motion is made under subsection (5), or where the motion is refused, the person who subsequently became a party to the action is bound by the judgment directing the reference as if the person had been a party to the action at the time the reference was directed. R.S.O. 1990, c. C.30, s. 58 (6).

#### Section Amendments with date in force (d/m/y)

1994, c. 27, s. 42 (5, 7) - 09/12/1994; 1996, c. 25, s. 4 (3-7) - 31/10/1996

#### Carriage of action

~~—59. (1) The court may at any time make an order awarding carriage of the action to any person who has a perfected lien. R.S.O. 1990, c. C.30, s. 59 (1).~~

#### Consolidation of actions

~~—(2) Where more than one action is brought to enforce liens in respect of the same improvement, the court may,~~

~~—(a) consolidate all the actions into one action; and~~

~~—(b) award carriage of the action to any person who has a perfected lien. R.S.O. 1990, c. C.30, s. 59 (2).~~

#### Application to fix date for trial or settlement meeting

~~—60. (1) Any party may make a motion to the court without notice to any other person at any time after;~~  
~~—(a) the delivery of the statements of defence, or the statements of defence to all crossclaims, counterclaims or third party claims, if any, where the plaintiff's claim is disputed; or~~  
~~—(b) the expiry of the time for the delivery of these statements of defence in all other cases;~~  
~~to have a day, time and place fixed for the trial of the action, or for the holding of a settlement meeting under section 61, or both. R.S.O. 1990, c. C.30, s. 60 (1).~~

**~~Notice of settlement meeting~~**

~~—(2) Where the court orders the holding of a settlement meeting, then at least ten days before the date appointed for the holding of the meeting, the party who obtained the appointment shall serve a notice of settlement meeting upon any person who was, on the twelfth day before the date appointed;~~  
~~—(a) subject to section 54 (default in filing defence), the owner and every other person named as a defendant in every statement of claim in respect of the action;~~  
~~—(b) where the lien attaches to the premises, a person with a registered interest in the premises;~~  
~~—(c) where the lien attaches to the premises, an execution creditor of the owner;~~  
~~—(d) any other person having a preserved or perfected lien against the premises; and~~  
~~—(e) a person joined as a third party under section 56. R.S.O. 1990, c. C.30, s. 60 (2).~~

**~~Request to identify other persons having lien~~**

~~—(3) Where the lien does not attach to the premises, the party who obtained the appointment for the holding of the settlement meeting shall request the owner to inform the party who obtained the appointment of the identity of every person described in clause (2) (d). R.S.O. 1990, c. C.30, s. 60 (3).~~

**~~Service of notice of trial~~**

~~—(4) Subject to section 54, where the court fixes a date for trial, the party who obtained the appointment shall serve a notice of trial, at least ten days before the date appointed for trial, upon any person who is or would be entitled to a notice of a settlement meeting under subsection (2). R.S.O. 1990, c. C.30, s. 60 (4).~~

**~~Conduct of settlement meeting~~**

~~—61. (1) Where a settlement meeting is ordered by the court, it shall be conducted in accordance with this section. R.S.O. 1990, c. C.30, s. 61 (1).~~

**~~Idem~~**

~~—(2) The settlement meeting shall be conducted by;~~  
~~—(a) a person selected by a majority of the persons present at the meeting; or~~  
~~—(b) where no person is selected, by the person who took out the appointment;~~  
~~and shall be for the purpose of resolving or narrowing any issues to be tried in the action. R.S.O. 1990, c. C.30, s. 61 (2).~~

**~~Idem~~**

~~—(3) The results of the settlement meeting shall be embodied in a statement of settlement which shall summarize those issues of fact and law which have been settled by the parties. R.S.O. 1990, c. C.30, s. 61 (3).~~

**~~Statement of settlement~~**

~~—(4) The statement of settlement shall be filed with the court and shall be attached to and form part of the record, and the settlement shall be binding upon all persons served with notice of the settlement meeting, and upon all defendants against whom pleadings have been noted closed under section 54, but subject to subsection 54 (3), the court may vary or set aside the statement of settlement upon such order as to costs or otherwise as it considers appropriate. R.S.O. 1990, c. C.30, s. 61 (4).~~

**~~Power of court~~**

~~—(5) Upon the filing of the statement of settlement with the court, the court may;~~

- ~~—(a) if there was no dispute at the meeting to a claim for lien, declare the lien valid and give such further judgment as it considers appropriate;~~
- ~~—(b) enter a judgment or make a report upon consent on those issues which have been settled by the parties;~~
- ~~—(c) make any order that is necessary in order to give effect to any judgment or report of the court under clause (a) or (b); and~~
- ~~—(d) make any order that is necessary for, or will expedite the conduct of, the trial. R.S.O. 1990, c. C.30, s. 61 (5).~~

**Non-application of Rule 50**

- ~~—(6) Rule 50 of the Rules of Civil Procedure does not apply to an action under this Act. R.S.O. 1990, c. C.30, s. 61 (6).~~

**59-61 REPEALED: 2017, c. XX, s. 44 (3).**

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**Judgment or report**

- ~~—62-62 (1) The results of the trial shall be embodied,~~

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- (a) in a judgment in the prescribed form, where the trial is conducted by a judge of the court; or
- (b) in a report in the prescribed form, where the trial is conducted on a reference ~~by a master, by a case management master, or by a person agreed on by the parties under section 58.~~ R.S.O. 1990, c. C.30, s. 62 (1); 1994, c. 27, s. 42 (9); 1996, c. 25, s. 4 (8).

**Varying form**

(2) The prescribed form of judgment or report may be varied by the court in order to meet the circumstances of the case so as to afford to any party to the action any right or remedy in the judgment or report to which the party is entitled. R.S.O. 1990, c. C.30, s. 62 (2).

- (3) REPEALED: 1999, c. 12, Sched. B, s. 3.

**Issue of execution**

(4) The judgment or report may direct any party found liable to make a payment, to make such payment forthwith, and execution may be issued,

- (a) immediately, in the case of a judgment; or
- (b) after confirmation, in the case of a report. R.S.O. 1990, c. C.30, s. 62 (4).

**Order for sale**

(5) The court may order that the interest in the premises be sold and may direct the sale to take place at any time after the judgment or confirmation of the report, allowing a reasonable time for advertising the sale. R.S.O. 1990, c. C.30, s. 62 (5).

**Persons who may be let in**

- (6) The court may allow any person with a perfected lien,
  - (a) who was not served with a notice of trial; or
  - (b) whose action was stayed by reason of an order under the ~~Arbitrations~~Arbitration Act, 1991.

to be let in to prove the claim at any time before the amount realized in the action for the satisfaction of the lien has been distributed, and where the claim is allowed, the judgment or report shall be amended to include the claim. R.S.O. 1990, c. C.30, s. 62 (6).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 42 (9) - 09/12/1994; 1996, c. 25, s. 4 (8) - 31/10/1996; 1999, c. 12, Sched. B, s. 3 - 22/12/1999

**Personal judgment**

- ~~—63-63~~ Subject to paragraph 3 of subsection 36 (4) (sheltering), the court may award any lien claimant a personal judgment, whether the claimant proves the lien or not, upon any ground relating to the claim that is disclosed by the evidence against any party to the action for any amount that may be due to the claimant and that the claimant might have recovered in a proceeding against that party. R.S.O. 1990, c. C.30, s. 63.

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#### Right to share in proceeds

~~—64. 64~~ Where an interest in the premises is sold under court order, or by a trustee appointed under Part IX, a person with a perfected lien is entitled to share in the proceeds of sale in respect of the amount owing to the person, although that amount or part thereof was not payable at the time of the commencement of the action or at the time of the distribution of the proceeds. R.S.O. 1990, c. C.30, s. 64.

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#### Orders for completion of sale

~~—65. 65~~ (1) The court may make all orders necessary for the completion of a sale and for vesting an interest in the premises in the purchaser. R.S.O. 1990, c. C.30, s. 65 (1).

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#### Payment into court of proceeds

(2) Where an interest in the premises is sold under court order, or by a trustee appointed under Part IX, the proceeds of the sale shall be paid into court to the credit of the action. R.S.O. 1990, c. C.30, s. 65 (2).

#### Fees and disbursements

(3) The court may add to the claim of the party having carriage of the action the fees and actual disbursements of the party in connection with the sale. R.S.O. 1990, c. C.30, s. 65 (3).

#### To whom proceeds paid

(4) The court shall direct to whom the proceeds shall be paid in accordance with the priorities established by this Act. R.S.O. 1990, c. C.30, s. 65 (4).

#### Where proceeds insufficient to satisfy judgment

(5) Where the proceeds of the sale are not sufficient to satisfy the judgment and costs, the court shall certify the amount of the deficiency and give personal judgment in the appropriate amount to each party whose judgment is not satisfied out of the proceeds against each person who has been found liable to the party. R.S.O. 1990, c. C.30, s. 65 (5).

#### Application to court for directions

~~—66. Where a person is in possession of an amount that may be subject to a trust under Part II, the person may apply to the court for direction and the court may give any direction or make any order that the court considers appropriate in the circumstances. R.S.O. 1990, c. C.30, s. 66.~~

#### Procedure generally

#### Summary procedure

~~—67. (1) The procedure in an action shall be as far as possible of a summary character, having regard to the amount and nature of the liens in question. R.S.O. 1990, c. C.30, s. 67 (1).~~

#### Interlocutory steps

~~—(2) Interlocutory steps, other than those provided for in this Act, shall not be taken without the consent of the court obtained upon proof that the steps are necessary or would expedite the resolution of the issues in dispute. R.S.O. 1990, c. C.30, s. 67 (2).~~

#### Application of rules of court

~~—(3) Except where inconsistent with this Act, and subject to subsection (2), the Courts of Justice Act and the rules of court apply to pleadings and proceedings under this Act. R.S.O. 1990, c. C.30, s. 67 (3).~~

#### Technical assistance

~~—(4) The court may obtain the assistance of any merchant, accountant, actuary, building contractor, architect, engineer or other person in such a way as it considers fit, to enable it to determine better any matter of fact in question, and may fix the remuneration of such person and direct the payment thereof by any of the parties. R.S.O. 1990, c. C.30, s. 67 (4).~~

#### Representation

~~—(5) A lien claimant whose claim is for an amount within the monetary jurisdiction of the Small Claims Court may be represented by a person authorized under the Law Society Act to represent the claimant. 2006, c. 21, Sched. C, s. 102 (2).~~

#### **Manner of making motion**

~~—(6) Where in this Act the court is empowered to do anything upon motion, the motion may be made in the manner provided for in the rules of court for the making of motions, regardless of whether any action has been commenced at the time the motion is made. R.S.O. 1990, c. C.30, s. 67 (6).~~

#### **Section Amendments with date in force (d/m/y)**

~~2006, c. 21, Sched. C, s. 102 (2)~~ 01/05/2007

~~66-67 REPEALED: 2017, c. XX, s. 46.~~

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### **PART IX**

#### **EXTRAORDINARY REMEDIESAPPOINTMENT OF TRUSTEE**

##### **Application for appointment of trustee**

~~68-68~~ (1) Any person having a lien, or any other person having an interest in the premises, may apply to the court for the appointment of a trustee and the court may appoint a trustee upon such terms as to the giving of security or otherwise as the court considers appropriate. R.S.O. 1990, c. C.30, s. 68 (1).

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##### **Powers of trustee**

- (2) Subject to the supervision and direction of the court, a trustee appointed under subsection (1) may,
- (a) act as a receiver and manager and, subject to the *Planning Act* and the approval of the court, mortgage, sell or lease the premises or any part thereof;
  - (b) complete or partially complete the improvement;
  - (c) take appropriate steps for the preservation of the premises; and
  - (d) subject to the approval of the court, take such other steps as are appropriate in the circumstances. R.S.O. 1990, c. C.30, s. 68 (2).

##### **Liens a charge on amounts recovered**

(3) Subject to subsection 78 (7), all liens shall be a charge upon any amount recovered by the trustee after payment of the reasonable business expenses and management costs incurred by the trustee in the exercise of any power under subsection (2). R.S.O. 1990, c. C.30, s. 68 (3).

##### **Sale subject to encumbrances**

(4) Any interest in the premises that is to be sold may be offered for sale subject to any mortgage, ~~eharge~~, interest or other encumbrance that the court directs. R.S.O. 1990, c. C.30, s. 68 (4).

##### **Orders for completion of sale, etc.**

(5) The court may make all orders necessary for the completion of any mortgage, lease or sale by a trustee under this section. R.S.O. 1990, c. C.30, s. 68 (5).

##### **Labour and material payment bonds**

~~—69. (1) Where a labour and material payment bond is in effect in respect of an improvement, any person whose payment is guaranteed by that bond has a right of action to recover the amount of the person's claim, in accordance with the terms and conditions of the bond, against the surety on the bond, where the principal on the bond defaults in making the payment guaranteed by the bond. R.S.O. 1990, c. C.30, s. 69 (1).~~

##### **Saving**

~~—(2) Nothing in this section makes the surety liable for an amount in excess of the amount that the surety undertakes to pay under the bond and the surety's liability under the bond shall be reduced by and to the extent of any payment made in good faith by the surety either before or after judgment is obtained against the surety. R.S.O. 1990, c. C.30, s. 69 (2).~~

##### **Subrogation**

~~—(3) The surety, upon satisfaction of its obligation to any person whose payment is guaranteed by the bond, shall be subrogated to all the rights of that person. R.S.O. 1990, c. C.30, s. 69 (3).~~

~~69 REPEALED: 2017, c. XX, s. 48.~~

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## PART X APPEALS

### Stated case

~~—70-70 (1) Where in the course of an action a question of law arises, the court may state the question in the form of a stated case for the opinion of the Divisional Court, and the stated case shall thereupon be set down to be heard before the Divisional Court and notice of hearing shall be served by the party setting down the matter upon all parties concerned. R.S.O. 1990, c. C.30, s. 70 (1).~~

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### Facts to be set out

(2) The stated case shall set forth those facts material to the determination of the question raised. R.S.O. 1990, c. C.30, s. 70 (2).

### Appeal to Divisional Court

~~—71- Divisional Court from a judgment or an order on a motion to oppose confirmation of a report under this Act. R.S.O. 1990, c. C.30, s. 71 (1).~~

### Notice of appeal

(2) A party wishing to appeal shall file and serve a notice of appeal within fifteen days of the date of the judgment or order, but the time for filing or serving the notice of appeal may be extended by the written consent of all parties, or by a single judge of the Divisional Court where an appropriate case is made out for doing so. R.S.O. 1990, c. C.30, s. 71 (2).

~~Where no appeal lies without leave~~

(3) No appeal lies from ~~an interlocutory order made by the court, except with leave of the Divisional Court.~~

~~No appeal~~

~~—(a) —(4) No appeal lies from a judgment or an order on a motion to oppose confirmation of a report under this Act, where if the amount claimed is \$1,000 to \$10,000 or less; or,~~

~~Same~~

~~—(b) —an interlocutory (5) No appeal lies from an order made by of the court. R.S.O. 1990, c. C.30, s. 71 (3), under Part II.1.~~

## PART XI PRIORITIES

### Enforcement of lien despite default

~~—72-72 A person who has supplied services or materials in respect of an improvement may enforce a lien despite the non-completion of, abandonment or termination of the contract or a subcontract by any other person. R.S.O. 1990, c. C.30, s. 72.~~

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### Assignment of lien rights

~~—73-73 The rights of a person having a lien may be assigned by an instrument in writing and, if not assigned, upon the death of the person pass to the person's personal representative. R.S.O. 1990, c. C.30, s. 73.~~

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### Continuation of general lien

~~—74-74 (1) Subject to section 82, where one or more premises that are subject to an unpreserved general lien are sold, the general lien continues for the full amount of the lien against those premises that are subject to the lien, that were not sold. R.S.O. 1990, c. C.30, s. 74 (1).~~

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### Idem

(2) Where a person having a preserved or perfected general lien releases the lien against one or more of the premises subject to the lien, the lien continues for the full amount of the lien against those premises that were not released. R.S.O. 1990, c. C.30, s. 74 (2).

#### Effect of taking security

~~75.75~~ (1) The taking of any security for, or the acceptance of any promissory note or bill of exchange for, or the taking of any acknowledgment of, or the giving of time for the payment of, or the taking of proceedings for the recovery of, or the obtaining of a personal judgment for, the claim, does not in itself merge, waive, pay, satisfy, prejudice or destroy a lien. R.S.O. 1990, c. C.30, s. 75 (1).

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#### Where note or bill negotiated

(2) Where any promissory note or bill of exchange has been negotiated, the person having the lien may still enforce the lien if the person is the holder of the promissory note or bill of exchange at the time when the person proves the claim for lien. R.S.O. 1990, c. C.30, s. 75 (2).

#### Time not extended

(3) Nothing in this section extends the time for, or dispenses with the requirement for, the preservation or perfection of a lien. R.S.O. 1990, c. C.30, s. 75 (3).

#### Lien claimant deemed purchaser

~~76.76~~ Where a ~~claim for~~ lien is preserved by registration ~~of a claim for lien~~, the lien claimant shall be deemed to be a purchaser to the extent of his lien within the provisions of the *Registry Act* and *Land Titles Act*, but except as otherwise provided in this Act, those Acts do not apply to any lien arising under this Act. R.S.O. 1990, c. C.30, s. 76.

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#### Priority of liens over executions, etc.

~~77.77~~ The liens arising from an improvement have priority over all judgments, executions, assignments, attachments, garnishments and receiving orders except those executed or recovered upon before the time when the first lien arose in respect of the improvement. R.S.O. 1990, c. C.30, s. 77.

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#### Priority over mortgages, etc.

~~78.78~~ (1) Except as provided in this section, the liens arising from an improvement have priority over all conveyances, mortgages or other agreements affecting the owner's interest in the premises. R.S.O. 1990, c. C.30, s. 78 (1).

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#### Building mortgage

(2) Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, the liens arising from the improvement have priority over that mortgage, and any mortgage taken out to repay that mortgage, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, irrespective of when that mortgage, or the mortgage taken out to repay it, is registered. R.S.O. 1990, c. C.30, s. 78 (2).

#### Prior mortgages, prior advances

(3) Subject to subsection (2), and without limiting the effect of subsection (4), all conveyances, mortgages or other agreements affecting the owner's interest in the premises that were registered prior to the time when the first lien arose in respect of an improvement have priority over the liens arising from the improvement to the extent of the lesser of,

- (a) the actual value of the premises at the time when the first lien arose; and
- (b) the total of all amounts that prior to that time were,
  - (i) advanced in the case of a mortgage, and
  - (ii) advanced or secured in the case of a conveyance or other agreement. R.S.O. 1990, c. C.30, s. 78 (3).

#### Prior mortgages, subsequent advances

(4) Subject to subsection (2), a conveyance, mortgage or other agreement affecting the owner's interest in the premises that was registered prior to the time when the first lien arose in respect of an improvement, has priority, in addition to the priority to which it is entitled under subsection (3), over the liens arising from the improvement, to the extent of any advance made in respect of that conveyance, mortgage or other agreement after the time when the first lien arose, unless,

- (a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or
- (b) prior to the time when the advance was made, the person making the advance had received written notice of a lien. R.S.O. 1990, c. C.30, s. 78 (4).

#### Special priority against subsequent mortgages

(5) Where a mortgage affecting the owner's interest in the premises is registered after the time when the first lien arose in respect of an improvement, the liens arising from the improvement have priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV. R.S.O. 1990, c. C.30, s. 78 (5).

#### General priority against subsequent mortgages

(6) Subject to subsections (2) and (5), a conveyance, mortgage or other agreement affecting the owner's interest in the premises that is registered after the time when the first lien arose in respect to the improvement, has priority over the liens arising from the improvement to the extent of any advance made in respect of that conveyance, mortgage or other agreement, unless,

- (a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or
- (b) prior to the time when the advance was made, the person making the advance had received written notice of a lien. R.S.O. 1990, c. C.30, s. 78 (6).

#### Advances to trustee under Part IX

(7) Despite anything in this Act, where an amount is advanced to a trustee appointed under Part IX as a result of the exercise of any powers conferred upon the trustee under that Part,

- (a) the interest in the premises acquired by the person making the advance takes priority, to the extent of the advance, over every lien existing at the date of the trustee's appointment; and
- (b) the amount received is not subject to any lien existing at the date of the trustee's appointment. R.S.O. 1990, c. C.30, s. 78 (7).

#### Where postponement

(8) Despite subsections (4) and (6), where a preserved or perfected lien is postponed in favour of the interest of some other person in the premises, that person shall enjoy priority in accordance with the postponement over,

- (a) the postponed lien; and
- (b) where an advance is made, any unpreserved lien in respect of which no written notice has been received by the person in whose favour the postponement is made at the time of the advance,

but nothing in this subsection affects the priority of the liens under subsections (2) and (5). R.S.O. 1990, c. C.30, s. 78 (8).

#### Saving

(9) Subsections (2) and (5) do not apply in respect of a mortgage that was registered prior to the 2nd day of April, 1983. R.S.O. 1990, c. C.30, s. 78 (9).

#### Financial guarantee bond

(10) A purchaser who takes title from a mortgagee takes title to the premises free of the priority of the liens created by subsections (2) and (5) where,

- (a) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance; or
- (b) a letter of credit or a guarantee from a bank listed in Schedule I or II to the *Bank Act* (Canada),

in ~~a form~~ the prescribed form is registered on the title to the premises, and, upon registration, the security of the bond, letter of credit or the guarantee takes the place of the priority created by those subsections, and persons who have proved liens have a right of action against the surety on the bond or guarantee or the issuer of the letter of credit. R.S.O. 1990, c. C.30, s. 78 (10); 1997, c. 19, s. 30.

#### Home buyer's mortgage

(11) Subsections (2) and (5) do not apply to a mortgage given or assumed by a home buyer. R.S.O. 1990, c. C.30, s. 78 (11).

#### Section Amendments with date in force (d/m/y)

1997, c. 19, s. 30 - 10/10/1997

#### Persons who comprise class

~~79-79~~ All persons having a lien who have supplied services or materials to the same payer comprise a class, and a person who has supplied services or materials to more than one payer is a member of every class to the extent to which the person's lien relates to that class. R.S.O. 1990, c. C.30, s. 79.

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#### Priority between and within class

~~80-80~~ (1) Except where it is otherwise provided by this Act,

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- (a) no person having a lien is entitled to any priority over another member of the same class;
- (b) all amounts available to satisfy the liens in respect of an improvement shall be distributed rateably among the members of each class according to their respective rights; and
- (c) the lien of every member of a class has priority over the lien of the payer of that class. R.S.O. 1990, c. C.30, s. 80 (1).

#### Where conveyance or mortgage void

(2) Any conveyance or mortgage in respect of the premises to any person entitled to a lien on the premises, in payment of or as security for that claim, whether given before or after that lien arises, is void against all other persons entitled to a lien on the premises. R.S.O. 1990, c. C.30, s. 80 (2).

#### Worker's priority

~~81-81~~ (1) The lien of a worker has priority over the lien of any other person belonging to the same class to the extent of the amount of forty regular-time working days' wages. R.S.O. 1990, c. C.30, s. 81 (1).

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#### Workers' trust fund

(2) Where monetary supplementary benefits are payable to a workers' trust fund instead of to a worker, the trustee of the workers' trust fund is subrogated to the rights of the worker under this Act with respect to those benefits. R.S.O. 1990, c. C.30, s. 81 (2).

#### Device to defeat workers' priority void

(3) Every device to defeat the priority given to workers by this section is void. R.S.O. 1990, c. C.30, s. 81 (3).

#### Subordination of general lien claims

~~82-82~~ Where a general lien is realized against a premises in an action in which other liens are also realized against the premises,

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- (a) the general lien shall rank with the other liens according to the rules of priority set out in section 80 only to the extent of,
  - (i) the total value of the general lien,divided by,
  - (ii) the total number of premises to which the person having the general lien supplied services or materials under contract or subcontract; and
- (b) in respect of the balance of the general lien, it shall rank next in priority to all other liens against the premises, whether or not of the same class. R.S.O. 1990, c. C.30, s. 82.

#### Application of insurance proceeds

~~83-83~~ Where a premises that is subject to a lien is destroyed in whole or in part, any amount received by the owner or a mortgagee by reason of any insurance on the premises shall take the place of the premises so destroyed and shall be distributed in accordance with the priorities set out in this Part. R.S.O. 1990, c. C.30, s. 83.

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#### Distribution of proceeds of sale

~~84-84~~ Where an interest in the premises is sold or leased under an order of the court or by a trustee appointed under Part IX, the proceeds received as a result of that disposition, together with any amount paid into court under subsection 65 (2), shall be distributed in accordance with the priorities set out in this Part. R.S.O. 1990, c. C.30, s. 84.

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#### Priorities on insolvency

~~—85.85~~ (1) Where a payer becomes insolvent, the trust fund of which that payer is trustee shall be distributed so that priority over all others is given to a beneficiary of that trust who has proved a lien and a beneficiary of a trust created by section 8 that is derived from that trust, who has proved a lien. R.S.O. 1990, c. C.30, s. 85 (1).

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Idem

(2) Priority in the distribution of trust funds among those who have proved liens shall be in accordance with the respective priorities of their liens as set out in this Part. R.S.O. 1990, c. C.30, s. 85 (2).

Idem

(3) The remaining trust funds shall be distributed among the beneficiaries of that trust and the beneficiaries of trusts created by section 8 that are derived from that trust, whose liens have not been proved, in accordance with the respective priorities to which those liens would have been entitled as set out in this Part, had those liens been proved. R.S.O. 1990, c. C.30, s. 85 (3).

part xi.1  
surety bonds

Bonds and public contracts

Definition

85.1 (1) In this section,

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“public contract” means a contract between an owner and a contractor respecting an improvement, if the owner is the Crown, a municipality or a broader public sector organization.

Application

(2) Subject to the regulations, this section applies to a public contract if the contract price exceeds the amount prescribed for the applicable owner.

Requirement for labour and material payment bond

(3) On entering into a public contract, a contractor shall furnish the owner with a labour and material payment bond, in the prescribed form, that,

(a) is of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;

(b) has a coverage limit of at least 50 per cent of the contract price; and

(c) extends protection to subcontractors and persons supplying labour or materials to the improvement.

Requirement for performance bond

(4) On entering into a public contract, a contractor shall furnish the owner with a performance bond, in the prescribed form, that,

(a) is of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance; and

(b) has a coverage limit of at least 50 per cent of the contract price.

Claims process

(5) A bond form prescribed for the purposes of subsection (3) or (4) may set out the claims process applicable in respect of the bond.

No limitation on other bonds or security

(6) For greater certainty, this section does not limit the ability of the owner to require the contractor to provide other types of bonds or security.

Rights of action

Default, labour and material payment bond

85.2 (1) If a labour and material payment bond is in effect in respect of an improvement and the principal on the bond defaults in making a payment guaranteed by the bond, any person to whom the payment is guaranteed has a right of action to recover the amount of the person’s claim, in accordance with the terms and conditions of the bond, against the surety and the principal.

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Default, performance bond

(2) If a performance bond is in effect in respect of an improvement and the contractor defaults in performing the contract guaranteed by the bond, the owner has a right of action to enforce the bond, in accordance with its terms and conditions, against the surety and the contractor.

#### Saving

(3) Nothing in this section makes the surety liable for an amount in excess of the amount that the surety undertakes to pay under a bond, and the surety's liability under the bond shall be reduced by and to the extent of any payment made in good faith by the surety either before or after judgment is obtained against the surety.

#### Same

(4) Nothing in this section makes the surety liable as the principal under a bond, or makes the surety a party to any contract.

#### Subrogation

(5) On satisfaction of its obligation to any person under a bond to which this section applies, the surety shall be subrogated to all the rights of that person.

## **PART XII MISCELLANEOUS RULES**

### **Costs**

~~—86-86~~ (1) Subject to subsection (2), any order as to the costs in an action, application, motion or ~~settlement meeting any other step in a proceeding under this Act~~ is in the discretion of the court, and an order as to costs may be made against,

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- (a) a party to the action or motion; or
- (b) a person who represented a party to the action, application or motion, where the person,
  - (i) knowingly participated in the preservation or perfection of a lien, or represented a party at the trial of an action, where it is clear that the claim for a lien is without foundation, is frivolous, vexatious or an abuse of process, or is for a ~~grossly excessive~~wilfully exaggerated amount, or that the lien has expired, or
  - (ii) prejudiced or delayed the conduct of the action,

and the order may be made on a substantial indemnity basis, including where the motion is heard by: a person other than a judge or the action has been referred under section ~~58 to, a master, case management master or commissioner-58.~~ 2006, c. 21, Sched. C, s. 102 (3).

### **Where least expensive course not taken**

(2) Where the least expensive course is not taken by a party, the costs allowed to the party shall not exceed what would have been incurred had the least expensive course been taken. R.S.O. 1990, c. C.30, s. 86 (2).

### **Section Amendments with date in force (d/m/y)**

1996, c. 25, s. 4 (10) - 31/10/1996

2006, c. 21, Sched. C, s. 102 (3) - 01/05/2007

### **How documents may be given**

~~—87-87~~ (1) Except where otherwise ordered by the court, all documents and notices required to be given or that may be given under this Act, may be served in any manner permitted under the rules of court or, in the alternative, may be sent by certified or registered mail addressed to the intended recipient at the recipient's last known mailing address,

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- (a) according to the records of the person sending the document; or
- (b) as stated on the most recently registered instrument identifying the recipient as a person having an interest in the premises. R.S.O. 1990, c. C.30, s. 87 (1).

### Exception, written notice of lien

(1.1) Despite subsection (1), a written notice of lien shall be served in a manner permitted under the rules of court for service of an originating process.

### **When document deemed received**

(2) In the absence of evidence to the contrary, a document or notice sent to a person by certified or registered mail shall be deemed to have been received by the person on the fifth day following the date on which it was mailed, exclusive of Saturdays and holidays. R.S.O. 1990, c. C.30, s. 87 (2).

#### Date of mailing

(3) Where a document or notice is sent by registered mail, the date appearing on the postal registration receipt shall be deemed conclusively to be the date of mailing. R.S.O. 1990, c. C.30, s. 87 (3).

#### Financial Administration Act

87.1 If a ministry or specified public entity, as defined in the *Financial Administration Act*, is liable to pay interest under this Act, the payment of the interest is deemed to have been authorized and directed by the Treasury Board under section 11.4.1 of that Act.

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#### Courts of Justice Act

87.2 In the event of a conflict between this Act and the *Courts of Justice Act*, this Act prevails to the extent of the conflict.

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#### Regulations

88 (1) The Lieutenant Governor in Council may make regulations respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act, including regulations,

—88. The Lieutenant Governor in Council may make regulations,— (a) respecting anything that, under this Act, may or must be prescribed or done by regulation;

—(a)

—(b) prescribing forms and providing for their use;

—(b) prescribing the appropriate offices of the Crown to which claims for lien must be sent;

—(c) prescribing the form and manner of publication of copies of certificates and declarations of substantial performance under section 32. R.S.O. 1990, c. C.30, s. 88.

Note: Despite Schedules A and B to the Revised Statutes of Ontario, 1990, section 92(c) governing the registry required to be established under clause 13.3 (1) (c);

(d) governing fees that may be set by the Authorized Nominating Authority under clause 13.3 (2) (a) or that the Authority may determine under clause 13.10 (2) (b);

(e) if a designation is made under subsection 13.4 (1), prescribing fees for the training and qualification of persons as adjudicators and for the appointment of adjudicators, and requiring their payment;

(f) establishing procedures for the making of complaints against the Authorized Nominating Authority;

(g) governing adjudication procedures for the purposes of subsection 13.6 (2);

(h) governing the procedures for requiring a consecutive adjudication under subsection 13.8 (2);

(i) governing procedures that apply if an adjudicator fails to complete an adjudication under Part II.1;

(j) for the purposes of Part VIII, governing procedures that apply to actions;

(k) exempting public contracts from the application of section 85.1.

#### Conflict

(1.1) In the event of a conflict between a regulation made under clause 88 (1) (j) and the *Courts of Justice Act* or the rules of court, the regulation prevails to the extent of the conflict.

#### Same, transitional matters

(2) The Lieutenant Governor in Council may make regulations providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the *Construction Lien Act*, 1983, being chapter 6, shall be deemed to continue in force. See: 1993, c. 27, s. 8, par. 1 and s. 9, *Amendment Act*, 2017.