



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

MECHANICS' LIEN ACT

PLEASE NOTE

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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MECHANICS' LIEN ACT

CHAPTER M-4

1. Definitions

In this Act

- (a) “**completion of the contract**” means substantial performance, not necessarily total performance of the contract;
- (b) “**contractor**” means a person contracting with, or employed directly by, the owner or his agent to do work upon or to furnish material for an improvement, but does not include a labourer;
- (c) repealed by 2008, c.20, s.72;
- (d) “**Crown**” includes Crown agencies and Crown corporations as defined in the *Financial Administration Act* R.S.P.E.I. 1988, Cap. F-9;
- (e) “**highway**” includes any road, street, lane, thoroughfare, bridge, subway, pier, ferry, square and public place, appropriated to the public use;
- (f) “**improvement**” includes anything constructed, erected, built, placed, dug or drilled on or in land except a thing that is not attached to the realty or intended to be or become part thereof;
- (g) repealed by 2008, c.20, s.72;
- (h) “**labourer**” means any person employed for wages in any kind of labour whether employed under a contract of service or not;
- (i) “**lien**” means a lien created by this Act;
- (j) “**owner**” means a person, including the Crown, having an estate or interest in land upon or in respect of which work is done or material is furnished at his request, express or implied,
 - (i) upon his credit,
 - (ii) upon his behalf,
 - (iii) with his privity and consent, or
 - (iv) for his direct benefit,
 and all persons claiming under him whose rights are acquired after the beginning of the work or the furnishing of the material in respect of which a lien is claimed;
- (k) “**person**” includes a body corporate or politic, a firm, partnership or association;
- (l) “**proper registry office,**” when used with reference to or in respect of the registration, recording, filing, discharging or vacating of a claim of lien or other instrument or document, or of any dealing, relating to or affecting any land, means the office of the Registrar for the county in which the land is situated;
- (m) repealed by 2008, c.20, s.72;
- (n) “**Registrar**” means a Registrar of Deeds;

- (o) “**sub-contractor**” means a person not contracting with or employed directly by the owner or his agent for the doing of any work, but contracting with or employed by a contractor, or by a sub-contractor under him, but does not include a labourer;
- (p) “**wages**” means money earned by a labourer for work done, whether by time or piece work or otherwise;
- (q) “**work**” includes the doing of work and the performance of services upon or in respect of any improvement, and also includes the breaking of any land or the clearing thereof of timber or scrub. *R.S.P.E.I. 1974, Cap. M-7, s.1; 1983, c.31, s.1; 1983, c.33, s.66; 2008, c.20, s.72(59).*

2. Origin of lien

A person who

- (a) does, or causes to be done, any work upon or in respect of an improvement; or
- (b) furnishes any material to be used in an improvement for an owner, contractor, or sub-contractor,

has, except as otherwise provided by this Act, a lien for wages or for the price of the work, or material, as the case may be, or for so much thereof as remains owing to him, upon the estate or interest of the owner in the land in respect of which the improvement is being made, as such estate or interest exists at the time the lien arises, or at any time during its existence. *R.S.P.E.I. 1974, Cap. M-7, s.2.*

3. Extent of liability of owner

- (1) A lien does not attach so as to make the owner liable for a greater sum than the sum payable by the owner to the contractor, except as otherwise provided by this Act.

Idem

- (2) Where a lien is claimed by any person other than the contractor, it does not attach so as to make the owner liable for a greater sum than the amount owing to the contractor for whom, or for whose sub-contractor, the work has been done, or the materials have been furnished, except as otherwise provided by this Act.

Minimum amount of lien

- (3) No claim of lien shall be registered if the amount of the claim or the aggregate of joined claims is less than \$32.

When material deemed to be furnished

- (4) Material shall be deemed to be furnished to be used within the meaning of this Act when it is delivered either on the land upon which it is to be used, or on such land or in such place in the immediate vicinity thereof as is designated by the owner or his agent, or by the contractor or sub-contractor.

Exception to subsection (4)

- (5) Where material furnished to be used as set out in section 2 is incorporated in an improvement, a lien attaches as herein provided, notwithstanding that the material may not have been delivered in strict accordance with subsection (4).

Lien for rented equipment

- (6) A person who rents equipment to an owner, contractor or subcontractor for use on a contract site shall be deemed for the purposes of this Act to have performed a service for which he has

a lien for the price of the rental of the equipment used on the contract site, limited, however, in amount to the sum justly owed and due to the person entitled to the lien from the owner, contractor or sub-contractor in respect of the rental of the equipment. *R.S.P.E.I. 1974, Cap. M-7, s.3; 1952, c.30, s.1; 1983, c.31, s.2.*

4. Exceeding operation of Act, limitation

No agreement shall deprive any person not a party thereto and otherwise entitled to a lien under this Act of the benefit of the lien. *R.S.P.E.I. 1974, Cap. M-7, s.4.*

5. *Idem*

An agreement by a labourer that this Act does not apply or that the remedies provided by it are not available for his benefit is null and void. *R.S.P.E.I. 1974, Cap. M-7, s.5.*

6. Attempt to defeat priorities, *re* labourer

Every device by an owner, contractor, or sub-contractor used to defeat the priority given by this Act to a labourer for his wages is null and void. *R.S.P.E.I. 1974, Cap. M-7, s.6.*

7. Payment to defeat lien, effect

- (1) A payment made for the purpose of defeating or impairing a lien is null and void for that purpose.

Conveyance of charge, when deemed fraudulent

- (2) A conveyance, mortgage or charge of or on land given in payment of, or as security for a lien upon that land whether given before or after the lien arises, shall be deemed to be fraudulent and void as against any other person entitled under this Act to a lien on the same land. *R.S.P.E.I. 1974, Cap. M-7, s.7.*

8. When lien arises

A lien arises when the work is begun or the first material is furnished. *R.S.P.E.I. 1974, Cap. M-7, s.8.*

9. Priority of lien *re* judgments etc.

- (1) A lien has priority over all judgments, executions, attachments, garnishments and receiving orders recovered, issued or made after the lien arises.

Priority of lien *re* conveyances, mortgages etc.

- (2) Upon registration of the claim of lien, the lien, subject to subsection (3), has priority over all claims under conveyances, mortgages, and other charges, and agreements for sale of land, registered or unregistered, made by the owner after the lien arises.

Conveyance etc. made after lien arises but before registration

- (3) A mortgage or conveyance that is registered after a lien for material arises, but before the registration of the claim of lien, has priority over the lien to the extent of any payments or advances made thereunder in good faith before the person making the payments or advances has knowledge of the lien.

Where land is encumbered by mortgage etc., priorities

- (4) Where land upon or in respect of which work is done or material is furnished, is encumbered by a mortgage or other charge registered before a lien arises, the mortgage or other charge has priority
- (a) over the lien to the amount of the moneys owing under the mortgage or charge at the time the lien arises, but only to the extent of the value of the land at that time; and
 - (b) over a lien for material furnished to the extent of any payments or advances made under the mortgage or charge after the lien arose but before the person making the payments or advances has received notice in writing of the lien from the lienholder.

Unpaid purchase money, priority

- (5) Where the owner has an estate or interest in the land as purchaser under an agreement for sale and the purchase money or part thereof is unpaid, the vendor has priority over a lien only to the extent of the value of the land at the time the lien arose. *R.S.P.E.I. 1974, Cap. M-7, s.9.*

10. Lienholders, priority between

- (1) Subject to subsection (2), all lienholders rank proportionately for the amounts for which their liens may respectively be enforced and the proceeds of any sale so far as required shall, except as aforesaid, be distributed among the lienholders in proportion.

Liens for wages, priority

- (2) Liens for wages, for all purposes under this Act and to the extent of thirty days wages, have priority over all other liens; all liens for wages shall rank on an equal footing. *R.S.P.E.I. 1974, Cap. M-7, s.10.*

11. Leasehold attached, fee simple also liable, where

- (1) Where the estate or interest upon which the lien attached is leasehold, the fee simple shall also be subject to the lien, if the person doing the work or supplying the material gives notice in writing by registered letter or personal service to the owner or his agent of the work to be done or the material to be furnished and the owner or his agent fails within ten days thereafter to give notice to such person that he will not be responsible therefor.

Forfeiture or cancellation of lease, effect on lien

- (2) No forfeiture or cancellation of a lease, except for nonpayment of rent, deprives any person otherwise entitled to a lien of the benefit of the lien, and he may pay any rent due or accruing due and the amount so paid may be added to his claim. *R.S.P.E.I. 1974, Cap. M-7, s.12.*

12. Property destroyed by fire, application of insurance moneys

Where any property in respect of which a lien has arisen is wholly or partly destroyed by fire, any money received or receivable by an owner or by a prior mortgagee or chargee by reason of insurance thereon takes the place of the property so destroyed, and after satisfying any prior mortgage or charge in the manner and to the extent set out in subsection 9(4) is subject to the claims of all lienholders to the same extent as if the money were realized by a sale of the property in an action to enforce a lien. *R.S.P.E.I. 1974, Cap. M-7, s.13.*

13. Removal of material

- (1) During the existence of a lien no part of any material affected thereby shall be removed to the prejudice of the lien.

Material actually furnished, lien in favor of

- (2) Material actually furnished to be used for the purpose set out in sections 2 and 3 is subject to a lien in favor of the person furnishing it until it is placed in the improvement; and while the lien exists the material is not subject to execution or other process to enforce any debt other than that for the purchase money thereof. *R.S.P.E.I. 1974, Cap. M-7, s.14.*

14. Hold back of twenty per cent

- (1) An owner liable upon a contract under which a lien may arise shall deduct from any payments made by him thereunder and subject to section 16 retain for a period of sixty days after the completion or abandonment of the contract an amount equal to twenty per cent of the value of the work done and of the material furnished to be used, irrespective of whether the contract provides for instalment payments or payment on completion of the contract.

Calculation of hold back

- (2) The value mentioned in subsection (1) is calculated on the basis of the contract price, or, if there is no specific contract price, then on the basis of the actual value of the work and material.

Hold back where value of work and materials exceeds \$15,000

- (3) Where the value of the work and material exceeds \$15,000, the amount to be retained shall, except as hereafter mentioned, be equal to fifteen per cent instead of twenty per cent of the value of the work and materials, calculated as aforesaid, but the amount to be retained shall not be less than the sum required to be retained pursuant to subsection (1) where the value is \$15,000 or less.

Reduction of holdback where sub-contract completed

- (4) Where
- (a) a contract is under the supervision of an architect, engineer or other person upon whose certificate payments are to be made;
 - (b) the architect, engineer or other person referred to in clause (a) certifies to the owner and to a sub-contractor that the sub-contract has been completed to his satisfaction;
 - (c) sixty days have elapsed after the certificate referred to in clause (b) was delivered to the owner and sub-contractor; and
 - (d) no claim of a lien derived under that sub-contract is filed under section 19 or all such liens are discharged pursuant to section 30,

the owner shall reduce the amount to be retained by him by

- (e) fifteen per cent or twenty per cent, as the case may be, of the sub-contract price; or
- (f) where there is no specific sub-contract price, fifteen per cent or twenty per cent, as the case may be, of the actual work, service performed or materials furnished under that sub-contract.

Certificate is conclusive evidence of completion

- (5) Where a certificate issued by an architect, engineer or other person as referred to in subsection (4) to the effect that a sub-contract by which a sub-contractor became a sub-contractor has been completed to the satisfaction of that architect, engineer or other person has been given to that sub-contractor, then for the purposes of subsections 24(2), (3) and (4) and section 27 that sub-contract and any materials furnished or to be furnished thereunder and any work or services performed or to be performed thereunder shall, so far as concerns any

lien thereunder of that sub-contractor, be deemed to have been completed or furnished not later than the time at which the certificate was so given.

Lien as charge on hold back

- (6) Every lien is a charge upon the amount directed by this section to be retained in favor of the lienholders who have done work or furnished material for
- (a) the contractor to whom the moneys so required to be retained are payable; or
 - (b) his sub-contractor.

Payments made in good faith without notice of lien

- (7) All payments up to eighty per cent as fixed by subsection (1) or up to eighty-five per cent as fixed by subsection (3) and payments permitted as a result of the operation of subsections (4) and (5) made in good faith by an owner to a contractor, or by a contractor to a sub-contractor, or by one sub-contractor to another sub-contractor, before notice in writing of the lien given by the person claiming the lien to the owner, contractor or sub-contractor, as the case may be, operate as a discharge of the lien to such extent.

Amendment of contracts

- (8) Every contract is amended in so far as is necessary to be in conformity with this section.

Default in completion, application of holdback

- (9) Where a contractor or sub-contractor makes a default in completing his contract, the amount required to be retained under this section shall not, as against a lienholder, be applied by the owner, contractor or sub-contractor to the completion of the contract or for any other purpose than the satisfaction of liens. *R.S.P.E.I. 1974, Cap. M-7, s.15; 1980, c.37, s.1.*

14.1 Release of holdback

Notwithstanding section 14, where the Government has let a contract for highway construction and

- (a) completion is scheduled in the calendar year following the calendar year in which the contract was executed;
- (b) it is subject to the supervision of an engineer upon whose certificates payments are to be made; and
- (c) the engineer has certified to the owner and the contractor that the work scheduled to be completed in the first year has been completed to his satisfaction,

for the purposes of section 14, the contract shall be deemed to have been completed on December 1 of the first calendar year and the owner shall reduce the amount to be retained by him by 15% or 20%, as the case may be, of the value of the contract for the work deemed to have been completed. *1996, c.28, s.1.*

15. Notice of lien to owner, duties of owner

- (1) Where a lienholder gives to the owner notice in writing of his lien stating under oath the amount claimed, the owner shall retain from the amount payable to the contractor under whom the lien is derived the amount stated in the notice, in addition to the amount retained under section 14.

Special fund for this section

- (2) The amounts retained pursuant to subsection (1) constitute a fund, separate from that constituted by the amounts retained pursuant to section 14, for the benefit of lienholders who give notice under this section.

Distribution of funds to lienholders

- (3) The lien of each lienholder who gives notice under this section is a charge in his favour upon the amount directed by this section to be retained; and each of the lienholders rank on an equal footing on the amount retained under this section for the amount for which his lien may be enforced, and the amount so retained shall be distributed among the lienholders proportionately as hereinafter provided.

Payment to lienholder under this section

- (4) A payment made to a lienholder under this section does not disentitle him to claim for any balance remaining payable to him and to be paid therefor from moneys retained under section 14. *R.S.P.E.I. 1974, Cap. M-7, s.16.*

16. Payment of hold backs

Payment of the amounts required to be retained under sections 14, 14.1 and 15 may be made so as to discharge every lien or charge under this Act in respect thereof

- (a) on the expiration of the sixty days after the completion or abandonment of the contract, if a claim or lien has not been registered or action commenced as provided herein; or
- (b) on the expiration of ninety days mentioned in section 27 if action has not been commenced within that period as mentioned in that section

whichever is the sooner. *R.S.P.E.I. 1974, Cap. M-7, s.17; 1996, c.28, s.2.*

17. Payment to lienholder on account

If an owner, contractor, or sub-contractor, makes a payment to a lienholder for or on account of a debt due the lienholder for work done or material furnished to be used as mentioned in sections 2 and 3, for which debt the owner, contractor, or sub-contractor is not primarily liable, and within three days thereafter gives written notice of the payment to the person primarily liable or his agent, the payment shall be deemed to be a payment on the contract with the person primarily liable, but not so as to affect the percentage to be retained by the owner as provided by section 14 or any further deduction required by section 15. *R.S.P.E.I. 1974, Cap. M-7, s.18.*

18. Enforcement of lien

Subject to subsection 3(1), a lienholder is entitled to enforce his lien notwithstanding the non-completion or abandonment of the contract by a contractor or sub-contractor under whom he claims. *R.S.P.E.I. 1974, Cap. M-7, s.19.*

19. Registration of lien

- (1) A claim of lien upon any land or interest therein may be registered in the proper registry office.

Claim, particulars

- (2) A claim of lien shall state
- (a) the name and address of
 - (i) the lienholder,
 - (ii) the owner, or the person whom the lienholder or his agent, believes to be the owner of the land to be charged, and
 - (iii) the person for whom, and upon whose credit, the work was, or is to be, done, or the material was, or is to be, furnished;
 - (b) the date upon which the last work was done or the last material furnished, or, where the claim is registered before the work or furnishing of material is completed, the time or period within which the same is to be done or furnished;
 - (c) a short description of the work done, or to be done, or of the material furnished, or to be furnished;
 - (d) the sum claimed as due or to become due;
 - (e) a description sufficient for registration of the land or interest therein to be charged; and
 - (f) the date of expiry of the period of credit, if any, given by the lienholder.

Form of claim of lien

- (3) A claim of lien may be made in one of the Forms 1 to 3 in the Schedule, in duplicate, and shall be verified by the affidavit of the lienholder or of his agent or assignee having personal knowledge of the matters required to be verified, which affidavit may be in Form 4 in the Schedule.

Affidavit, contents

- (4) Where an affidavit of verification is made by an agent or assignee, it shall state that he has a personal knowledge of the matters verified.

Address for service

- (5) Every claim of lien shall show an address for service on the lienholder.

Changing address for service

- (6) A lienholder may change his address for service by notifying the owner and the Registrar in writing; and thereupon the Registrar shall note the change of address upon the claim of lien.

Description of railway land and registration of

- (7) When it is desired to register a claim of lien against a railway, it is sufficient description of the land of the railway company to describe it as the land of the railway company; and every such claim shall be registered in the registry office of every county within which the lien is claimed to have arisen. *R.S.P.E.I. 1974, Cap. M-7, s.20.*

20. Claim against several lands

- (1) A claim of lien may include claims of lien against different lands of the same owner.

Joint liens

- (2) Any number of persons claiming liens upon the same land may unite in making a claim; but each lien shall be verified as provided in section 19. *R.S.P.E.I. 1974, Cap. M-7, s.21.*

21. Substantial compliance sufficient

- (1) Substantial compliance with sections 19 and 20 is sufficient; and no lien shall be invalidated by failure to comply with any requirement of those sections unless, in the opinion of the judge who tries the action, the owner, contractor, sub-contractor, mortgagee, or some other person is prejudiced thereby, and then only to the extent to which he is so prejudiced.

Registration required

- (2) Nothing in this section shall dispense with the requirement of registration of a claim of lien.

Failure to comply by lienholder prejudicial, power of court

- (3) Where, in the opinion of the judge, some person has been prejudiced by failure on the part of the lienholder or his agent to comply with any provision of sections 19 and 20, the judge may allow such amendments to be made as are required to comply with those sections and to permit the action to be tried, without prejudice to any person. *R.S.P.E.I. 1974, Cap. M-7, s.22.*

22. Procedure for registration

- (1) The Registrar, upon receipt of the proper fee, shall register a claim of lien, describing it as a "mechanics' lien," and it shall appear as an encumbrance against the land, or the estate or interest in land therein described.

Certification of duplicate

- (2) The Registrar shall certify the registration upon the duplicate, which duplicate shall be filed with the Prothonotary when action is brought to enforce the lien.

Fee payable for registration

- (3) The fee payable on registration of a claim of a lien shall be the same, with the necessary changes, as for registration of other documents relating to the title to land. *R.S.P.E.I. 1974, Cap. M-7, s.23; 2008, c.20, s.72(59).*

23. Copying into registry books not required

Notwithstanding any other provision of this Act or of section 14 of the *Registry Act* R.S.P.E.I. 1988, Cap. R-10 a claim of lien, a certificate of discharge of a lien or an order of a judge discharging a registration of a claim of lien shall be simply filed and not copied at full length in the registry books. *R.S.P.E.I. 1974, Cap. M-7, s.24.*

24. Lien for wages, time for registration

- (1) A claim of lien for wages may be registered at any time before the expiration of sixty days from the doing of the last work for which the wages are owing and the lien claimed.

Lien for services, time for registration

- (2) A claim of lien for services may be registered at any time before the expiration of sixty days from the completion of the services.

Lien for material, time for registration

- (3) A claim of lien for material may be registered at any time before the expiration of sixty days from the furnishing of the last material the price of which is claimed for.

Lien of contractor, time for registration

- (4) A claim of lien by a contractor or sub-contractor may, in cases not otherwise provided for, be registered at any time before the expiration of sixty days from the completion or abandonment of the contract or sub-contract as the case may be.

Contract under supervision of architect etc., time for registration

- (5) Where a contract is under the supervision of an architect, engineer or other person, upon whose certificates payments are to be made, a claim of lien by the contractor may be registered within the time mentioned in subsection (4) or within seven days after the architect, engineer or other person has given or has, after application in writing to him by the contractor, refused or neglected for three days to give a final certificate. *R.S.P.E.I. 1974, Cap. M-7, s.25.*

25. Expiration of lien where no claim

Every lien in respect of which a claim of lien is not registered ceases to exist on the expiration of the time herein limited for the registration thereof. *R.S.P.E.I. 1974, Cap. M-7, s.26.*

26. Lien registered, purchaser to that extent

Where a claim of lien is registered, the lienholder shall be deemed a purchaser to that extent. *R.S.P.E.I. 1974, Cap. M-7, s.27.*

27. Expiration of registered lien

Every lien in respect of which a claim of lien has been registered ceases to exist on the expiration of ninety days from the registration of the claim of lien unless, in the meantime, an action is commenced in which the lien may be enforced. *R.S.P.E.I. 1974, Cap. M-7, s.28.*

28. Notice to lienholder by person claiming right, title or interest to land

- (1) Any person having or claiming any right, title, or interest in or to any land in respect of which a claim of lien is registered may, at any time after thirty days have expired since the registration of the claim, notify the lienholder, by sending to him by mail as hereinafter provided, a notice in writing that, unless an action in which the lien may be enforced, is commenced within thirty days from the date of the mailing of the notice, the lien shall cease to exist.

Form of notice and procedure

- (2) The notice mentioned in subsection (1) shall be in Form 5 in the Schedule, and shall be sent by registered mail, postage prepaid, addressed to the lienholder at the address for service shown in the claim of lien.

Expiration of lien where no action

- (3) Unless an action is commenced within the time provided by subsection (1), the lien ceases to exist; and a judge upon the application of any person interested without notice to any other person may order the registration of the claim of lien to be discharged unless, before the expiration of the period of thirty days, an order of a judge extending the time for beginning the action is registered in the proper registry office.

Discharge of lien

- (4) Where an action has been commenced, a certificate of the Prothonotary

- (a) that the action has been discontinued; or
- (b) that, insofar as the land affected by the lien involved in the action is concerned, the action has been dismissed or otherwise finally disposed of, that no appeal therefrom has been entered, and that the time limited for such an appeal has expired,

may be registered and when registered discharges every lien sought to be enforced in the action, and the Registrar shall mark discharged the registration of every claim of lien registered with respect to every such lien.

Order by court discharging lien

- (5) Where a lien in respect of which a claim is registered has ceased to exist as provided in section 27, a judge upon the application, without notice to any other person, of any person having any right, title, or interest, in or to any land affected by such lien, or his duly authorized agent, may order the registration to be discharged. *R.S.P.E.I. 1974, Cap. M-7, s.29.*

29. Assignment of lienholder rights

The rights of a lienholder may be assigned by an instrument in writing; and, if not assigned, shall upon the death of the lienholder pass to his personal representative. *R.S.P.E.I. 1974, Cap. M-7, s.30.*

30. Certificate of discharge

- (1) A lien may be discharged by a certificate of discharge in Form 6 in the Schedule, signed by the lienholder, or by his agent duly authorized in writing, verified by affidavit, and registered in the proper registry office.

Payments received on amount of lien

- (2) Where the amount claimed by a lienholder, or any part thereof, has been paid, the certificate of discharge shall acknowledge receipt of the amount so paid.

Registry office procedure

- (3) The certificate of discharge shall be numbered and entered by the Registrar in the same manner as other instruments; and the fee shall be the same as that for registration of other satisfactions. *R.S.P.E.I. 1974, Cap. M-7, s.31.*

31. Taking security or promissory note etc, effect on lien

- (1) The taking of security or a promissory note or a bill of exchange for, or the taking of any other acknowledgement of the amount of a lien or any part thereof, or the extension of the time for the payment thereof, or the taking of proceedings for the recovery of a personal judgment therefor, or said judgment shall not merge, prejudice, or destroy the lien unless the lienholder agrees in writing that it shall have that effect.

Promissory note etc. discounted or negotiated

- (2) Where a promissory note, bill of exchange or other security, taken or accepted as mentioned in subsection (1), is discounted or negotiated by the lienholder, the discounting or negotiation shall not prejudice or destroy the lien; but the lienholder shall retain the lien for the benefit of the holder of the promissory note, bill of exchange, or other security.

Where lienholder extends time for payment

- (3) Where a lienholder extends the time for payment of indebtedness in respect of which he has registered a claim of lien, subsection (1) does not apply either to the lien or otherwise to the

case, unless the lienholder commences an action to enforce the lien within the time in this Act prescribed; but, in such case, he shall take no further proceedings in the action until the expiration of the period by which the time is extended.

Commencement of action by another, effect on extension

- (4) Where a lienholder gives an extension of time as mentioned in subsection (3), if any other person commences an action to enforce a lien against the same land, the lienholder may, in the action, prove and obtain payment of the amount of the indebtedness as if no extension had been given. *R.S.P.E.I. 1974, Cap. M-7, s.32.*

32. Demand of owner of terms of contract

- (1) A lienholder may, in writing, at any time demand of the owner or his agent
- (a) the terms of the agreement with the contractor in respect of which the work has been or is to be, performed or the material has been, or is to be, furnished; and
 - (b) the state of the accounts between the owner and the contractor, including the amount already paid under the agreement and the amount due and unpaid thereunder; and
 - (c) the production for inspection of the contract or agreement, if it is in writing.

Owner refuses etc.

- (2) If the owner or his agent
- (a) refuses, or neglects within a reasonable time, to inform the lienholder of
 - (i) the terms of the agreement, and
 - (ii) the amount already paid, and the amount due and unpaid thereunder; or
 - (b) intentionally or knowingly falsely states the terms of the agreement or the amount already paid or the amount due and unpaid thereunder,

and if the lienholder sustains loss by reason of the refusal or neglect or false statement, the owner is liable to him for the amount of the loss and section 44 applies.

Demand of mortgagee or unpaid vendor

- (3) A lienholder may, in writing, at any time demand of a mortgagee or unpaid vendor of the agent or either of them
- (a) the terms of any mortgage on, or agreement for the sale of, the land in respect of which the work has been, or is to be, performed, or the material has been or is to be, furnished; and
 - (b) a statement showing the amount advanced on the mortgage and the amount owing on the mortgage or agreement.

Mortgagee etc. refuses

- (4) If the mortgagee or vendor, or the agent,
- (a) refuses, or neglects, within a reasonable time, to inform the lienholder
 - (i) of the terms of the mortgage or agreement for sale, and
 - (ii) of the amount advanced on the mortgage and the amount owing on the mortgage or agreement, as the case may be; or
 - (b) intentionally or knowingly falsely states the terms of the mortgage or agreement or the amount advanced on the mortgage or owing on the mortgage or agreement;

and if the lienholder sustains loss by reason of the refusal or neglect or false statement the mortgagee or vendor is liable to him for the amount of the loss in an action therefor, or in any action for the enforcement of a lien when section 44 applies.

Demand of contractor

- (5) A lienholder may at any time, in writing, demand of a contractor or sub-contractor
- (a) the terms of any agreement with the owner, contractor, or sub-contractor, to which the person of whom the demand is made is a party, in respect of which agreement the work has been or is to be performed or the material has been or is to be furnished; and
 - (b) the state of the accounts thereunder between the owner and the contractor, or between the contractor and any one or more sub-contractors, or between any sub-contractor and any other sub-contractor, including the amount already paid on any agreement and the amount due and unpaid thereunder.

Contractor etc. refuses

- (6) If the contractor or sub-contractor of whom the demand is made
- (a) refuses, or neglects within a reasonable time, to inform the lienholder
 - (i) of the terms of the agreement, and
 - (ii) of the amount already paid and the amount due and unpaid thereunder; or
 - (b) intentionally or knowingly falsely states the terms of the agreement or the amount already paid or the amount due and unpaid thereunder,

and if the lienholder sustains loss by reason of the refusal or neglect or false statement, the contractor or sub-contractor is liable to him for the amount of the loss in an action therefor, or in any action for the enforcement of a lien when section 44 applies. *R.S.P.E.I. 1974, Cap. M-7, s.33.*

33. Enforcement of lien

Any lien may be enforced by action in the court according to the ordinary procedure thereof except where the same is varied by this Act. *R.S.P.E.I. 1974, Cap. M-7, s.34.*

34. Statement of claim

The statement of claim shall be filed at the time the action is commenced and shall be served with the originating notice. *R.S.P.E.I. 1974, Cap. M-7, s.35.*

35. Contents of writ

The writ shall contain an appropriate provision directing a statement of defence to be filed in accordance with this Act. *R.S.P.E.I. 1974, Cap. M-7, s.36.*

36. Service on owner

- (1) A copy of the originating notice and statement of claim shall be served on the owner, or his agent, and such service may be effected either within or outside the province.

Entering an appearance

- (2) The defendant may enter an appearance at any time within the time limited for filing his defence. *R.S.P.E.I. 1974, Cap. M-7, s.37.*

37. Defence, time limit for

- (1) Within sixteen days after service upon him of the statement of claim, the defendant may file and serve a defence in the usual manner.

Failure to file and serve defence, effect

- (2) If the defendant fails to file and serve a defence within the time specified in subsection (1) he is, unless otherwise ordered by a judge, precluded from disputing the plaintiff's claim and right to a lien, and the plaintiff may sign interlocutory judgment against the defendant. *R.S.P.E.I. 1974, Cap. M-7, s.38.*

38. Terms of defence

A defendant in default may, by order of a judge, be allowed to defend upon such terms as the judge shall think just. *R.S.P.E.I. 1974, Cap. M-7, s.39.*

39. Lienholders, joint action

Any number of lienholders claiming liens on the same land may join in an action, and any action brought by a lienholder or person claiming a lien shall be taken to be brought on behalf of all other lienholders on the land in question. *R.S.P.E.I. 1974, Cap. M-7, s.40.*

40. Time and place of trial

After the filing and service of the defence, a judge shall, upon application by any party to the action upon notice to the opposite party, fix a time and place for the trial of the action. *R.S.P.E.I. 1974, Cap. M-7, s.41.*

41. Notice of trial, time for

The party obtaining the appointment shall at least eight clear days before the day fixed for the trial, unless the judge directs that a shorter notice may be given, serve a notice of trial, in Form 7 in the Schedule, upon the attorney for the parties who appear by attorneys, and on all lienholders who have registered their liens, and on all other persons having any registered charges, encumbrances or claims on the land affected by the lien, who are not parties or who, being parties, appear personally in the action; and the service on those not parties shall be personal, unless otherwise directed by the judge. *R.S.P.E.I. 1974, Cap. M-7, s.42.*

42. Parties to action

It is not necessary to make any other lienholder a party defendant to the action, but every lienholder served with the notice of trial is for all purposes to be treated as if he were a party to the action. *R.S.P.E.I. 1974, Cap. M-7, s.43.*

43. Lienholder not a plaintiff, filing statement of claim

Every lienholder not a plaintiff in the action shall, within six days after being served with the notice of trial, file with the Prothonotary a statement showing the grounds and particulars of his claim, and, if he fails so to do he is, unless otherwise ordered by the judge, precluded from asserting his lien. *R.S.P.E.I. 1974, Cap. M-7, s.44.*

44. Disposition of the action

- (1) At the trial of the action the judge shall proceed to determine all questions which arise therein or which are necessary to be tried to dispose of the action completely and, subject to section 43, to adjust the rights and liabilities of the persons appearing before him or upon whom the notice of trial has been served.

Idem

- (2) At the trial the judge shall take all accounts, make all inquiries, give all directions, and do all things necessary to try and otherwise finally dispose of the action and of all matters, questions and accounts arising in the action, and, subject to section 43, to adjust the rights and liabilities of and give all necessary relief to all parties to the action or who have been served with the notice of trial. *R.S.P.E.I. 1974, Cap. M-7, s.45.*

45. Order for sale of land

- (1) In the judgment, the judge may order that the estate or interest charged with the lien be sold, allowing, however, a reasonable time for advertising the sale, and the sale shall be by the sheriff unless otherwise ordered and shall be in the manner prescribed for sales under statute executions to sell lands.

Order for sale of personal property

- (2) The judge may direct the sale of any personal property or materials and authorize the removal thereof. *R.S.P.E.I. 1974, Cap. M-7, s.46.*

46. Sale proceeds, payment into court and distribution of

- (1) Where a sale is held, the moneys arising therefrom shall be paid into court and in ordering that the sale be confirmed, the judge shall direct to whom the moneys in court shall be paid, and may add to the claim of the person conducting the sale his actual disbursements incurred in connection therewith; and, where sufficient moneys to satisfy the judgment and costs is not realized from the sale, he shall certify the total amount of the deficiency and the proportion thereof falling upon each person entitled to recover.

Orders for completing sale

- (2) The judge may make all necessary orders for the completion of the sale, and for vesting the property in the purchaser. *R.S.P.E.I. 1974, Cap. M-7, s.47.*

47. Deficiencies, satisfying

Every judgment in favor of lienholders shall adjudge that the person personally liable for the amount of the judgment shall pay any deficiency that may remain after sale of property adjudged to be sold; and, in any case where on the sale sufficient to satisfy the judgment and costs is not realized therefrom, the deficiency may be recovered against the property of that person by the usual process of the court. *R.S.P.E.I. 1974, Cap. M-7, s.48.*

48. Failure to establish valid lien, enforcement of claim

Where any claimant fails for any reason to establish a valid lien, he may nevertheless recover in the action a personal judgment against any party to the action for such sum as may appear to be due to him and which he might recover in an action in contract against such party. *R.S.P.E.I. 1974, Cap. M-7, s.49.*

49. Lienholder who has not proved claim, letting in to prove claim

A lienholder, who has not proved his claim at the trial, may, on application to the judge who tried the action and on such terms as to costs and otherwise as may be just, be let in to prove his claim at any time before the amount realized in the action has been distributed; and, where the claim is proved and allowed, the judge shall amend the judgment so as to include the claim therein. *R.S.P.E.I. 1974, Cap. M-7, s.50.*

50. Consolidation of actions

Where more than one action is brought to realize liens in respect of the same land, the judge may

- (a) on the application of a party to one of the actions;
- (b) on the application of any other person interested; or
- (c) of his own initiative,

by order consolidate all the actions into one action and give the conduct of the consolidated action to such plaintiff as he may think fit. *R.S.P.E.I. 1988, Cap. M-7, s.51; 1989, c.5, s.1.*

51. Application of lienholder to be plaintiff

The judge may hear the application of any lienholder entitled to the benefit of the action and after due notice to the other claimants may make an order giving the lienholder the carriage of the proceedings, and the lienholder shall thereafter for all purposes be deemed to be the plaintiff in the action. *R.S.P.E.I. 1974, Cap. M-7, s.52.*

52. Apportionment of claims

A judge may apportion equitably against any number of lands the amounts included in any claim or claims of lien under subsection 20(1). *R.S.P.E.I. 1974, Cap. M-7, s.53.*

53. Payment to cover amount of lien, discharge

- (1) A judge at any time may receive security for, or payment into court of, the amount claimed in a registered claim of lien together with such costs as the judge may fix, and the judge may thereupon order that the registration of the claim of lien be discharged.

Order for discharge

- (2) A judge may order discharged the registration of a claim of lien upon any other proper grounds.

Substitution for land as security

- (3) Moneys paid into court, or any security given in an action,
 - (a) takes the place of the land against which the claim of lien was registered; and
 - (b) subject to subsection (4), is subject to the claim of every person who has registered a lien and, before the time limited by section 27 has expired, has commenced an action,
 to the same extent as if the money had been realized by a sale of the property in an action to enforce the lien.

First charge against substituted security

- (4) The amount found by the judge to be owing to the person, the registration of whose claim of lien has been discharged under this section, shall be a first charge upon the money or security so paid in or given.

Registration of discharge

- (5) Whenever a judge orders a registration of a claim of lien to be discharged, the order shall forthwith be registered in the proper registry office. *R.S.P.E.I. 1974, Cap. M-7, s.54.*

54. Order for inspection of agreement, mortgagee etc.

A judge may, on a summary application before or after an action is commenced for the enforcement of a lien, order the owner or his agent, the mortgagee or his agent, the unpaid vendor or his agent, or the contractor or sub-contractor, as the case may be, of whom the demand is made under section 32, to produce and allow any lienholder to inspect any such agreement, mortgage, or agreement for sale, and may make such order as to the costs of the application and order as he may consider just. *R.S.P.E.I. 1974, Cap. M-7, s.55.*

55. Total claims \$100 or less, new trial

In any action where the total amount of the claims of the plaintiff and all other persons claiming liens is \$100 or less, the judgment at the trial shall be final and conclusive, unless, upon application within fourteen days after judgment is pronounced, the judge who tried the action should grant a new trial. *R.S.P.E.I. 1974, Cap. M-7, s.56.*

56. Appeal where claims \$100 or more

An appeal to the Court of Appeal lies in any action where the total amount of the claims of the plaintiff and all other persons claiming liens exceeds \$100. *R.S.P.E.I. 1974, Cap. M-7, s.57; 2008, c.20, s.72(59).*

57. Limitation on costs awarded against defendant

The costs of the action awarded by the judge trying the action shall not, exclusive of actual disbursements, exceed in the aggregate an amount equal to twenty-five per cent of the amount found actually due, and shall be apportioned and borne as the judge may direct, but in making the apportionment he shall have regard to the actual service rendered by or on behalf of the parties respectively. *R.S.P.E.I. 1974, Cap. M-7, s.58.*

58. Limitation on costs awarded against plaintiff

Where costs are awarded against the plaintiff or other person claiming a lien, the costs shall not exceed in the aggregate an amount equal to twenty-five per cent of the claim of the plaintiff and other claimants, besides actual disbursements, and shall be apportioned and borne as the judge may direct. *R.S.P.E.I. 1974, Cap. M-7, s.59.*

59. Counsel fees

Counsel fees shall be deemed disbursements under sections 57 and 58. *R.S.P.E.I. 1974, Cap. M-7, s.60.*

60. Limitation on costs

If the least expensive course is not taken by a party under this Act, the costs allowed to him in no case exceed what would have been incurred if the least expensive course had been taken. *R.S.P.E.I. 1974, Cap. M-7, s.61.*

61. Discretion of the judge

The costs of and incidental to all actions, applications and orders commenced or made under this Act shall be in the discretion of the judge, subject always to the limitations provided for by sections 57 and 58. *R.S.P.E.I. 1974, Cap. M-7, s.62.*

62. Discharge of lien, costs where

Where a lien is discharged under section 30 or section 53 or when in an action judgment is given in favor of or against a claim for a lien, the judge may allow a reasonable amount for costs or drawing and registering the lien or for discharging the registration thereof. *R.S.P.E.I. 1974, Cap. M-7, s.63.*

63. Commission on money paid into court

No commission shall be payable on any payment of money into court or on obtaining money out of court in respect of a claim of lien. *R.S.P.E.I. 1974, Cap. M-7, s.64.*

64. Uniform construction of Act

This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of the provinces that enact it. *R.S.P.E.I. 1974, Cap. M-7, s.65.*

SCHEDULE

*FORM 1**

CLAIM OF LIEN

A.B. (name of claimant), of (here state residence of claimant), (if so, as assignee of, stating name and residence of assignor), under the *Mechanics' Lien Act* claims a lien upon the estate of (here state the name and residence of owner of the land upon which the lien is claimed) in the undermentioned land in respect of the following work (service or materials), that is to say (here give a short description of the nature of the work done or materials furnished, and for which the lien is claimed), which work (or service) was done (or materials were furnished) for (here state the name and residence of the person upon whose credit the work was done or materials were furnished), on or before the day of, 20.....

The amount claimed as due (or to become due) is the sum of \$.

The following is a description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

When credit has been given insert: The said work was done (or materials were furnished) on credit, and the period of credit agreed to expired (or will expire) on the day of, 20.....

Dated at.....this day of20.....

(Signature of Claimant)

*{Note: Form 1 is prescribed by subsection 19(3) of the Act}

*FORM 2**

CLAIM OF LIEN FOR WAGES

A.B. (name of claimant,) of (here state residence of claimant) (if so, as assignee of, stating name and residence of assignor), under the *Mechanics' Lien Act* claims a lien upon the estate of (here state the name and residence of the owner of land upon which the lien is claimed) in the undermentioned land, in respect of days work performed thereon while in the employment of (here state the name and residence of the person upon whose credit the work was done) on or before theday of, 20.....

The amount claimed as due is the sum of \$

The following is the description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

Dated at this.....day of..... 20_.....

(Signature of Claimant)

*{Note: Form 2 is prescribed by subsection 19(3) of the Act}

FORM 3*

CLAIM OF LIEN FOR WAGES BY SEVERAL CLAIMANTS

The following person, under the Mechanics' Lien Act claim a lien upon the estate of (here state the name and residence of the owner of land upon which the lien is claimed) in the undermentioned land in respect of wages for labor performed thereon while in the employment of (here state name and residence or names and residences of employers of the several persons claiming the liens).

A.B., of (residence) \$ for days wages

C.D., of (residence) \$ for days wages

E.F., of (residence) \$ for days wages

The following is the description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

Dated at this day of..... 20.....

(Signatures of Several Claimants)

*{Note: Form 3 is prescribed by subsection 19(3) of the Act}

FORM 4*

AFFIDAVIT VERIFYING CLAIM

I, A.B., named in the above (or annexed) claim, do make oath that the said claim is true. Or, we, A.B., and C.D., named in the above (or annexed) claim do make oath, and each for himself saith that the said claim, so far as relates to him, is true.

(Where affidavit is made by agent or assignee, a clause must be added to the following effect: I have full knowledge of the facts set forth in the above (or annexed) claim).

Sworn before me at in.....of this..... day of , 20.....

*{Note: Form 4 is prescribed by subsection 19(3) of the Act}

FORM 5*

NOTICE

To

Under the provisions of the Mechanics' Lien Act, I hereby notify you that the claim for lien filed by you on the day of..... 20..... against the following lands namely shall cease to exist unless an action to realize such claim for lien or in which such claim may be realized is commenced within thirty days from the date of the mailing of this notice, or unless within such thirty days you register an order of a judge of the Supreme Court extending the time for commencing such action.

This notice is given by virtue of my interest as follows:

Dated at this day of 20.....

*{Note: Form 5 is prescribed by subsection 28(2) of the Act}



FORM 6*

CERTIFICATE OF DISCHARGE

In the Matter of the Mechanics' Lien Act

I.....of..... theof in the province of do hereby acknowledge to have received from the sum of dollars (\$.....) in full discharge of my Mechanics' Lien as a upon the following land (insert legal description of land)

which Mechanics' Lien bears date the..... day of , 20....., and was registered in the office of the Registrar of Deeds for County, Prince Edward Island, on the day of , 20..... as No.

Dated at this day of 20.....

.....

Witness

*{Note: Form 6 is prescribed by subsection 30(1) of the Act}

FORM 7*

NOTICE OF TRIAL

(Style of Court and Cause)

Take notice that this action will be tried at the (Court House) in the of on the..... day of by a judge of this Court and at such time and place the said judge will proceed to try this action and all questions which arise in or which are necessary to be tried to completely dispose of the same and to adjust the rights and liabilities of the persons appearing before him, or upon whom this Notice of Trial has been served, and at such trial he will take all accounts, make all enquiries and give all directions and do all things necessary to try and otherwise finally dispose of this action, and of all matters, questions and accounts arising therein, and will give all necessary relief to all parties.

And further take notice that, if you do not appear at the trial and prove your claim (if any) or prove your defence (if any) to the action, the proceedings will be taken in your absence and you may be deprived of all benefit of the proceedings and your rights disposed of in your absence.

This is a Mechanics' Lien action brought by the above-named plaintiff against the above-named defendants to enforce a Mechanics' Lien against the following lands: (set out description of lands)

This notice was served by, etc.

*{Note: Form 7 is prescribed by section 41 of the Act}