

1970

## c 41 The Mechanics' Lien Amendment Act, 1970

Ontario

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CHAPTER 41

An Act to amend  
The Mechanics' Lien Act, 1968-69

Assented to June 26th, 1970  
Session Prorogued November 13th, 1970

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 3 of section 22 of *The Mechanics' Lien Act, 1968-69* is amended by striking out "an officer having jurisdiction to try the action" in the third and fourth lines and inserting in lieu thereof "in the County of York, the master", so that the subsection shall read as follows:

1968-69,  
c. 65, s. 22,  
subs. 3,  
amended

(3) Where a certificate of action has been registered for two years or more in the registry office and no appointment has been taken out for the trial of the action, the judge or, in the County of York, the master, may, upon the application *ex parte* of any interested person, make an order vacating the certificate of action and discharging all liens depending thereon.

Vacating  
orders

2.—(1) Subsection 2 of section 25 of *The Mechanics' Lien Act, 1968-69* is amended by striking out "officer having jurisdiction to try the action" in the first and second lines and inserting in lieu thereof "in the County of York, the master", so that the subsection, exclusive of the clauses, shall read as follows:

1968-69,  
c. 65, s. 25,  
subs. 2,  
amended

(2) Upon application, the judge or, in the County of York, the master, may, at any time,

Security  
or payment  
into court  
and vacating  
lien and  
certificate  
of action

(2) Subsection 6 of the said section 25 is amended by striking out "officer" in the third line and inserting in lieu thereof "in the County of York, the master", so that the subsection shall read as follows:

1968-69,  
c. 65, s. 25,  
subs. 6,  
amended

(6) Where money has been paid into court or a bond deposited in court pursuant to an order under subsection 2, the judge or, in the County of York, the

Payment of  
money out  
of court

master

master, may, upon such notice to the parties as he may require, order the money to be paid out to the persons entitled thereto or the delivery up of the bond for cancellation, as the case may be.

1968-69,  
c. 63, s. 28,  
subs. 3,  
re-enacted

3. Subsection 3 of section 28 of *The Mechanics' Lien Act, 1968-69* is repealed and the following substituted therefor:

Production  
of contract  
or agreement

- (3) The judge or, in the County of York, the master, may, on a summary application at any time before or after an action is commenced for the enforcement of the claim for lien, make an order requiring the owner or his agent or the mortgagee or his agent or the unpaid vendor or his agent or the contractor or his agent or the subcontractor or his agent, as the case may be, to produce and permit any lien claimant to inspect any such contract or agreement or mortgage or agreement for sale or the accounts or any other relevant document upon such terms as to costs as the judge or master deems just.

1968-69,  
c. 65, s. 34,  
subs. 1-3,  
re-enacted

4.—(1) Subsections 1, 2 and 3 of section 34 of *The Mechanics' Lien Act, 1968-69* are repealed and the following substituted therefor:

Power to  
appoint a  
receiver of  
rents and  
profits

- (1) At any time after the delivery of the statement of claim, the judge having jurisdiction to try the action or, in the County of York, a judge of the Supreme Court, may, on the application of any lien claimant, mortgagee or other person interested, appoint a receiver of the rents and profits of the property against which the claim for lien is registered, upon such terms and upon the giving of such security or without security as the judge deems just.

Power to  
direct  
sale and  
appoint  
trustee

- (2) Any lien claimant, mortgagee or other person interested may make an application to the judge having jurisdiction to try the action or, in the County of York, a judge of the Supreme Court, at any time before or after judgment, who may hear *viva voce* or affidavit evidence or both and appoint, upon such terms and upon the giving of such security or without security as the judge deems just, a trustee or trustees with power to manage, mortgage, lease and sell, or manage, mortgage, lease or sell, the property against which the claim for lien is registered, and the exercise of such powers shall be under the supervision and direction of the court, and with power, when so directed by the court, to complete or partially complete the property, and, in the event

that

that mortgage moneys are advanced to the trustee or trustees as the result of any of the powers conferred upon him or them under this subsection, such moneys take priority over every claim of lien existing as of the date of the appointment.

- (3) Any property directed to be sold under subsection 2 may be offered for sale subject to any mortgage or other charge or encumbrance if the judge so directs. Property offered for sale

(2) Subsection 5 of the said section 34 is amended by striking out "or officer" in the first line, so that the subsection shall read as follows: 1968-69, c. 65, s. 34, subs. 5, amended

- (5) The judge shall make all necessary orders for the completion of any mortgage, lease or sale authorized to be made under subsection 2. Orders for completion of sale

5. Section 35 of *The Mechanics' Lien Act, 1968-69* is repealed and the following substituted therefor: 1968-69, c. 65, s. 35, re-enacted

35. At any time after delivery of the statement of claim and before judgment, or after judgment and pending the hearing and determination of any appeal, any lien claimant, mortgagee or other interested person may make an application to the judge having jurisdiction to try the action or who tried the action, as the case may be, or, in the County of York, a judge of the Supreme Court, who may hear *viva voce* or affidavit evidence or both and make an order for the preservation of any property pending the determination of the action and any appeal. Order for preservation of property

6. Subsection 10 of section 38 of *The Mechanics' Lien Act, 1968-69* is repealed and the following substituted therefor: 1968-69, c. 65, s. 38, subs. 10, re-enacted

- (10) Any party to an action under this Act or any other interested person may at any time and from time to time apply to the judge having jurisdiction to try the action or, in the County of York, the master, for directions as to pleadings, discovery, production or any other matter relating to the action or reference, including the cross-examination of a lien claimant or his agent or assignee on his affidavit verifying the claim. Applications for directions

7. Subsection 1 of section 43 of *The Mechanics' Lien Act, 1968-69* is amended by inserting after "judgment" in the first line "or report made on a reference for trial" and by 1968-69, c. 65, s. 43, subs. 1, amended

inserting

inserting after "judgment" in the third line "or report", so that the subsection shall read as follows:

Appeal

- (1) Except where the amount of a judgment or report made on a reference for trial in respect of a claim or counterclaim is \$200 or less, an appeal lies from any judgment or report under this Act to the Court of Appeal.

1968-69,  
c. 65, s. 46,  
subs. 2,  
re-enacted

**8.** Subsection 2 of section 46 of *The Mechanics' Lien Act, 1968-69* is repealed and the following substituted therefor:

Inter-  
locutory  
proceedings

- (2) Except where otherwise provided by this Act, no interlocutory proceedings shall be permitted without the consent of the judge having jurisdiction to try the action or, in the County of York, the master, and then only upon proper proof that such proceedings are necessary.

1968-69,  
c. 65, s. 47,  
re-enacted

**9.** Section 47 of *The Mechanics' Lien Act, 1968-69* is repealed and the following substituted therefor:

Service of  
documents

47. Except where otherwise directed by the judge having jurisdiction to try the action or, in the County of York, the master, all documents relating to an action under this Act, other than statements of claim and notices of trial, are sufficiently served upon the intended recipient if sent by registered mail addressed to the intended recipient at his address for service.

Commence-  
ment

**10.** This Act comes into force on the day it receives Royal Assent.

Short title

**11.** This Act may be cited as *The Mechanics' Lien Amendment Act, 1970*.