

Standing Committee on  
Social Development



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# Report on Bill 65: *Builders' Lien Act*

19<sup>th</sup> Northwest Territories Legislative Assembly

Chair: Ms. Caitlin Cleveland

**MEMBERS OF THE STANDING COMMITTEE ON  
SOCIAL DEVELOPMENT**

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Rocky Simpson  
MLA Hay River South

Rylund Johnson  
MLA Yellowknife North

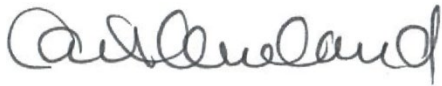
Frieda Martselos  
MLA Thebacha

September 27, 2023

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Social Development is pleased to provide its report on *Bill 65: Builders' Lien Act* and commends it to the House.



Ms. Caitlin Cleveland, Chair  
Standing Committee on Social Development

**STANDING COMMITTEE ON SOCIAL DEVELOPMENT**

**REPORT ON BILL 65: *BUILDERS' LIEN ACT***

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## STANDING COMMITTEE ON SOCIAL DEVELOPMENT

### REPORT ON BILL 65: *BUILDERS' LIEN ACT*

#### INTRODUCTION

Bill 65: *Builders' Lien Act* (Bill 65) received second reading on November 3, 2022 and was referred to the Standing Committee on Social Development (Committee) for review. The Department of Justice (Department) sponsored the Bill.

On January 18, 2023, Committee held a public hearing on Bill 65. Committee heard comments focused on why the *Builders' Lien Act*, as drafted, does not apply to the Government of the Northwest Territories (GNWT), but does apply to municipalities, and does not consider Indigenous governments at all. There were also questions on how provisions related to lands owned by those entities would work, particularly the provisions on seizure and sale. Committee had previously raised similar concerns, particularly concerning types of lands subject to the Bill and the extent to which GNWT engaged with Indigenous and municipal governments in developing the Bill.

During the public hearing, Committee expressed concerns regarding the lack of consultation done on behalf of the Department prior to Bill 65's introduction. In response, the Minister of Justice made a commitment to Committee to conduct further engagement with the public. Following the public hearing, the Government House Leader formally requested that Committee seek an extension of the review period under Rule 8.3(2). The Department needed further time to engage in discussions with Indigenous governments, municipalities, and industry about Committee's concerns. Committee agreed and successfully sought an extension.

Over the course of reviewing the Bill, Committee considered several potential amendments and engaged extensively with the Department on amending the Bill to better reflect concerns related to land interests and exemptions from seizure and sale. Six months were dedicated to Committee and Departmental staff working together and negotiating on potential amendments. However, while Committee acknowledges that significant progress was made, in the end, the Minister did not agree with Committee on a path forward on several key areas of the Bill. Committee therefore decided that the Bill as drafted is not ready to proceed. Committee decided it was better to urge the Department to work to improve the Bill and reintroduce it in the next Assembly with significant modifications to improve it, rather than to proceed with a fundamentally flawed Bill at this time.

#### COMMITTEE'S OUTLOOK ON BUILDERS' LIEN LEGISLATION

Committee strongly supports the need for new builders' lien legislation in the Northwest Territories. The existing *Mechanics Lien Act* has not changed substantially for decades. Since then, real property development, contractual arrangements and construction practices have changed considerably and continue to evolve. The central intent of such legislation is to ensure that contractors, subcontractors, and workers are paid for their work and materials. In recent years, other Canadian jurisdictions have updated their builders' lien legislation, such as Ontario (2019), British Columbia (2020), and Alberta (2022).

However, Committee has concluded that Bill 65, as it is currently written, is not ready for passage in the Legislative Assembly. Committee believes the Department needs to approach this legislation differently and author a new *Builders' Lien Act* within the first half of the 20<sup>th</sup> Assembly as a significant priority.

## **COMMITTEE CONSIDERED PUBLIC INPUT**

Committee sought public feedback on Bill 65 with a public notice and targeted engagement letters. Committee received written submissions from:

- Mr. Dale Johnson of Clark Builders; and
- Yellowknives Dene First Nation (YKDFN).

All written submissions are included in an Appendix to this report.

Additionally, during the public hearing on Bill 65, Committee heard remarks from the Minister of Justice and asked questions to departmental officials. Committee thanks Mr. Johnson and YKDFN for their engagement. Their participation helped inform Committee discussions on key issues for future consideration.

## **COMMITTEE CONCERNS**

There are three main areas that Committee had concerns with regarding Bill 65.

- The primary issue was determining which land interests held by different levels of government and Indigenous governments would be subject to seizure and sale, as that is the the ultimate remedy for a lien that ensures a contractor or subcontractor is paid for their services.
- Second, the core structure of the Bill being such that exemptions from seizure and sale are made on the basis of who owns a project, rather than what type of project it is.

- Lastly, Bill 65 did not include a provision to introduce a prompt payment system that ensures a timeline for both issuing and paying invoices on building projects and provides a dispute resolution mechanism to resolve payment disputes.

### **Land Interests of Different Levels of Government**

Committee's main concern with Bill 65 is how the *Act* would operate in regard to liens on construction projects within the context of several types of lands owned by multiple levels of government across the NWT. For example, of the lands to consider includes municipalities, lands withdrawn from disposition for the purpose of pending treaties, private land, and properties located within land, resources, and self-government agreement areas, among others. Given that within the NWT much land is either owned, or managed and administered by different levels of government, Committee considered it vital that the *Act* clearly state which types of lands may be subject to seizure and sale as a remedy for a lien on a project.

Ultimately, Committee did not want one level of government to be exempt from seizure and sale, while other levels of government would be subject to seizure and sale. From the start, it was Committee's desire that all levels of government be treated the same under the *Act*. However, the Bill as drafted does not bind the GNWT, but it does bind municipalities, and it makes no reference to Indigenous governments. This latter point, of having no reference to Indigenous governments, was a major point of contention for Committee, as it provided the sense that the Bill had been drafted without the consideration of Indigenous governments.

Committee had many discussions on this subject, including with the Government House Leader. Committee struggled with the notion that if Indigenous governments would be subject to the Bill, and would have their lands exempted from seizure and sale just like the GNWT or a municipal government, then how would an Indigenous government be defined? Committee proposed several draft motions to amend this aspect of the Bill, and considered many draft motions proposed by the Department. As these discussions progressed though, Members quickly realized that this topic raised bigger questions about defining an Indigenous government that could not and should not be answered within the context of this Bill.

Committee determined that it is inappropriate for both the legislative branch, as well as the executive branch of government to prescribe a definition on what an Indigenous government is within the context of *Builders' Lien* legislation. Especially while there is another Bill before the Assembly concerning the United Nations Declaration on the Rights of Indigenous Peoples, which is an internationally recognized document that affirms the autonomy and self-determination of Indigenous peoples. Article 3 of the Declaration, which reads:

- *Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

With this consideration, Committee determined that the GNWT should not be the arbiter in defining what an Indigenous government is, as that is a matter that should be decided by Indigenous peoples and Indigenous governments themselves. Thus, Members concluded that while this is an important topic that is part of a larger discussion that should be had, it is not Committee's place to legislate on this matter with this Bill.

Furthermore, Committee did consider several options as potential paths forward with this section of the Bill. Those included leaving the definition of Indigenous government undefined, identifying Indigenous governments through regulation, as well as utilizing the definition of Indigenous government from another Bill before the Assembly, which is Bill 85: *United Nations Declaration on the Rights of Indigenous Peoples Implementation Act*.

It was at this point where discussions broke down, as Committee did not consider this subject sufficiently addressed within the Bill as drafted. Thus, since a compromise could not be reached with the government on what specific language to use in the *Act*, Committee decided that Bill 65 is *not* ready to move forward.

### **Exempting Governments vs. Exempting Project Types**

Committee recognized that if Bill 65 was amended to bind the GNWT, along with municipalities and Indigenous governments, to be subject to liens but not to seizure and sale of land, then very little infrastructure in the NWT would be left to be subject to seizure and sale. Recognizing this, Committee determined that the Bill as drafted, which provides an exemption for seizure and sale on the basis of who owns a project, was problematic.

Therefore, following much consideration on this point, Committee determined that exemption for seizure and sale of land should instead apply to the type of project, rather than the owner of the project. Approaching the Bill this way would avoid the issue of having to define Indigenous governments altogether.

This approach to the Bill would ensure a better balance between protecting critical public infrastructure such as health centres, highways, or emergency services, etc., against the need to protect contractors, workers, and suppliers, which is the primary intent of the Bill. However, because this is such a substantial shift in how the Bill is structured, and since there is not enough time within the 19<sup>th</sup> Assembly to make this fundamental change to the Bill's structure, Committee decided that the Bill should be re-drafted.

### **Prompt Payment System**

One aspect that was absent from Bill 65 is a section on prompt payment, which would provide assurances within a set timeline for contractors and subcontractors to issue invoices for their work, and for owners to pay invoices for services rendered. A prompt payment system would also create a dispute resolution mechanism by providing a



framework for resolving disputes between parties. Committee is aware of several jurisdictions that have codified prompt payment systems into legislation, with the most recent jurisdictions whose amendments and regulations came into force being Alberta (2022), Saskatchewan (2022), and Ontario (2019).

Committee did ask the Government House Leader if this system was considered, and the response was that the Department made a conscious choice not to include this provision at this time. However, the government indicated that it is open to adding this provision in the future. The government also considered adjudication provisions, but chose not include it in the Bill, as the government considers the issue of payment schedules as a matter for the Supreme Court, under debtor/creditor law.

Committee heard prompt payment as a vital concern of the construction industry. Therefore, Committee considered the absence of a prompt payment system as a significant missing aspect within Bill 65 and Committee would like to see the inclusion of such a provision within future lien legislation introduced by the government.

## **CONCLUSION**

On June 29, 2023, Committee held a clause-by-clause review. Committee passed a motion to report Bill 65 to the Legislative Assembly as *not* ready for consideration in Committee of the Whole.

Committee strongly recommends the Department to work on re-introducing *Builders' Lien* legislation that addresses the fundamental flaws with Bill 65 as a top priority for the next Assembly.

This concludes the Standing Committee on Social Development's review of Bill 65: *Builders' Lien Act*.

## **APPENDIX 1: SUBMISSIONS**

**From:** [Johnson, Dale](#)  
**To:** [Glen Rutland](#); [DST\\_LEG\\_Committees](#)  
**Cc:** [Caitlin Cleveland](#); [Cathleen Knotsch](#); [Mahalia Yakeleya Newmark](#)  
**Subject:** RE: Builders lien act  
**Date:** November 21, 2022 11:12:27 AM  
**Attachments:** [image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)

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Morning Glen,

I would like to formally make a submission for review (personally not through Clark Builders)

I am unable to make any sense of the stipulation in the new NWT builders lien act legislation that is being issued by the Government of the Northwest Territories however the Government of the Northwest Territories is not being bound by it. I would appreciate any information on how and why this stipulation was added and wonder if the GNWT has reviewed other Provinces/Territories to see if they have similar stipulations.

**Dale Johnson**, RSE, GSC, Senior Project Manager

D: 867.873.6337 C: 867.444.9287

206 - 349 Old Airport Road

Yellowknife NT Canada X1A 3X6



[clarkbuilders.com](http://clarkbuilders.com)



**From:** [Michael Ball](#)  
**To:** [Lena Black](#)  
**Cc:** [David Staples](#); [Melissa Mackenzie](#); [Taylor Maxwell](#)  
**Subject:** RE: Builders' Lien Act - Request for Feedback  
**Date:** December 16, 2022 10:44:28 AM  
**Attachments:** [image001.jpg](#)

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Good day,

I have spoken with Chair Cleveland and Members of the Standing Committee on Social Development regarding your request for an extension to provide feedback on Bill 65 *Builders' Lien Act* and Bill 68 *An Act to Amend the Child Day Care Act*. Noting that Committee has an obligation to conclude their review and deliver a report to the Assembly by early March they are unable to provide the requested extension of 60 days. However, Committee is prepared to receive your submission on these Bills until 5:00pm on Friday, January 27, 2023. This will allow Members of the Standing Committee time to consider your views on these Bills while still allowing them to satisfy their obligation to report to the Assembly.

Thank you,

Mársı | Kinanāskomitin | Thank you | Merci | Hąjı' | Quana | Qujannamiik | Quyanainni | Máhsı | Máhsı | Mahsi

Michael Ball  
*Manager of Committees and Clerk of Journals | Gestionnaire des comités et greffier des journaux*

Northwest Territories Legislative Assembly  
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[WWW.NTASSEMBLY.CA/FR](http://WWW.NTASSEMBLY.CA/FR)

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**From:** Lena Black <lblack@ykdene.com>  
**Sent:** December 13, 2022 10:05 AM  
**To:** Daniel Aviugana <Daniel\_Aviugana@ntassembly.ca>  
**Cc:** David Staples <davids@ykdene.com>; Melissa Mackenzie <mmackenzie@ykdene.com>  
**Subject:** FW: Builders' Lien Act - Request for Feedback

**EXTERNAL:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender's name and email address and know the content is safe.

Hi Daniel,

YKDFN requests an extension of 30-60 days to respond, this is an important matter and the response time provided not adequate and includes the Christmas Break where our staff are not in the office. Please confirm that an extension can be provided to everyone for this.

Kind regards,



Lena Black  
A/Chief Executive Officer  
Yellowknives Dene First Nation  
Dettah Administration  
PO Box 2514, Yellowknife, NT,  
X1A 2P8

Tel. (867) 873-4307 Ext-2009  
Fax (867) 873-5969  
E-mail [lblack@ykdene.com](mailto:lblack@ykdene.com)  
Website <https://smex-ctp.trendmicro.com:443/wis/clicktime/v1/query?url=www.ykdene.com&umid=ad082820-4a11-45c5-97a4-5bd9a5e582b2&auth=1c4337358902dda1e7c32be21da7d9106e0c1295-c86b3e7a5b19ff68434036aa6ee1476aff4c4f5b>

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**From:** Melissa Mackenzie <[mmackenzie@ykdene.com](mailto:mmackenzie@ykdene.com)>  
**Sent:** December 12, 2022 4:49 PM  
**To:** Lena Black <[lblack@ykdene.com](mailto:lblack@ykdene.com)>  
**Cc:** David Staples <[davids@ykdene.com](mailto:davids@ykdene.com)>  
**Subject:** FW: Builders' Lien Act - Request for Feedback

Hi Lena,

As per your request at December 1<sup>st</sup> Check Nets is to forward you the below email.

Mahsi Cho / Kind regards,



Melissa Mackenzie  
Senior Executive Assistant to Chief Edward Sangris  
Yellowknives Dene First Nation  
Dettah Administration  
PO Box 2514, Yellowknife, NT, X1A 2P8

Tel. (867) 873-4307 Ext-2005  
Fax (867) 873-5969  
Cell (867) 446-9250  
E-mail [mmackenzie@ykdene.com](mailto:mmackenzie@ykdene.com)  
Website [www.ykdene.com](http://www.ykdene.com)

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**From:** Daniel Aviugana <[Daniel\\_Aviugana@ntassembly.ca](mailto:Daniel_Aviugana@ntassembly.ca)>  
**Sent:** November 30, 2022 3:33 PM  
**To:** Melissa Mackenzie <[mmackenzie@ykdene.com](mailto:mmackenzie@ykdene.com)>  
**Subject:** Builders' Lien Act - Request for Feedback

**SENT ON BEHALF OF MS. CAITLIN CLEVELAND, CHAIR OF STANDING COMMITTEE ON SOCIAL DEVELOPMENT**

-  
Dear Edward Sangris,  
via email at [mmackenzie@ykdene.com](mailto:mmackenzie@ykdene.com)

-  
**Builders' Lien Act: Request for Feedback**

-  
In November 2022, the Government of the Northwest Territories (GNWT) put forward Bill 65: *Builders' Lien Act*. Bill 65 has been referred to the Standing Committee on Social Development (Committee) for review. We are reaching out to you for feedback on Bill 65 as drafted by the Government of the Northwest Territories.

Bill 65 proposes to replace the existing *Mechanics Lien Act* with a new Act, the *Builders' Lien Act*. The new Act contains the following changes:

- Changing the name of the Act from 'Mechanics' Lien Act to 'Builders' Lien Act
- Amending the scope of the Act to include "improvements"
- Extending timelines for filing and perfecting claims
- Allowing courts to order discharges when appropriate
- Creating trust provisions that require owners and contractors to hold any money received in trust for employees and subcontractors
- Introducing the concept of 'substantial performance' and finishing holdbacks
- Allowing annual, phased, and segmented release of holdbacks for large contracts

- Eliminating the posting of payroll at the construction site
- Providing greater clarity regarding which groups or persons have priority
- Providing the right to information
- Greater clarity and readability
- Transitional legislation

For further information please see:

A **plain language summary** of the proposed Act is attached and is also available online at: [https://www.ntassembly.ca/sites/assembly/files/taled\\_document\\_794-192\\_-\\_jus\\_-\\_plain\\_language\\_summary\\_for\\_bill\\_65\\_builders\\_lien\\_act.pdf](https://www.ntassembly.ca/sites/assembly/files/taled_document_794-192_-_jus_-_plain_language_summary_for_bill_65_builders_lien_act.pdf)

The formal text of **Bill 65: *Builders' Lien Act*** is available at: [https://www.ntassembly.ca/sites/assembly/files/bill\\_65.pdf](https://www.ntassembly.ca/sites/assembly/files/bill_65.pdf)

The existing ***Mechanics Lien Act*** is available at: <https://www.justice.gov.nt.ca/en/files/legislation/mechanics-lien/mechanics-lien.a.pdf>

### **To Provide Feedback:**

As Committee is now reviewing Bill 65: *Builders' Lien Act*, this is your opportunity to provide input.

To provide your input you can:

1. **Appear as a witness at the public hearing.** This allows you to speak to the Committee directly, either in-person or virtually. The public hearing is scheduled for January 11, 2023 at 7:00 PM.
2. **Provide a written submission.** If you wish to share your views but do not wish to appear before Committee, you can write a letter to the Committee with your thoughts on the changes proposed in Bill 68. All submissions are provided to the Committee for their consideration. The deadline to provide a written submission is Monday, January 16, 2023, at 5:00 PM (MST).

To appear at the public meeting, provide a written submission, or if you require any further information on making a submission to the Committee please contact Committee Clerk, Michael Ball by email: [committees@ntassembly.ca](mailto:committees@ntassembly.ca).

We look forward to hearing from you on this important matter.