



# Construction Association of New Brunswick

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February 20, 2018

Legislative Services Branch  
Office of the Attorney General  
Chancery Place  
P.O. Box 6000  
Fredericton, NB E3B 5H1

Office of the Attorney General:

RE: Law Reform Notes #40; Mechanics Lien Act

The Construction Association of New Brunswick (CANB) supports the reform and modernization of the New Brunswick “Mechanics Lien Act.” CANB is the voice of the New Brunswick constructing industry, representing 650 members who employ 24,000 workers. The industry contributes approximately \$1.24 billion in real GDP annually to the province. The “Mechanics Lien Act” helps govern the business transactions of the New Brunswick construction industry, particularly as it pertains to payment for services rendered throughout the construction pyramid.

The Law Reform Notes for the “Mechanics Lien Act” present several recommendations, there are two areas that CANB members have identified as improvements that will help ensure better business practices:

## ***1) Time period for preservation***

CANB supports that a claim of lien for services or wages be increased; however, recommends it be extended to 90 days after substantial completion rather than the final invoice.

Moreover, CANB recommends further explanation and or guidelines for when a lien notice should be issued.

## **2) *Holdbacks and substantial performance***

CANB supports the reduction of holdbacks from 15% to 10%.

CANB members express communication barriers between the various levels of the construction pyramid as being a barrier to finding out when a project is substantially complete. Together with a better definition of what is “substantially complete”, a look at developing a communications system from the consultants (architects and engineers) and owner down would eliminate some of the miscommunication and confusion surrounding finding out when a project is deemed “substantially complete.”

Prior to legislation being passed regarding this section of the Act, CANB asks the Office of the Attorney General and the New Brunswick Government seek further consultation and feedback from the industry, as “substantial completion” is one of the larger issues impeding business being done within the construction industry. CANB would like to ensure that any final changes to the Act will reduce the amount of litigation and provide a long-lasting solution to this issue.

### ***The following are additional comments surrounding other recommendations being proposed in the “Mechanics Lien Act”:***

- CANB members agree with changes to the definitions “improvements” and “owner.”
- CANB expresses concern around “liens against specific kinds of property” and agree that the Act should encompass commercial and residential condominium development where it is not clear on how to lien these properties when contractors are not limited to doing work for only one unit but all.
- CANB agrees that the fund distribution regarding construction trusts is an issue and that safeguards need to be put in place to ensure funds for said project are paid out for said project.
- CANB supports a simplified dispute resolution. The current process can be cumbersome and costly and not beneficial when all things considered to conducting one’s business. Currently, small companies cannot afford the legal costs in exercising their lien rights. CANB recommends a process to provide arbitration prior to a lien and judicial interference. A two-tiered system being proposed with claims under \$12k going to Small Claims Court is seen as a positive solution.
- CANB would like more information on what the Attorney General’s office is considering in terms of payment bonds, as currently government projects are the only projects being bonded.

CANB asks to be contacted for further consultation and feedback on final changes to the “Mechanics Lien Act”, as any changes will have a lasting impact on the members and day-to-day business operations of our members. CANB’s recommendations were gathered over the course of several member and board consultations since the beginning of January.

CANB is a federation representing members from CANB-Moncton Northeast, CANB-Fredericton Northwest and CANB-Saint John, in addition to representation from various industry associations.

For further information on CANB’s recommendations and or comments, please contact John Landry, Executive Director by phone (506) 459-5770 or by email at [canb4@nbnet.nb.ca](mailto:canb4@nbnet.nb.ca).

Sincerely,

John Landry

CANB Executive Director