

# **Specialized Oil Sands Claims – The *Builders' Lien Act***

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Presented by:

**Renn M. Moodley**

**Witten LLP**

**Edmonton, Alberta**

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## **SPECIALIZED OIL SANDS CLAIMS – THE BUILDERS’ LIEN ACT<sup>1</sup>**

### **INTRODUCTION**

The *Builders’ Lien Act*, RSA 2000, c. B-7 (hereinafter referred to as the “*Builders’ Lien Act*” or “*BLA*”) can be used as a tool to provide contractors and suppliers of materials with security for payment. A contractor or supplier of materials who causes a lien to be registered against land, a leasehold interest, or a mineral interest may avail itself of remedies described in the *Builders’ Lien Act*, including, but not limited to, the foreclosure of the interest that the lien was registered against to obtain payment. The *Builders’ Lien Act* can be unforgiving. While the requirements of a Statement of Lien set out in s. 34.2 of the *BLA* appear to be simple, there are certain requirements that are very technical. Failure to comply with these requirements may result in the lien being invalidated and discharged. If a lien is discharged, a lien claimant may still have a claim against the party it provided services or materials to; however, if that party is insolvent or is on the verge of insolvency the likelihood of recovery is significantly reduced.

As a result of oil prices recently dipping below \$48.00 a barrel and other related uncertainties in the commodities markets, I have noticed that parties involved in the construction and operation of oil and gas projects in Alberta seem to be tightening their purse strings. As a result, contractors and subcontractors who are owed monies for services and/or materials supplied to these projects are being proactive and consulting with counsel to obtain advice on what steps to take to ensure they get paid. The advice that counsel often (but, not always) provide is to register a lien against the project. As a result of the registration of a lien, the lien claimant may avail itself of its rights under the *Builders’ Lien Act*. Moreover, as a result of the registration of a lien, the lien claimant’s outstanding payable cannot be ignored and must be dealt with in some manner by the contractor and/or owner of the project.

The intent and purpose of this paper is to provide a very general and broad overview of lien registration procedures in respect of the registration of a lien against a basic commercial project, condominium project, a pipeline, and a mineral interest. Subsequently, I provide an in depth analysis in respect of the registration of a lien against an oil sands project and I explore certain technical registration issues that arise in respect of these projects.

### **REGISTRATION OF A LIEN – GENERAL PROCEDURES**

Below, I summarize the general procedures in respect of the registration of a lien in respect of a

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<sup>1</sup> Renn M. Moodley is a partner with Witten LLP and can be reached at 780 441 3238 or [rmoodley@wittenlaw.com](mailto:rmoodley@wittenlaw.com)

basic commercial project, condominium project, pipeline, and mineral interests.

**A. Procedure – Registration of Lien - Basic Commercial Project**

Who Can File a Lien?	Any person who does work in respect of an improvement or furnishes any material to be used in an improvement for an owner, contractor or subcontractor ( <i>BLA</i> , s. 6(1)).
When Does the Lien Arise?	When the work is started or the first material is furnished ( <i>BLA</i> , s. 10) (but it ceases to exist if not registered within the time period provided by the <i>BLA</i> - see below).
Where to File the Lien	<p>At either of the Land Titles Offices:</p> <p><u>Edmonton:</u></p> <p>John E. Brownlee Building  10365-97 Street  Edmonton, Alberta, Canada  T5J 3W7</p> <p>Phone: 780-427-2742  E-mail: <a href="mailto:lto@gov.ab.ca">lto@gov.ab.ca</a></p> <p><u>Calgary:</u></p> <p>Service Alberta Building  710 - 4 Avenue S.W.  Calgary, Alberta, Canada  T2P 0K3</p> <p>Phone: 403-297-6511  E-mail: <a href="mailto:lto@gov.ab.ca">lto@gov.ab.ca</a></p>
How to File a Lien	<p>By filing a statement of lien in FORM A (attached as Schedule “A”) including all essential information (see below) at the Land Titles Office.</p> <p>See <i>BLA</i>, s. 34.</p>