

## Don't Lien and Walk Away - Registering a builders' lien is just the first step

February 09, 2022

Recently, there has been an uptick in matters relating to failures to enforce builders' liens. It is important to know the appropriate steps required to enforce a lien, and when those steps must be taken, according to the Alberta [Builders' Lien Act](#) (BLA) and other legislation in force. The recent Alberta Court of Queen's Bench decision of [Chandos Construction Ltd v. Deloitte Restructuring Inc., 2022 ABOB 78](#) (Chandos), is a cautionary tale that contractors, owners and lawyers, alike, should consider when handling enforcement of builders' liens.

Many readers will be aware of the legislative deadlines to register a lien. It is important to be diligent with tracking deadlines in relation to not only registering a lien, but also enforcing a lien. By way of background, the time to register a builders' lien, subject to some nuanced exceptions, is either 45 days, or 90 days on an oil or gas well site project, from the date the last materials, services or wages were provided or the contract was abandoned. Section 43 of the BLA requires a lienholder to commence an action in the Court of Queen's Bench and register a Certificate of Lis Pendens within 180 days of registration of the lien. As a general rule applicable to nearly all litigation in Alberta, the [Limitations Act](#) requires a claimant to seek a remedial order within two years from the date it first knew or ought to have known a claim exists.

Regarding registered builders' liens, often owners or general contractors will take steps to have a lien removed from registration on the lands by posting security with the court while the lien dispute is ongoing. This is typically done by way of a Section 48 application pursuant to the BLA. This may be done for a variety of reasons, including contractual obligations, but primarily for the purposes of financing and progressing the relevant project. Once security is posted with the court to replace the lands that the lien is registered against, the usual 180-day deadline to file a Statement of Claim may no longer apply depending on the language included in the court order. However, in that case, the two-year limitation period would still apply.

In Chandos, the parties took the appropriate steps to register a lien and the lien was removed by posting security with the court, but the lienholder failed to enforce the lien in compliance with the two-year limitation period. The lienholder registered a lien in October 2016 and the lien was removed by way of posting security in November 2016. Subsequent to these steps, the parties entered into a contractual interpretation dispute which impacted the lien claim.

Some readers may be aware of the prominent and related case, [Chandos Construction Ltd. v. Deloitte Restructuring Inc, 2020 SCC 25](#), wherein the Supreme Court of Canada deemed invalid a contractual provision which required a subcontractor to forfeit 10 per cent of the total subcontract price to the general contractor upon the subcontractor's insolvency or bankruptcy. In 2021, after the lienholder was successful at the SCC in the contractual dispute, it sought to enforce the lien. However, that contractual dispute took over three years at various levels of court and by then the lienholder had run afoul of the two-year limitation period to enforce its lien claim. Accordingly, the application to enforce the lien was dismissed and the security posted with the court was returned.

It is also important to follow all of the requirements set out in the BLA to properly enforce a lien. Failing to do so could result in the claim being challenged. This occurred in a recent case out of British Columbia where an application was brought by the general contractor for an order declaring a lien to be extinguished and for the return of the security posted in court, on the basis that the notice of civil claim was defective. In that case, the plaintiff avoided having its lien extinguished by bringing an application to amend its civil claim, which was consented to by the owner: [Trans Canada Trenchless Ltd v. Targa Contracting \(2013\) Ltd, 2021 BCSC 2518](#). However, without the cross-application and the consent of the owner, the court had determined that the lien claim would be extinguished.

**In summary, when proceeding with registration and enforcement of builders' liens it is essential to ensure steps are taken according to legislated procedures and deadlines. Contractors and owners need to be aware of changing timelines and regulations relating to the Alberta Builders' Lien Act that are expected to come into force later this year.**

[BLG's Construction group](#) has written extensively on the [upcoming changes to the BLA](#). Reach out to any of the contacts below should you have any questions on how the upcoming changes to the BLA or new regulations could affect your business.

By

[Jason Buttuls, Patricia L. Morrison](#)

Expertise

[Construction](#)

---

## BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

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

### BLG Offices

#### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### Montréal

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.