

1994

Province of
British Columbia

**Report on the
*Woodworker Lien Act***

**LAW REFORM
COMMISSION OF
BRITISH COLUMBIA**

MINISTRY OF ATTORNEY GENERAL

LAW REFORM COMMISSION OF BRITISH COLUMBIA

REPORT ON THE

WOODWORKER LIEN ACT

“The Commission is to take and keep under review all the law of the Province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law....”

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*The Law Reform Commission gratefully acknowledges
the financial support of the Law Foundation of
British Columbia in carrying out this project.*

Canadian Cataloguing in Publication Data

Law Reform Commission of British Columbia.

Report on the Woodworker Lien Act

(LRC, ISSN 0843-6053 ; 137)

Includes bibliographical references: p.

ISBN 0-7726-2180-2

1. British Columbia. Woodworker Lien Act. 2. Liens — British Columbia. 3. Loggers — British Columbia. 4. Logging — Law and legislation — British Columbia. I. Title. II. Series: Law Reform Commission of British Columbia. LRC ; 137.

KEB259.A72L38 1994 346.711'024 C94-960230-2
KF1058.L38 1994

**TO THE HONOURABLE COLIN GABELMANN
ATTORNEY GENERAL OF THE PROVINCE OF BRITISH COLUMBIA:**

The Law Reform Commission of British Columbia has the honour to present the following:

**REPORT ON
THE *WOODWORKER LIEN ACT***

The *Woodworker Lien Act* is a provincial statute designed to protect the interests of those who earn their living in the forest industry. It was enacted almost 100 years ago and since that time little has been done to modernize it to meet changing economic circumstances. In its current form the Act is a legal relic drafted in outmoded and inaccessible language and employing outdated procedures and legal concepts.

In this Report we recommend a wholly new form of statutory security. The legislation we recommend is built on the concepts of the *Personal Property Security Act* and is designed to work in harmony with it.

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CHAPTER I

LIENS FOR LOGGING WORK

A. Introduction

The *Woodworker Lien Act*¹ is a provincial statute designed to protect or secure the interests of wage earners, and possibly other persons, engaged in aspects of the forest industry. It is the frequent target of calls for reform and modernization.

Even a quick reading of the *Woodworker Lien Act* makes it obvious why concerns are raised. The Act is a legal relic which embodies an archaic approach to statutory security. It is drafted in outmoded and inaccessible language. It establishes a registration scheme which achieves nothing. Procedures contained in the Act for the enforcement of the lien have escaped the modernization and rationalization that other aspects of civil procedure have received in recent years and a reading of the case law surrounding the Act raises further concerns over the scope of its operation.

B. Some History

The first legislation aimed at securing wages in the forest industry was introduced in 1888. The *Protection of Workmen's Wages Act, 1888*² stipulated that persons entering into certain contractual arrangements to buy logs must require the production, by the supplier, of a receipted pay roll relating to the supplier's workers' wages.³

Seven years later a second Act was introduced. The *Woodmen's Lien for Wages Act, 1895* created a lien over logs and timber in favour of persons who had performed labour or services in connection with them.⁴ Both Acts existed independently⁵ until 1910 when they were joined into a

1. R.S.B.C. 1979, c. 436. The full text of the Act is set out as Appendix D to this Report.

2. S.B.C. 1888, c. 40. These provisions have been carried forward into the current legislation. See Appendix D, ss. 37, 38, 39.

3. A failure to comply would subject the buyer to personal liability to workers for unpaid wages. The Act obliged the buyer to retain an amount equal to any unpaid wages for the benefit of the workers involved.

4. S.B.C. 1895, c. 58, s. 3. Other provisions defined relevant terms, and set out the procedures for perfecting and enforcing the lien.

5. Although from 1897 to 1910 the Act of 1888 formed part of the *Mechanics' Lien Act*. See R.S.B.C. 1897, c. 132, ss. 26, 27, 28.

single statute.⁶ The substance of the legislation has changed little since that time.⁷ The Act is now almost 100 years old and seems never to have been the subject of any systematic review or analysis.

C. The Working Paper

In October 1992 we distributed a Working Paper that contained tentative proposals aimed at defining a new legislative framework for statutory security to assist those who work in the forest industry.⁸ The comment that we received in response to the Working Paper, while not extensive, was most helpful to us in developing our final recommendations.

We would like to thank those who did respond to the Working Paper. We would also like to acknowledge the contribution of Ms. Elizabeth Liu, a former member of the Commission's Research staff, who assisted us with this study.

6. See S.B.C. 1910, c. 54.

7. Amendments made in 1905 and 1919 slightly enlarged the scope of the Act. See S.B.C. 1905, c. 57; S.B.C. 1919, c. 92. Other amendments made minor revisions to the terminology employed by the Act and the enforcement procedures. See S.B.C. 1928, c. 56; S.B.C. 1932, c. 61; S.B.C. 1935, c. 90; S.B.C. 1948, c. 107; S.B.C. 1962, c. 70; S.B.C. 1989, c. 40. The title *Woodworker Lien Act* has its origin in the statute revision of 1979.

8. Law Reform Commission of British Columbia, *Liens for Logging Work* (WP 68, 1992).

A. Principal Features of the Act

Only a summary description of the Act and its operation is set out below. The more detailed analysis set out in the Working Paper has not been reproduced in this Report. Please refer to Appendix A for detailed information on access to the Working Paper.

1. PERSONS ENTITLED TO A LIEN

The question of who is entitled to a lien under the *Wood-worker Lien Act* has been the most persistently litigated of the issues surrounding the Act. A recurring question concerns the status of so-called independent contractors. A review of the jurisprudence suggests that the right to claim a lien is governed by the following rules:

1. The claimant must be a wage earner.
2. For the purposes of rule 1 “wages” may be remuneration
 - (a) based on time worked,
 - (b) based on production (piecework), or
 - (c) based on *quantum meruit*.
3. As a general rule, a corporation may not be a claimant but
 - (a) an exception may exist for the “one man” company,¹ and
 - (b) an officer or shareholder who is a wage earner (paid by the corporation) may be entitled to assert a lien.
4. Supplying tools or equipment does not disentitle the claimant to a lien covering both labour and the use of equipment if labour and skill are substantial components in the arrangement.
5. The claimant must have provided the labour or services personally and not employed others to do it.

1. *Green Limits Contracting Ltd. v. MacKenzie Redi-Mix Co. (1985) Ltd.*, [1992] B.C.D. Civ. 2575.3-01, CA013931 (B.C.C.A.). The scope of this possible exception has not been the subject of any further development.

CHAPTER II: THE WOODWORKER LIEN ACT

2. WHAT WORK WILL GIVE RISE TO A LIEN?

The Act gives a lien for “labour or services,” an expression defined in the Act to include most work usually associated with a timber harvesting operation. It also includes processing operations, giving millworkers status to claim liens.

3. WHAT PROPERTY IS SUBJECT TO THE LIEN?

The lien is against the “logs or timber” (also a defined expression) on which the work giving rise to the lien was actually done. Where those logs or timber have been mingled with other logs arising out of the same logging operation, the lien attaches to all the logs in the mass.²

4. FILING REQUIREMENTS

The lien arises at the time labour or services are performed,³ but the claimant who wishes to preserve its priority must file a statement of the lien in a registry of the Supreme Court.⁴ The statement must describe the claim and the logs or timber against which the lien is asserted⁵ and be filed within 30 days after the work was performed.⁶

5. PRIORITY OF THE LIEN

The Act gives a woodworker lien high priority. It is “deemed to be a first lien or charge on the logs or timber” with “precedence over all other claims or liens.”⁷

6. HOW IS THE LIEN ENFORCED?

The most numerous provisions of the *Woodworker Lien Act* are those which set out the procedure for enforcing the lien. The Act provides a

2. The cases suggest that the lien may survive other kinds of mingling as well.

3. See, *Warehouse Security Finance Co. v. Niemi (No. 4)*, [1944] 3 W.W.R. 567, 580 (B.C.C.A.).

4. *Woodworker Lien Act*, R.S.B.C. 1979, c. 436, s. 3.

5. *Ibid.*, s. 4.

6. *Ibid.*, s. 5. Exactly when this time begins to run has been an issue in some cases.

7. *Ibid.*, s. 2. An exception to the first priority is made for claims of the Crown and certain other interests (timber slide companies). A number of problems, issues and unanswered questions surround the priority of the lien.

relatively complete, albeit complex, body of rules for the enforcement of lien claims.⁸

7. PAYROLL RECEIPTS

Sections 37 to 40 of the *Woodworker Lien Act* create an extraordinary remedy in favour of wage earners. The remedy casts a duty on every person making payments under certain logging contracts to require the production of payroll records. If it appears by the records that any worker is unpaid that person is required to retain, for the use of the worker, the amount unpaid. A failure to do so renders the person liable to an unpaid worker for the wages due.

B. Current Use of the Act

1. REGISTRY SURVEY

As part of our background research on this study we attempted to obtain information concerning the way the Act is currently being used in practice. Our point of entry for this research was the Supreme Court registries where lien statements are filed under section 3 of the Act. With the co-operation of the Chief Registrar a questionnaire was circulated to all registries in the province requesting information for the years 1989, 1990 and 1991. The information sought included the total number of lien claims filed for each of those years, their total values and the value of the largest individual lien filed in that period. Information was also sought concerning the filing schemes adopted for recording woodworker liens and the frequency with which searches for liens are requested.

2. NUMBER AND DISTRIBUTION OF FILINGS

Responses to the survey were received from 33 Supreme Court registries. The numerical results, in tabular form, are set out in Appendix B to this Report. In absolute numbers, the volume of liens filed is not high.⁹ In most registries no liens were filed in any of the three years under review. The heaviest consistent volume of usage seems to be by those who register in Prince George. There is no requirement for a connection between the registry in which the lien statement is filed and

8. The most distinctive feature of the procedural provisions is the Writ of Attachment which a lien claimant may cause to be issued *ex parte* directing the sheriff to seize logs or timber pending proceedings to enforce the lien. The Writ of Attachment can act as originating process in an enforcement proceeding.

9. The statistics are somewhat distorted by the filing, in the Vancouver Registry, of a large number of claims which appear to arise out of a single insolvency.

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the location of the logs or timber or the site of the activity which gave rise to the lien claim. A lien may be filed in any registry of the Supreme Court.¹⁰ Thus it is possible to file a lien statement in a registry on Vancouver Island for work carried out in the Kootenays and *vice versa*.¹¹

3. VALUE OF INDIVIDUAL CLAIMS

One of the most striking features of the survey is the value claimed in many of the individual lien statements. Over the three-year period under review, the average lien claim is approximately \$22,000. Very large liens were not uncommon. Three liens were recorded in excess of \$100,000. The highest of those claims was for \$347,471.¹²

4. REGISTRY PRACTICES

There is no common practice or system among the Supreme Court registries for filing and maintaining the records of wood-worker liens. In some registries, the process consists merely of placing the lien statement on a "Shannon file" which is kept in the registry. In other registries, an attempt is made to integrate filings under the *Woodworker Lien Act* with the system used for civil litigation files.¹³ No registry appeared to maintain a system through which a prospective buyer of logs or timber could confidently do a search for liens using the owner's name as a search parameter.

According to the responses to our survey, searches of the registry are seldom requested.

5. CONTENTS OF INDIVIDUAL LIEN CLAIMS

In the course of our research we examined between 40 and 50 statements of lien claim filed in the last three years. These included the claims filed in the Vancouver registry which were examined by a member of the Commission's research staff as well as copies of typical lien claims which were sent to us by registry officials in response to the survey. The results of this part of our research do not lend themselves to

10. Before the County Court was abolished in 1989, lien statements were to be filed in the registry of the County Court for the County in which the work was performed.

11. This is more than a hypothetical possibility. In our research we encountered a lien filed in the Vancouver Registry based on work carried out in the Prince George region.

12. The highest claim was by a company in respect of "heavy-lift helicopter air transportation and falling and bucking services."

13. For indexing purposes this involves assigning a notional plaintiff and defendant to the file. Various registries have approached this exercise in different ways.

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quantification. They do, however, permit certain inferences to be drawn about the use being made of the Act.

(a) Kind of Work on which Lien Claims are Based

The kinds of work for which liens are being claimed seem to be in respect of timber harvesting and associated activity. The Act does not appear to be used to any extent by those engaged in the processing end of the forest industry although millworkers and the like do have status to claim liens.

(b) Who are Claiming Liens?

It also seems fairly clear to us that large numbers of liens are asserted by claimants whose status to do so is questionable. In some cases, the lien statement itself speaks of “contracting.” In other cases, the claimant is an incorporated entity.¹⁴ In many cases the very size of the amount claimed suggests that the claim is based on something other than arrears of salary or wages.

(c) Description of Logs and Timber

The way in which the logs and timber are described allows other inferences to be drawn. First, the descriptions suggest that most liens are asserted against logs and timber which continue to be under the effective control of their owner or of a contractor engaged by their owner.¹⁵ Although in theory the lien persists against the buyers of logs and timber,¹⁶ in practice lien rights do not appear to be asserted in these circumstances.

C. Principal Conclusions

Our survey of the Act, the jurisprudence, and the current practice leads to a number of conclusions that have implications for reform of the law in this area. The basic conclusion is that the Act is out of touch with current needs and practices and is deficient in a number of ways.

14. *See* n. 1, *supra*.

15. Some lien claimants, however, were not sure who owned the logs or timber against which the lien was claimed. Presumably they knew the identity of the person who engaged them, but not who engaged that person.

16. *Supra*, n. 4, s. 5.

CHAPTER II: THE WOODWORKER LIEN ACT

1. THE ACT IS OBSCURELY DRAFTED

The drafting is archaic and obscure. Numerous examples of difficult and convoluted drafting in the Act could be cited.¹⁷ Although the Act appears to address the relevant issues in great detail, in reality many important issues surrounding the lien are left at large.

2. THERE IS A GAP BETWEEN LAW AND PRACTICE

There is a significant gap between the law and what actually occurs in practice. The best illustration concerns the status to claim a lien. The case law surrounding the *Woodworker Lien Act* suggests that only a relatively narrow group of individuals are entitled to claim liens. Most limited companies and contractors do not appear to have status. Our empirical research, however, suggests that large numbers of lien statements are filed by persons who do not appear to have status.¹⁸ There is obviously a demand for lien rights by those for whom the Act, in its current form, provides a very shaky and uncertain vehicle.

3. THE ENFORCEMENT PROCEDURES ARE OUT-OF-DATE

British Columbia has been very active over the past decade in modernizing the rules of civil procedure to provide effective machinery for dealing with disputes and claims. The focus of these reforms has been the *Rules of Court*. Procedural laws which are contained in individual statutes have escaped this modernizing process. The provisions of the *Woodworker Lien Act* are a case in point. While a lawyer or judge in the late Victorian era would probably have felt quite comfortable with the procedural features of the Act, today they constitute no more than a legal curiosity. Enforcement machinery more in keeping with contemporary needs and practices is clearly required.

4. THE PROVISIONS CONCERNING PAYROLL RECEIPTS ARE UNWORKABLE

The oldest portion of the Act is also the most antiquated. We refer to sections 37 to 40 which concern payroll receipts. These provisions harken back to an age of quill pens and high stools. The kind of payroll sheet which the Act requires seems to be wholly incompatible with modern business procedures in which payrolls are processed by computer

17. *E.g.*, s. 10.

18. It is difficult to ascertain how often the status of the lien claimant is put in issue after a lien statement has been filed. In large numbers of cases, the court file consists merely of the lien statement and there is no evidence of further proceedings either to enforce the lien or to have the lien discharged.

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and payment is frequently made through a direct deposit into the worker's bank account. The survival of this measure merely constitutes a trap for persons obtaining logs and timber under contracts to which it applies.

5. THE ACT IS BASED ON AN OBSOLETE ECONOMIC MODEL

The Act's greatest failing is that it was created to accommodate an economic model of the forest industry as it existed many years ago. This model is relatively simple. Logging operations were small and locally based. The person who owed the debt on which the lien claim was based was normally the owner of the logs or timber in issue, thus the existence of the lien did not normally work an unfairness on the owner. There were few competing interests likely to arise in the logs or timber so there was no obvious need for a detailed priority scheme.

Given the simplicity of the economic model it is not surprising that the legislature would respond with a simple scheme for statutory security. It probably suited the needs of the time very well for the statute simply to provide for a lien which was a "first charge" and call for its filing in the local County Court.¹⁹

Today the economic environment is vastly more complex. The ownership of a large proportion of the harvesting rights²⁰ in the province has become concentrated in a small number of major forest companies with the balance being in the hands of "small operators." The contracting and sub-contracting of work within the forest industry has become a predominant pattern, even by the major forest companies who do not carry out all of their harvesting operations "in-house."²¹ Forest work is often contracted out to a "full phase contractor" who assumes responsibility for all aspects of the timber harvesting operation. Particular tasks such as road building, hauling, and the like may, in turn, be sub-contracted to other operators and certain specialized functions may be sub-contracted even further.

The result is a pyramid shaped structure of linked contracts. At the apex of the pyramid is the person who owns the timber harvesting rights and who will be the owner of the logs and timber once they are cut.

19. Filing in County Court ended with the merger of the County and Supreme Courts in 1989.

20. A right to harvest Crown timber may take a number of forms. See *Forest Act*, R.S.B.C. 1979, c. 140, s. 10.

21. This may reflect either a business decision or a requirement imposed by the Crown as a condition of obtaining the timber harvesting rights.

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Below the owner may be the full phase contractor. Lower yet in the pyramid may be one or two layers of sub-contractors, with the actual workers and wage-earners at the base. In a large pyramid a worker may be as many as five contractual links removed from the owner of the logs or timber. Where the harvesting rights are owned by a smaller operator, the pyramid will be somewhat truncated.

An owner of logs or timber is liable (to the value of that property) to a person who is lower in, or at the bottom of, the pyramid. The fairness of this result depends on whether the pyramid is a shallow one or a tall one. In a shallow pyramid (the economic model envisaged in the *Woodworker Lien Act*) the result is unobjectionable since the owner will normally be the party who is in default of the obligations to the lien claimant. If the pyramid is a tall one, however, the current Act imposes liability on all owners of logs, whether or not they are in default. It provides no machinery which allows owners to limit their liability or otherwise protect their interests. The fairness of this may be questioned.

6. CONCLUSION

It is our conclusion that the *Woodworker Lien Act* is beyond repair and no amount of revision or redrafting can save it. A wholly new and modern Act is required. Our version of such an Act is set out in the following chapter along with explanatory comments.

Forest Work Security Act

Introductory Comment: The new Forest Work Security Act builds on the Personal Property Security Act¹ (PPSA). The PPSA was enacted in 1989 and provides a new legal framework for the operation of a whole range of distinct security devices which formerly led a separate legal existence. They have been brought within a single unifying concept, the “security interest” which is the basic intellectual unit of reckoning on which the PPSA operates. Once a particular arrangement is identified as a security interest most of its characteristics and attributes can be determined with reference to the PPSA. The PPSA defines the priority enjoyed by the security interest in relation to other interests in the same property.

Incorporating the PPSA by reference into the new Act, as we have done, provides a central conceptual pillar which can then be altered or modified as may be needed to meet the exigencies of forest work. This also permits legislation which is relatively short and uncluttered.

In this Report we must assume a certain familiarity with the Personal Property Security Act and its application. Those who wish to have more specific information about it should consult one of the many specialized sources available.²

Interpretation

1. In this Act

Comment: Section 1 defines the pivotal concepts used in the Act.

“forest products” means logs or timber which have been cut or cut and trimmed but not further processed,

“forest work” means all work incidental to a timber harvesting operation, whether carried out at a harvesting site or a handling site and includes cutting, skidding, felling, hauling, scaling, banking, driving, running, rafting and booming logs,

Comment: “Forest work” describes the activity that will give rise to a security interest under the Act. That is defined with reference to timber harvesting work carried out at either a “harvesting site” or a “handling site,” both defined terms.

1. *Personal Property Security Act*, S.B.C. 1989, c. 36.

2. See Cuming and Wood, *British Columbia Personal Property Security Act Handbook* (2nd ed., 1993); McLaren, *Secured Transactions in Personal Property in Canada* (2nd ed., 1989). See also Law Reform Commission of British Columbia, *Report on Personal Property Security* (L.R.C. 23, 1975).

CHAPTER III: NEW LEGISLATION

“Forest work” also includes “hauling.” The list of activities that constitute forest work can be extended by regulation. See section 8.

“forest work security interest” means a security interest arising under section 2,

Comment: The “forest work security interest” (hereafter FWSI), is the legal concept on which the Act is centred.

“forest worker” means a person engaged or employed to do forest work and includes a person engaged under a contract who supplies equipment or employs others to do forest work,

Comment: “Forest worker” identifies the persons who are entitled to claim a security interest under the Act. It expressly includes a person engaged under a contract.³

“handling site” means a place where forest products are held for storage, sorting, booming or transporting, whether located at the harvesting site, a processing site, or some intermediate location and, where the site serves numerous owners, the forest products of each owner are physically segregated,

“harvesting site” means the place where timber and logs are cut,

Comment: The concept of the “harvesting site” and the “handling site” are relevant to the definition of “forest work” and “hauling” and also recur in sections 2 and 5 of the Act.

3. “Person” includes a corporation: *Interpretation Act*, R.S.B.C. 1979, c. 206, s. 29.

CHAPTER III: NEW LEGISLATION

“hauling” means transporting forest products

- (a) within a harvesting site,
- (b) between a harvesting site and a handling site, or
- (c) between two handling sites,

“obligor” means a person who owes money to a forest worker in respect of forest work,

Comment: “Obligor” is used in sections 2, 3(2),6(3) and 6(4)

“owner” when used with reference to forest products means the owner of the forest products at the time a forest work security interest attaches,

“security interest” has the same meaning as in the *Personal Property Security Act*.

Comment: This is the first of several references that link the Forest Work Security Act to the PPSA. Section 7(1) provides the compendious link.

Security interest for work

2. To secure the payment of money owed to a forest worker for forest work, the forest worker has a security interest in all forest products

- (a) located at the harvesting site or handling site where the forest work was performed, and
- (b) located at any handling site to which forest products are normally hauled from a place referred to in paragraph (a)

that are

- (c) owned by the obligor, or
- (d) owned by a person that engaged the obligor to carry out the forest work.

Comment: Section 2 is the provision which actually creates the security interest in favour of the forest worker (the FWSI). Paragraphs (a) to (d) of section 2 identify the forest products which become subject to the security interest. These are defined with reference both to their location and ownership.

Attachment of security interest

3. (1) A forest work security interest attaches when the forest work for which the money is owed is performed.

(2) A forest work security interest does not attach to the proceeds of forest products.

*Comment: Section 3 describes some features of the creation of the security interest. "Attachment" is a term of art used in the PPSA to denote the time at which a security interest comes into existence. It is not a defined term and its meaning and significance arise by inference out of its usage. A security interest that has attached is normally enforceable against the debtor although it may not be enforceable against other persons unless it is also "perfected."*⁴

(3) A forest work security interest that attaches to forest products described in paragraph (d) of section 2 is limited to the amount owed from time to time by their owner to the obligor.

Comment: Section 3(3) attempts to accommodate the pyramid structure of contracting within the forest industry. The difficulty arises where the person in default is an intermediate contractor rather than the owner of forest products. The approach adopted in the Forest Work Security Act is to allow a forest worker to claim security in forest products owned by the person who has defaulted on obligations to the forest worker (the "obligor" in the Act) and in forest products owned by the person who engaged the obligor. In the latter instance, however, section 3(3) provides that the amount secured by the forest products is limited to the amount owed by their owner to the obligor.⁵ Simply put, the Act permits a person at the third step of the pyramid to assert a (potentially) limited claim to security without exposing the owner of the logs or timber to an unfair risk.

(4) For the purposes of subsection (1), hauling is deemed to be performed at its point of origin.

4. See Cumming and Wood, *Supra* n. 2 at 113. See text at n. 6 *infra*.

5. See s. 3(3). See also ss. 6(3) and 6(4) which gives a forest worker the right to deliver a notice after default that would maintain the value of the security in the face of payments from the owner to the obligor that would otherwise reduce it.

Perfection and priority of security interest

4. (1) Subject to this section, the provisions of the *Personal Property Security Act* respecting the perfection and priority of security interests apply to a forest work security interest as if it had been created by agreement.

Comment: “Perfection” is an undefined term of art used in the PPSA. A security interest is said to be perfected when it is enforceable against third parties.⁶ Subjecting the FWSI to the perfection rules of the PPSA means that, in practice, the forest worker will have to file a financing statement in the Personal Property Registry if the FWSI is to have any status vis a vis third parties. In keeping with the “open filing” policy of the PPSA no time limit is imposed on registration although delay could have adverse priority consequences for the forest worker.

Subjecting the FWSI to the priority rules of the PPSA means that it will normally be subordinate to security interests in the same forest products which have been registered earlier, but it will take priority over competing interests that are covered by a later registration. Subsections (2) and (4) create two important exceptions to this general priority rule.

(2) A perfected forest work security interest, to the extent that it secures money owed to a forest worker up to a maximum of \$20,000, has priority over any other security interest in the same forest products, other than a perfected purchase money security interest.

Comment: Subsection 4(2) creates a special priority with respect to the first \$20,000 secured by a FWSI (the \$20,000 amount can be altered by regulation - see s. 8). This portion of the claim is given priority over any other security interest in the same forest products other than a perfected purchase money security interest. This priority is analogous to that conferred by section 34(9) of the PPSA which gives a similar priority to certain agricultural “inputs.” This carries forward the high priority currently enjoyed by woodworkers’ liens but restricts it to an “average” amount.⁷

6. A security interest is normally perfected by registration in the personal property registry (PPR) established under the PPSA or by the secured party taking physical possession of the collateral. See Cuming and Wood, *supra* n. 2 at 149.

7. See page 6 as to average claim values.

CHAPTER III: NEW LEGISLATION

(3) A forest work security interest that has received priority under subsection (2) shall receive no further priority under subsection (2) with respect to the same, or additional, forest products except to the extent that

- (a) priority was not received for the maximum amount set out in subsection (2), or
- (b) the security interest secures money owed for forest work performed after the priority was received.

Comment: Section 4(3) has been included to ensure that the subsection (2) priority is not claimed repeatedly to the detriment of competing creditors.

(4) Where funds become available toward satisfying any claim secured by a forest work security interest, whether through an enforcement measure taken against the forest products or otherwise, and there is a competition between perfected forest work security interests

- (a) where the funds are insufficient to satisfy all the claims, to the extent that they are entitled to priority under subsection (2), then all the competing claims are entitled to share ratably in the funds with the *pro rata* share of each claim based upon the lesser of
 - (i) the value of the claim, and
 - (ii) the maximum amount specified in subsection (2), and
- (b) where all the claims have been satisfied, to the extent that they have priority under subsection (2) and the competition is over any remaining funds, then all the competing claims are entitled to share ratably in the funds with the *pro rata* share of each claim based upon the amount of the claim remaining unpaid.

Comment: The other important exception to the PPSA's first-to-register rule is contained in section 4(4) which concerns FWSIs in competition with each other for limited funds. The basic rule embodied in the Act is pro rata sharing although the basis on which calculations are made depends on the context in which the competition arises.

When the claims of the parties rest, essentially, on the special priority given by subsection (2) then pro rata calculations are to be made with reference to the lesser of the size of the claim or the maximum amount for which priority can be claimed. This is to ensure there is a more equitable distribution when the pool of available funds is very small.

The second situation addressed is where all claimants have been paid to the extent of the priorities stipulated in subsection (2) and there are still funds left over. Pro

*rata distribution of these funds would be with reference to the amount remaining unpaid on each claim.*⁸

See Appendix C for examples of the application of section 4.

Termination of security interest

5. (1) A forest work security interest in forest products becomes unattached with respect to those forest products when

- (a) the forest products cease to be located at either
 - (i) the place they were located when the security interest attached, or
 - (ii) a handling site to which forest products are normally hauled from a place referred to in subparagraph (i), or
- (b) the forest products cease to be forest products through processing.

*Comment: The high priority conferred by section 4(2) poses an obvious danger if the forest products subject to it are allowed to enter the stream of commerce. It is desirable to safeguard the legal position of persons who may acquire an interest in logs or timber that are subject to a FWSI. The Act does this by maintaining the FWSI only so long as the forest products subject to it have a physical link to the harvesting operation. Section 5 terminates the FWSI once the forest products are no longer at a “harvesting site” or a “handling site” as defined.*⁹

(2) Despite subsection (1), a forest work security interest remains attached while the forest products are being hauled.

Comment: “Hauling” is a defined term.

8. This provision does not attempt to provide an express solution to the priority competition that arises when two or more groups of FWSIs must share pro rata among themselves but have differing priorities vis-a-vis an intervening PPSA security interest.

9. This supplements an important provision of the PPSA which provides protection for bona fide buyers of property that is subject to a security interest. According to s. 30(2) a buyer of goods sold in the ordinary course of the seller's business takes free of any perfected or unperfected security interest in the goods given by the seller.

Remedies

6. (1) A forest work security interest may be enforced under Part 5 of the *Personal Property Security Act*, but any remedy involving the physical seizure of forest products must be exercised only through a person authorized to act under a writ of seizure and sale to which the *Court Order Enforcement Act* applies.

Comment: Part 5 of the PPSA sets out a complete and detailed code of remedies for the enforcement of security interests. In particular, the PPSA authorizes secured parties to take possession of collateral (the property subject to a security interest) on default. This essentially self-help remedy is modified by section 6(1) in one important respect. Where security has not been the subject of an agreement between the parties, unrestricted self-help may be inappropriate. Section 6(1), therefore, requires that self-help remedies be exercised only through individuals who normally execute analogous court process. This should avoid any breaches of the peace that might otherwise flow from enforcement under the PPSA.

(2) A person who has a forest work security interest may apply *ex parte* for an injunction restraining the owner of the forest products from any act

- (a) that would result in a loss of priority under the *Personal Property Security Act*, or
- (b) that would cause the forest work security interest to become unattached under section 5.

Comment: Section 6(2) expressly authorizes a forest worker to apply for an injunction to preserve rights arising under the Act. It serves a function similar to that of the Writ of Attachment under the Woodworker Lien Act.

(3) Where a forest work security interest has attached to forest products described in paragraph (d) of section 2, and the obligor is in default, the forest worker may give to the owner of the forest products a notice, setting out particulars of

- (a) the identity of the obligor and the forest worker,
- (b) the forest products to which the security interest has attached, and
- (c) the default and the amount claimed.

(4) Unless the court otherwise orders, where a forest worker has given a notice under subsection (3)

- (a) no subsequent payment by the owner to the obligor operates to reduce the amount owed by the owner to the obligor for the purposes of section 3(3), and
- (b) the owner may, without liability to the obligor, refuse to make any further payments to the obligor

until the default specified in the notice is cured.

CHAPTER III: NEW LEGISLATION

Comment: Subsections 6(3) and 6(4) apply where the amount secured by a FWSI is limited by the operation of section 3(3). They provide a mechanism that permits the forest worker to prevent any diminution of the amount secured.

Application of *Personal Property Security Act*

7. (1) The *Personal Property Security Act* applies to a forest work security interest.

(2) Section 72 of the *Personal Property Security Act* applies to notices given under section 6(3).

Comment: Detailed guidance as to notification is provided by the PPSA.

(3) If there is a conflict between this Act and the *Personal Property Security Act*, this Act prevails.

Regulations

8. The Lieutenant Governor in Council may make regulations
- (a) from time to time substituting a different dollar amount for the one set out in section 4(1),
 - (b) respecting the description of forest products for the purposes of the *Personal Property Security Act*,
 - (c) designating particular activities to constitute forest work for the purposes of this Act, in addition to the activities set out in the definition of that expression.

Repeal

9. The *Woodworker Lien Act* is repealed.

The *Woodworker Lien Act*, in its current form, has serious deficiencies and should not be retained. The purpose of the *Woodworker Lien Act*, both as originally conceived and as identified in the cases construing it, is the protection of workers' wages. Today, however, this purpose is served comprehensively and efficiently by other legislation.¹ Duplicating that legislation serves little purpose, so the protection of workers' wages is, of itself, not a function that warrants the retention of a statute like the *Woodworker Lien Act*.

There are, however, many persons who participate in the forest industry whose economic position is similar to that of wage earners but who are not protected by most forms of wage protection legislation. Small contractors and "one person companies" are an obvious example. If there is a continuing role for legislation like the *Woodworker Lien Act* it is to serve the needs of these persons as well as conventional wage earners.

We have concluded that legislation should continue to exist to secure wages and "near wages" in the forest industry. In this Report we describe a new and modern regime of statutory security for forest workers. It is based on the concepts found in the *Personal Property Security Act* and adopts many features of that body of law. Our aim has been to create legislation which operates "invisibly" in the sense that it intrudes as little as possible on the day-to-day operation of the forest industry.

The Commission recommends that legislation similar to the *Forest Work Security Act* set out in the previous chapter be enacted in British Columbia.

1. See *Employment Standards Act*, S.B.C. 1980, c. 10. Workers also enjoy priority under various other statutes in respect of wages. See *Creditor Assistance Act*, R.S.B.C. 1979, c. 80, s.36; *Court Order Enforcement Act*, R.S.B.C. 1979, c. 75, s. 46; *Company Act*, R.S.B.C. 1979, c. 59, s. 95; *Estate Administration Act*, R.S.B.C. 1979, c. 114, s. 114(1)(e).

APPENDIX A

ACCESS TO THE WORKING PAPER

The *Working Paper on Liens for Logging Work* that preceded this Report contained a comprehensive review of the *Woodworker Lien Act* and the jurisprudence surrounding it. That review has not been carried forward into this Report.

The Working Paper remains accessible to those who wish to consider the Act in greater depth and detail.

How to Get Access to the Working Paper

1. Request a copy from the Law Reform Commission

The Law Reform Commission still has a number of copies of the Working Paper and is happy to distribute them on request so long as the supplies last. Write, phone or fax:

203 - 865 Hornby Street
Vancouver, B.C. V6Z 2G3

phone: (604) 660-2366
fax: (604) 660-2378

2. Electronic Access

The full text of the Working Paper has been posted to the Queen's Printer Bulletin Board System (QPBBBS) where it is available for downloading in Wordperfect 5.1 format. The file containing the *Working Paper on Liens for Logging Work* will be titled WP68.EXE. This is a self-extracting compressed file.

The QPBBS can be accessed in two different ways:

(a) Telephone/modem connection

To access the QPBBS by telephone the numbers are:

(604) 356-0045 (Victoria area)
(604) 660-1264 (Vancouver area)

The QPBBS supports a toll free call back within the province.

APPENDIX A: ACCESS TO THE WORKING PAPER

Once connection is made, go to the “files” area where a section is reserved for Law Reform Commission documents.

(b) Internet

If you have access to the Internet it is also possible to transfer the document via FTP. The address is:

BBS.QP.GOV.BC.CA.

Log in as ANONYMOUS and use your E-mail address as the password. Once you have connected look for Law Reform Commission files in the following path: \ROOT\GOVTINFO\LRC.

3. Consult a copy at a Law Library

Most libraries maintained by the British Columbia Courthouse Library Society will have a copy of the Working Paper.

APPENDIX B

COURT REGISTRY SURVEY

APPENDIX B									
Woodworker Lien Act - Use Survey									
Registry	Number Filed			Total Value of Liens			Largest Lien	Search Frequency	
	89	90	91	1989	1990	1991			
Victoria	0	0	5	\$0	\$0	\$140,744	\$58,400	almost never	
Creston	0	0	1	\$0	\$0	\$36,617	\$36,617	never	
Vanderhoof	0	0	0	\$0	\$0	\$0	\$0	never	
Chilliwack	0	0	0	\$0	\$0	\$0	\$0	never	
Port Hardy	0	0	0	\$0	\$0	\$0	\$0	very seldom	
Nanaimo	0	3	2	\$0	\$173,000	\$3,969	\$173,000	never	
Prince George	6	15	16	\$49,707	\$72,683	\$388,291	\$79,062	once per month	
Fort St. John	0	0	0	\$0	\$0	\$0	\$0	never	
Courtenay	0	0	0	\$0	\$0	\$0	\$0	never	
Smithers	0	0	0	\$0	\$0	\$0	\$0	never	
Port Alberni	0	0	0	\$0	\$0	\$0	\$0	never	
Rosland	0	0	0	\$0	\$0	\$0	\$0	never	
Quesnel	2	0	0	\$11,982	\$0	\$0	\$6,790	never	
Duncan	0	0	0	\$0	\$0	\$0	\$0	never	
Prince Rupert	3	1	0	\$236,617	\$1,673	\$0	\$224,516	rarely	
Vancouver	0	35	4	\$0	\$798,156	\$275,237	\$347,471	never	
Vernon	2	0	0	\$22,634	\$0	\$0	\$13,150	never	
Campbell River	3	2	2	\$31,000	\$14,100	\$12,000	\$0	never	
Terrace	3	1	0	\$87,823	\$6,554	\$0	\$54,945	twice per year	
Penticton	0	0	0	\$0	\$0	\$0	\$0	never	
New Westminster	0	0	0	\$0	\$0	\$0	\$0	very few	
Golden	0	0	1	\$0	\$0	\$10,000	\$10,000	never	
Dawson Creek	0	0	0	\$0	\$0	\$0	\$0	never	
Fort Nelson	0	0	0	\$0	\$0	\$0	\$0	never	
Powell River	0	0	0	\$0	\$0	\$0	\$0	never	
Salmon Arm	0	0	0	\$0	\$0	\$0	\$0	never	
100 Mile House	0	0	0	\$0	\$0	\$0	\$0	never	
Cranbrook	0	0	0	\$0	\$0	\$0	\$0	never	
Ashcroft	0	0	0	\$0	\$0	\$0	\$0	never	
Nelson	0	1	1	\$0	\$6,371	\$25,413	\$25,413	once per year	
Grand Forks	0	0	0	\$0	\$0	\$0	\$0	never	
Kitimat	0	0	0	\$0	\$0	\$0	\$0	twice per year	
Williams Lake	0	1	0	\$0	\$30,000	\$0	\$30,000	very rare	
Totals	19	59	32	\$439,763	\$1,102,537	\$892,271	\$347,471		
Average Lien Claim				\$23,145	\$18,687	\$27,883			
Three Year Average				\$22132.46					
<div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> 31 of the 35 Claims filed in the Vancouver Registry in 1990 were against the same "owner." This suggests that they arose out of a single insolvency. </div>									

APPENDIX C

SAMPLE CALCULATIONS FOR THE DISTRIBUTION OF FUNDS

Facts Common to both Scenarios

The following interests in a defined group of forest products were perfected at the dates and secure the amounts indicated:

SP	January 1,	\$50,000 (SP is not a PMSI)
FWSI(1)	May 1,	\$40,000
FWSI(2)	May 2,	\$15,000
FWSI(3)	May 3,	\$30,000

Scenario 1: Sale of the forest products yields \$30,000.

The fact that SP was the first to register does not give SP any priority over the FWSIs insofar as the forest workers are relying on section 4(2) for priority. The priority given to a FWSI by that provision takes precedence over any other security interest (except a PMSI which SP is not).

To give each FWSI its maximum priority entitlement under section 4(2) would require \$55,000. Since only \$30,000 is available that amount must be distributed among the FWSIs and this brings section 4(4)(a) into play. Pro rata distribution according to that rule would result in the following distribution:

$$FWSI(1): \$30,000 \times \frac{20,000}{55,000} = \$10,909$$

$$FWSI(2): \$30,000 \times \frac{15,000}{55,000} = \$8,182$$

$$FWSI(3): \$30,000 \times \frac{20,000}{55,000} = \$10,909$$

SP: \$0

APPENDIX C: SAMPLE CALCULATIONS FOR THE DISTRIBUTION OF FUNDS

Scenario 2: Sale of the forest products yields \$130,000

There are sufficient funds to permit each of the three FWSIs to take its maximum priority entitlement under section 4(2). FWSI(1) and FWSI(3) each get \$20,000 and FWSI(2) gets \$15,000. A total of \$55,000 is taken “off the top” leaving a balance of \$75,000 for further distribution.

With respect to that balance, so far as SP is concerned, the ordinary priorities of the PPSA take effect. This means that SP can assert the priority flowing from the earlier registration. SP is paid the \$50,000 owing.

The balance of the funds, \$25,000, must be divided between FWSI(1) and FWSI(3). Section 4(4)(b) requires that the division be on a *pro rata* basis according to the amount still owing to them. This leads to a final distribution as follows:

SP: \$50,000

FWSI(2): \$15,000

$$FWSI(1): \$20,000 + \$25,000 \times \frac{(30,000 - 20,000)}{30,000} = \$28,333$$

$$FWSI(3): \$20,000 + \$25,000 \times \frac{(40,000 - 20,000)}{30,000} = \$36,667$$

APPENDIX D

WOODWORKER LIEN ACT

R.S.B.C. 1979, c. 436

Interpretation

1. (1) In this Act

“labour or services” includes cutting, skidding, felling, hauling, scaling, banking, driving, running, rafting or booming logs or timber, and any work done by cooks, blacksmiths, artisans and others usually employed in connection with it, and any work done by engineers and all other persons employed in any capacity in or about a mill or factory where lumber of any description is manufactured;

“logs or timber” includes logs, timber, piles, posts, telegraph and telephone poles, ties, mining props, tan bark, shingle bolts and staves, or lumber of any description manufactured from them.

(2) “Person” in section 2 includes cooks, blacksmiths, artisans and all others usually employed in connection with labour or services, and physicians, surgeons and others entitled to receive payments from or out of any fund made up from deductions by an employer from the wages of those cooks, blacksmiths, artisans and others, arising from the labour or services, and set apart for payment of medical or surgical attendance and service on those employees.

Lien on logs or timber

2. (1) A person performing labour or services in connection with logs or timber in the Province, or his assignee, has a lien on them for the amount due for the labour or services, which shall be deemed a first lien or charge on the logs or timber, and has precedence over all other claims or liens on them, except a lien or claim which the Crown may have on the logs or timber for or in respect of any dues or charges, or which a timber slide company, or owner of slides and booms, may have on them, for or in respect of tolls.

(2) Where, under the *Employment Standards Act*, or otherwise, an employer deducts from the wages of his employees, being persons performing labour or services in connection with logs or timber in the Province, a sum for the payment of or for medical or surgical attendance and services on and for the employees, a physician, surgeon or other person entitled to receive the sum or a part of it or to payment from it has a lien on the logs or timber for the amount due him from the fund, which shall be deemed a first lien or charge on the logs or timber and has precedence over all other claims or liens on them, except the liens or claims provided for in subsection (1).

Filing

3. A lien arising under section 2 is void unless a statement of it in writing, verified on oath by the person claiming the lien, or some person duly authorized on his behalf, is filed in the office of a registrar of the Supreme Court.

Contents of statement

4. The statement shall set out briefly the nature of the debt, demand or claim, the amount due to the claimant, as near as may be, over and above all legal set-offs or counterclaims and a description of the logs or timber on or against which the lien is claimed, and may be in the form in Schedule A, or to the like effect.

Statement to be filed within 30 days

5. The statement shall be filed within 30 days after the last day the labour or services were performed; but a sale or transfer of the logs or timber on which a lien is claimed under this Act during the time limited for the filing of the statement of claim, and previous to the filing of it, or after the filing of it and during the time limited for the enforcement of it, shall not in any way affect the lien, which shall remain and be in force against the logs or timber in whose possession they are found, except sawn timber sold in the ordinary course of business.

Enforcing lien

6. (1) A person having a lien on or against logs or timber may enforce it by suit in the Supreme Court where the statement of lien is filed. The lien claim ceases to be a lien on the property named in the statement unless the proceedings to enforce it are commenced within 30 days after the filing of the statement, or after the expiry of the period of credit. The person liable for payment of the debt or claim shall be made the party defendant in the suit.

(2) There shall be attached to or endorsed on the writ or summons in the suit a copy of the lien claim filed as provided above, and no other statement of claim or particulars is necessary unless ordered by the court. If no defence or dispute note is filed, judgment may be signed and execution issued according to the practice of the court.

Procedure

7. The court may order particulars to be given, or proper or necessary amendments to be made, or may add or strike out the names of parties at any time, and may set aside any judgment and permit a defence or dispute note to be entered or filed, on the terms that the court considers proper. The writ or summons shall be in the form, as nearly as may be, in use in the court in which it is issued, and the practice shall follow, as nearly as may be, the practice of that court. Writs or summonses may be served anywhere in the Province in the same manner as in other cases, and the judgment shall declare that it is for wages, the amount of them and costs, and that the plaintiff has a lien for them on the property described when that is the case.

Sale under execution

8. Where an execution has issued and has been placed in the sheriff's hands for execution, and no attachment has been issued, the proceedings for the enforcement of the lien shall be by sale under the execution. The proceedings relating to proof of other claims, and the payment of money into court, and the distribution of the money, and otherwise, shall, as far as practicable, be the same as is hereinafter provided for proceedings on and subsequent to an attachment.

Summary hearing

9. (1) Whether commenced by writ, summons or attachment, the court may direct that any proceeding shall be disposed of summarily without waiting for the regular sittings of the court, on the terms as to notice and otherwise that the order provides.

(2) The court may also summarily dispose of an application to set aside an attachment or seizure, or to release logs or timber that have been seized.

Where attachment issues

APPENDIX D: WOODWORKER LIEN ACT

10. Where an attachment issues in the first instance, the statement of claim and defence or dispute note, and proceedings to judgment, may be the same as provided above. Where a suit has been begun by writ or summons, and where an attachment issues after proceedings have been begun by writ or summons, the proceedings shall continue and be carried to judgment under the writ or summons, except those that must be taken under the attachment.

11. [Repealed 1989-40-214.]

Seizure, when allowed

12. (1) On the production and filing of the statement mentioned in section 3 or a copy of it, and an affidavit made and sworn by the claimant of the amount of the claim due and owing, and showing that it has been duly filed, and stating that

- (a) he has good reason to and does believe that the logs or timber are about to be removed out of the Province;
- (b) he has good reason to and does believe that the logs or timber are about to be removed out of the district or locality in which they then lie;
- (c) the person indebted for the amount of the lien has absconded from the Province with intent to defraud or defeat his creditors; or
- (d) the logs or timber are about to be cut into lumber or other timber so that they cannot be identified; and
- (e) he is in danger of losing his claim if an attachment does not issue,

and if affidavits corroborating the affidavit of the plaintiff in respect of paragraph (a), (b), (c) or (d) are also filed, the registrar of the court having jurisdiction in the matter shall issue a writ of attachment directed to the sheriff, commanding him to attach, seize and take and safely keep the said logs or timber, or the portion of them that may be necessary to satisfy the amount claimed and the costs of the suit, and of the proceedings to enforce the lien.

(2) Where additional claims are made, or the amount of claim is increased, or a sufficient seizure has not been made, a second or subsequent seizure may be made either under execution or attachment.

Concurrent writs

13. The plaintiff may, at any time within 6 months from the date of the original writ of attachment, issue from the office from which the original writ issued one or more concurrent writs of attachment, to bear test on the same day as the original writ, and to be marked by the officer issuing the same with the word "concurrent" in the margin, which concurrent writs of attachment may be directed to any sheriff other than the sheriff to whom the original writ was issued, and need not be sued out in duplicate or be served on the defendant, but shall operate merely for the attachment of the logs or timber in aid of the original writ.

Writ of attachment as summons

14. (1) The writ of attachment shall also, where no writ or summons has issued, summon the defendant to appear before the court out of which the attachment has issued. A copy of the writ of attachment shall be served on the defendant, and if he is not the owner of the logs or timber described in the writ, then a copy of the writ shall also be served on the owner of the logs or timber, or on the person or agent in whose possession, custody or control they may be found, for him.

(2) Where the defendant or owner of the logs or timber cannot be found within the jurisdiction of the court, and there is no one in possession of the logs or timber, then a copy of the

APPENDIX D: WOODWORKER LIEN ACT

writ of attachment shall be forwarded to any sheriff or other constable or other competent person in the Province within whose jurisdiction the defendant and owner, or either of them, as the case may be, resides or may be found. The copy of the writ of attachment may be served by that sheriff, constable or person on the defendant or owner of the logs or timber. The owner may, on his own application or by discretion of a court, be made a party defendant at the trial.

(3) If the defendant or owner cannot be found in the Province, or the owner cannot be ascertained, and no agent or person is in possession for the owner, the writ may be served in the manner the court directs; but where the writ is served on an agent or other person in possession as stated above, the order of the court allowing the service shall be necessary.

(4) Where the service has not been personal on either the defendant or owner, and a proper defence has not been made, the court may, in its discretion, admit them, or either of them, to make full defence, and may make any order that is reasonable and just to all parties.

(5) The sheriff, constable or person is, before making service, entitled to demand payment of a sum sufficient to cover the amount of his necessary disbursements in effecting it.

Attachment of logs or timber in transit or held for delivery

15. A sheriff or bailiff shall not seize or detain logs or timber under this Act when in transit from the place where cut to the place of destination when the place of destination is within any of the districts in which proceedings have been commenced, but if the logs or timber are so in transit, or are in the possession of a booming company or other person for the purpose of being driven or sorted and delivered to the owners, or to satisfy a statutory lien, then attachment of the logs or timber may be made by serving a copy of the attachment on the company or person driving or holding them, who shall from the time of service be deemed to hold them, both on its or his own behalf and for the sheriff to the extent of the lien, until the logs or timber can be driven and sorted out; and when driven or sorted out the sheriff may receive the logs or timber from the company or person, and the statutory lien of the company or person shall not be released by the holding of the sheriff or other officer.

Bond

16. In case of an attachment, if the owner of the logs or timber, or a person in his behalf, executes and files with the registrar of the court out of which the attachment has issued a good and sufficient bond to the person claiming the lien, executed by 2 sureties and approved by the registrar, and conditioned for the payment of all claims, damages, costs, charges, disbursements and expenses that may be recovered by the claimant in the proceedings, together with the amount for which a lien is claimed in any other suit, the registrar shall issue an order to the sheriff having in charge the logs or timber directing their release, and on service of the order on the sheriff he shall release them.

Dispute note

17. A person who has been served with a copy of the writ of attachment under the preceding sections, and who desires to dispute it, shall within 14 days after the service enter in the court in which proceedings are pending a notice that he disputes the claim on the lien in whole or in part.

Default judgment

APPENDIX D: WOODWORKER LIEN ACT

18. If a notice of dispute is not entered under the last preceding section, judgment may be entered as in the case of default, and the practice or procedure may be the same as in a suit begun by writ or summons.

Payment into court

19. The defendant may at any time after service of the writ of attachment, and before the sale of the logs or timber, pay into court the amount for which a lien is claimed in the suit, together with the amount for which a lien is claimed in any other suit, together with the costs of the proceedings on them to the date of payment, taxed by the registrar of the court if so required. The person making the payment is then entitled to a certificate vacating the lien, and on the certificate being filed with the registrar of the court in which the original statement was filed, the lien is vacated and all further proceedings on it shall cease, and the person making the payment is entitled to an order directing the delivery up of the logs or timber seized under the attachment, or the cancellation of any bond given under section 16.

Appointment and notice of hearing

20. (1) After the expiration of the time for entry of a notice of dispute, the court shall, on the application of the claimant, issue an appointment naming a day on which all persons claiming a lien on the logs or timber shall appear in person, or by their solicitor or agent, before the court for the adjustment of their claims and the settlement of accounts. The appointment shall, if the court directs, be served on the defendants and on the owner, and shall also, if the court directs, be published once a week for 2 weeks before the day named in the appointment in a newspaper published in the judicial district in which proceedings are pending, if a newspaper is published there, and if not, then in a newspaper circulating in that district.

(2) A copy of the appointment shall be mailed by registered letter to every holder of a claim known to the plaintiff as a holder at least 2 weeks before the day named in the appointment, directed to the post office address of the claimant where it is known, and if not known, then to his last known address.

Hearing

21. (1) On the day named in the appointment and advertisement the persons served with a copy of it, and all other persons claiming a lien on the logs or timber who have prior to that date filed with the registrar of the proper court a notice claiming a lien on the logs or timber and stating the nature and amount of the claim, shall attend before the court named in the appointment and advertisement.

(2) Where claims are brought in pursuant to notice they may be established by affidavit, but any party interested shall be at liberty to cross examine the deponents, and may require that the claim be established in open court as in other cases.

Duties of court on hearing

22. The court shall hear all parties and take all accounts necessary to determine any amounts due to them, or any other holders of liens who may be called on by the court to prove their lien, and shall review their costs and determine who shall pay them and settle their priorities, and generally determine all matters necessary to adjust the rights of the several parties.

Court's report and order

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23. At the conclusion of the inquiry the court shall make its report and order, which shall state its findings and direct the payment into the court in which proceedings are pending of any amounts found due and the costs, within 10 days thereafter, and in default of payment, that the logs or timber shall be sold by the sheriff for satisfaction of the amounts found due to the several parties on the inquiry and costs. If the court is satisfied, having regard to the saving of costs or necessity of expedition of a sale, that the interests of all parties before the court as well as of all the creditors will be better served, he may order that the logs or timber shall be sold without delay by order of the court to the purchaser and at the price agreed to by the parties before the court.

Sale of logs

24. (1) In default of payment into court under the last preceding section within the time named in the order, the logs or timber shall, within 20 days after that, be sold by the sheriff holding them, in the same manner and subject to the same law as goods seized or taken in execution, unless the court directs that additional publicity be given to the sale. The amount realized by the sale shall, after deducting the expenses of it payable to the sheriff, be paid into the court in which the proceedings are pending, and shall, on the application of the several parties found to be entitled to it under the order of the court, be paid out to them by the registrar of the court.

(2) Where the amount realized on the sale is not sufficient to pay the claims in full and costs, the court shall apportion the amounts realized pro rata among the different claimants.

Balance remaining due after distribution

25. If after the sale and distribution of proceeds under section 24 an amount remains due to a person under the order of the court, the registrar of the court shall, on application of that person, give him a certificate that the amount remains due, which may be entered as a judgment in any court having jurisdiction against the person by whom the claim was directed to be paid, and execution may be issued on it as in the case of other judgments in the court.

Order discharging liens where nothing found due

26. Where nothing is found due on the several claims filed as mentioned in section 21, or on the liens with respect to which proceedings have been taken, the court may direct by its order that the liens be discharged and the logs or timber released, or the security given for them be delivered up and cancelled, and shall also by that order direct immediate payment of any costs which may be found due to the defendant or the owner of the logs or timber.

Costs

27. The costs to be taxed to a party shall, as far as possible, be according to the tariff of costs in force for other proceedings in the court in which proceedings under this Act have been taken.

Excess money paid into court

28. Where more money is paid into court as the proceeds of the sale of logs or timber than is required to satisfy the liens which are proved, and interest and costs, the court may order payment out of the remaining money to the party entitled to it.

Application to dismiss for want of prosecution

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29. A person affected by proceedings taken under this Act may apply to the court to dismiss them for want of prosecution, and the court may make the order on the application as to costs or otherwise that is just.

Adding parties

30. The court may at any stage of proceedings under this Act, on the application of a party or as it sees fit, order that a person who may be deemed a necessary party to the proceedings be added as a party to them or be served with a process or notice provided for by this Act, and the court may make an order as to the costs of adding the person or as to service that is just.

Alternate remedies

31. This Act shall not be deemed to disentitle a person to another remedy than that afforded by this Act for the recovery of an amount due in respect of labour or services performed on or in connection with logs or timber, and where a suit is brought to enforce a lien but no lien is found due, judgment may be directed for the amount found due as in an ordinary case.

Lien holders may join in proceedings

32. Any number of lien holders may join in taking proceedings under this Act, or may assign their claims to any person, but the statement to be filed under section 3 shall include particular statements of the several claims of persons so joining, and shall be verified by their affidavits or those of a person duly authorized on their behalf, or separate statements may be filed and verified as provided by this Act, and one attachment issued on behalf of all the persons so joining.

Consolidation of causes

33. If more than one suit is commenced under this Act in respect of the same logs or timber, the defendants, or any of them, shall apply to have the causes consolidated, and, failing to do so, he or they shall pay the costs of the additional suits.

34. [Repealed 1989-40-215.]

Procedure

35. The procedure regulating the practice in actions brought in the Supreme Court shall, so far as it is not inconsistent with this Act, regulate proceedings under this Act.

Who may take affidavits

36. Affidavits and affirmations under this Act may be sworn before a commissioner for taking affidavits.

Payrolls of woodmen's wages to be produced

37. Every person entering a contract, engagement or agreement with another person for the furnishing, supplying or obtaining of logs or timber by which it is requisite and necessary to engage and employ workers and labourers in the obtaining, supplying and furnishing the logs or timber shall, before making any payment for, or on behalf of, or under the contract, engagement or agreement of a sum of money or in kind, require the person to whom payment is to be made to produce and furnish a payroll or sheet of the wages and amount due and owing and of the payment

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of them, which payroll or sheet may be in the form in Schedule B, or, if not paid, the amount of wages or pay due and owing to all the workers or labourers employed or engaged on or under the contract, engagement or agreement at the time when the logs or timber are delivered or taken in charge for, or by or on behalf of, the person making the payment and receiving the timber or logs.

Person not requiring production liable to workmen

38. A person making a payment under the contract, engagement or agreement without requiring production of a receipted payroll or sheet as mentioned in the preceding section is liable, at the suit of a worker or labourer so engaged under the contract, engagement or agreement, for the amount of pay so due and owing to that worker or labourer under the contract, engagement or agreement.

Sums unpaid to be retained

39. The person to whom the payroll or sheet is given shall retain, for the use of the workers or labourers whose names are set out in the payroll or sheet, the sums set opposite their respective names which have not been paid and the receipts of the workers or labourers shall be a sufficient discharge for them.

Manufactured lumber purchased in ordinary course of business

40. Sections 37, 38 and 39 do not apply to the purchase of manufactured lumber purchased in the ordinary course of business.

Fees

41. No fees in stamps or money are payable to a judge or other officer in a suit brought to enforce a lien under this Act or on a filing, order, record or judgment, or other proceeding, in that suit, except that every person shall, on filing his statement of claim where he is a plaintiff, pay in stamps \$2 on every \$100 or fraction of \$100, of the amount of his claim up to \$1,000.

SCHEDULES [Omitted]