

# LAW REFORM COMMISSION OF BRITISH COLUMBIA

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## Backgrounder

### LRC 138—Report on the Tugboat Worker Lien Act

Date: June 1994

A lien is a legal right to retain property of a debtor as security for payment of a debt. One might reasonably assume therefore that the *Tugboat Worker Lien Act* deals with the right for tugboat crew members to secure wages owed to them by a tugboat owner. The title of the Act is, however, misleading, as its purpose is not to benefit workers but to provide the owner of a tugboat who performs any towage of logs or timber products with a lien on the tow (that is, on the logs or timber products) for unpaid fees.

It appears that the Act was originally conceived of as a means of helping small logging operators rather than tugboat operators. Small loggers found it difficult to obtain towage services to transport their logs, as tugboat owners usually required their fees to be paid in advance. The Act encouraged tugboat owners to extend credit to these small logging operators by, subject to some exceptions, giving them a first lien over the tow.

The report looks into the significance of the Act in conjunction with other legal remedies available to tugboat owners for breach of a towage contract. Essentially, a tugboat owner can also rely on a maritime “carrier’s lien” under the common law or on a statutory right *in rem* (that is, on the thing itself). In addition, most contracts for towage of logs or timber products appear to provide for consensual security. The report comes to the conclusion that the Act does not constitute a significant addition to the rights enjoyed by tugboat owners under statutory and common law.

The Act seems to be little used in practice, which suggests that it is not relied on extensively by those in the tugboat industry. The report therefore concludes that the Act is in reality obsolete and recommends that it should be repealed.

As a secondary issue, the report also examines whether the province has jurisdiction to enact this legislation or whether it is a federal matter. To be constitutionally valid, the Act must come within one of the classes of subject assigned to the provinces in section 92 of the *Constitution Act, 1867*. The report considers the Act in relation to some of these assigned subjects but is unconvinced that the province does have jurisdiction. The report

concludes that the better view is that the Act is beyond the legislative competence of the province.

### **Further Developments**

None.