

A Cheat Sheet for Commercial Litigators: Key Procedural Differences Between Lien Actions and Other Actions

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As a commercial litigator in Ontario, it is more than likely that a construction dispute will come across your desk. While there are many nuances to lien actions that are not caught below, this article will highlight some of the key procedural differences between lien actions and other actions for litigators looking to nail it every time.

General Principles

The *Construction Act* (the “Act”)[[1](#)] and its regulations[[2](#)] govern the procedure of a lien action. As a starting point, the Act provides that a lien claim is enforceable in an action in the Superior Court of Justice,[[3](#)] and the *Rules of Civil Procedure* (the “Rules”)[[4](#)] and the *Courts of Justice Act*[[5](#)] apply to lien actions unless they are inconsistent with the Act.[[6](#)]

The Act requires lien actions to be as far as possible of a summary character having regard to the amount and nature of the lien in question.[[7](#)]

Pleadings

In contrast to the Rules, a statement of claim in a lien action must be served within ninety days after the claim is issued. While the time for delivery of a statement of defence is the same in a lien action as other actions, there is no “notice of intent to defend” in a lien action. An extension of time to deliver a defence is normally obtained through an indulgence from counsel.

There is no right to reply in a lien action. Similarly, a non-party cannot be added by way of a counterclaim or by way of third party claim other than a claim for contribution and indemnity in a lien action.[[8](#)]

In keeping with the summary character of lien actions, pleadings can be served in any manner permitted by the Rules, or by certified or registered mail to the recipient’s last known mailing address.[[9](#)]

Joinder

A lien action can only be joined with a claim for breach of contract. A breach of trust claim cannot be joined with a lien action.[[10](#)]

References

After the delivery of all statements of defence or after the time for delivery of a defence has expired, any party to a lien action can make a motion to the court to have a trial date fixed or for a settlement meeting.[[11](#)] A lien action must be set down for trial within two years after commencement of the lien action.[[12](#)]

Given the summary nature of a lien proceeding, discoveries and affidavits of documents are not automatic and are considered interlocutory steps in a lien action. Before taking any interlocutory steps that are not provided for in the Act, the parties must seek leave and consent of the court.^[13]

Takeaways

Lien actions offer a variety of opportunities for young litigators interested in getting on their feet and learning new procedure. While the above are only some of the procedural differences between lien actions and other actions, consult the Act, the Regulation, and the Rules to determine the proper procedure as the matter proceeds.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

^[1] [Construction Act](#), RSO 1990, c. C.30 ("Act").

^[2] See [O Reg 302/18](#) ("Regulation").

^[3] Act, s. 50(1).

^[4] [Rules of Civil Procedure](#), R.R.O. 1990, Reg 194 ("Rules").

^[5] [Courts of Justice Act](#), RSO 1990, c. C.43.

^[6] Act, s. 50(2).

^[7] Act, s. 50(3).

^[8] [Backyard XP Inc. v. Cesario-Valela](#), 2023 ONSC 6312.

^[9] Act, s. 87(1).

^[10] Regulation, s. 3; [Devlan Construction Ltd. v SRK Woodworking Inc.](#)

^[11] Regulation, s. 9.

^[12] Act, s. 37(1).

^[13] Regulation, s. 13.

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