

Summary of Canadian lien waiver provisions

Province / Territory	Lien Waiver Allowed?	Lien-waiver Provisions	Comments
British Columbia	No	<p><u>Builders Lien Act, [SBC 1997], c. 45, s. 42:</u> 42. ... (2) An agreement that this Act is not to apply, or that the remedies provided by it are not to be available for a person's benefit, is void.</p>	
Alberta	No	<p><u>Builders' Lien Act, RSA 2000, c. B-7, s. 5:</u> 5. An agreement by any person that this Act does not apply or that the remedies provided by it are not to be available for the person's benefit is against public policy and void.</p>	
Saskatchewan	No	<p><u>Builders' Lien Act, Statutes of Saskatchewan, c. B-7.1, s. 99:</u> 99. (1) Any covenant in any agreement by any person who provides services or materials to an improvement that this Act or any provision of this Act does not apply is void. (2) Every contract or subcontract related to an improvement shall be deemed to be amended insofar as is necessary to be in conformity with this Act.</p>	
Manitoba	No	<p><u>Builders' Lien Act, CCSM, c. B91, ss. 11 and 12:</u> 11. Every agreement, oral or written, express or implied, on the part of any person (a) that provides or purports to provide that this Act does not apply to him; or (b) that provides or purports to provide that remedies available under this Act are not to be available for his benefit; or (c) that waives or purports to waive any lien or right of lien under this Act is against public policy and void. 12. Every device by a person and every payment made for the purpose of defeating or impairing a lien or a trust created under this Act is against public policy and void.</p>	
Ontario	No	<p><u>Construction Act, RSO 1990, c. C.30, s. 4:</u> 4. An agreement by any person who supplies services or materials to an improvement that this Act does not apply to the person or that the remedies provided by it are not available for the benefit of the person is void.</p>	

Quebec	Yes	<p>2726. A legal hypothec in favour of the persons having taken part in the construction or renovation of an immovable may not charge any other immovable. It exists only in favour of the architect, engineer, supplier of materials, workman and contractor or subcontractor for the work requested by the owner of the immovable, or for the materials or services supplied or prepared by them for the work. It is not necessary to publish a legal hypothec for it to exist.</p> <p>2936. Any renunciation or restriction of the right to publish a right which shall or may be published, as well as any penal clause relating thereto, is without effect.</p>	Quebec's Civil Code Article 2726 creates a builders' lien referred to as a "legal construction hypothec", which must be registered against the project lands in the land register. While it is possible to waive one's right to a legal <i>construction hypothec</i> , one cannot waive the right to <i>publish</i> a legal hypothec (see Article 2936 below). As a result, particular attention must be paid to the wording of a construction hypothec waiver clause.
New Brunswick	Yes	<p><u><i>Mechanics' Lien Act</i>, RSNB 1973, c. M-6, ss. 5 and 6:</u></p> <p>5. No agreement deprives a person not a party thereto and otherwise entitled to a lien under this Act of the benefit of the lien.</p> <p>6. (1) An agreement by a labourer that this Act does not apply or that the remedies provided by it are not available for his benefit is void.</p>	Only parties to a lien waiver agreement, with the exception of labourers, may waive their lien rights.
Nova Scotia	Yes	<p><u><i>Builders' Lien Act</i>, RS, c. 277, s. 4:</u></p> <p>4. (1) Every agreement, verbal or written, expressed or implied, on the part of any person employed in any kind of manual labour intended to be dealt with in this Act, that this Act shall not apply, or that the remedies provided by it shall not be available for the benefit of such person, shall be null and void.</p> <p>(2) This Section does not apply to a manager, officer or foreman.</p>	Only managers, officers, and/or foremen may waive their lien rights (the terms "manager", "officer", and/or "foreman" are not defined in the legislation).
Prince Edward Island	Yes	<p><u><i>Mechanics' Lien Act</i>, c. M-4, ss. 4 – 6:</u></p> <p>4. No agreement shall deprive any person not a party thereto and otherwise entitled to a lien under this Act of the benefit of the lien.</p> <p>5. An agreement by a labourer that this Act does not apply or that the remedies provided by it are not available for his benefit is null and void.</p> <p>6. Every device by an owner, contractor, or sub-contractor used to defeat the priority given by this Act to a labourer for his wages is null and void.</p>	Only parties to a lien waiver agreement, with the exception of labourers, may waive their lien rights.
Newfoundland and Labrador	Yes	<p><u><i>Mechanics' Lien Act</i>, RSN 1970, c. 229, ss. 3 and 4:</u></p> <p>3. (1) An agreement, oral or written, expressed or implied, on the part of a worker, that this Act, or a part of it, shall not apply to, or that a remedy provided by it shall not be available for the benefit of, that worker, or which in a way limits or abrogates or in effect limits, modifies or abrogates that remedy, is void and of no effect.</p> <p>(2) Subsection (1) does not apply to</p> <p>(a) a manager, officer or supervisor; or</p>	Only managers, officers, supervisors, and/or a person whose daily wages exceed \$50 may waive their lien rights (the terms "manager", "officer", and/or "supervisor" are not defined in the legislation).

		<p>(b) a person whose wages are more than \$50 a day.</p> <p>4. An agreement does not deprive a person, otherwise entitled to a lien under this Act and who is not a party to the agreement, of the benefit of the lien, but the lien attaches, notwithstanding that agreement.</p>	
Yukon	Yes	<p><u>Builders Lien Act, RSY 2002, c. 18, s. 2:</u></p> <p>2. No agreement shall deprive anyone otherwise entitled to a lien under this Act, and not a party to the agreement, of the benefit of the lien and the lien shall attach despite that agreement.</p>	Only parties to a lien waiver agreement may waive their lien rights. Unlike in New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador (assuming a labourer's daily wages do not exceed \$50), labourers may waive their lien rights.
Northwest Territories	Yes	<p><u>Mechanics Lien Act, RSNWT 1988, c. M-7, s. 2:</u></p> <p>2. No agreement shall be held to deprive a person otherwise entitled to a lien under this Act and not a party to the agreement of the benefit of the lien and the lien shall attach notwithstanding the agreement.</p>	Only parties to a lien waiver agreement may waive their lien rights. Unlike in New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador (assuming a labourer's daily wages do not exceed \$50), labourers may waive their lien rights.
Nunavut	Yes	<p><u>Consolidation of Mechanics Lien Act, RSNWT 1988, c. M-7, s. 2:</u></p> <p>2. No agreement shall be held to deprive a person otherwise entitled to a lien under this Act and not a party to the agreement of the benefit of the lien and the lien shall attach notwithstanding the agreement.</p>	Only parties to a lien waiver agreement may waive their lien rights. Unlike in New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador (assuming a labourer's daily wages do not exceed \$50), labourers may waive their lien rights.