



# BRITISH COLUMBIA LAW INSTITUTE

1822 East Mall, University of British Columbia

Vancouver, British Columbia V6T 1Z1

Voice: (604) 822 0142 Fax: (604) 822 0144 E-mail: [bcli@bcli.org](mailto:bcli@bcli.org)

Website: [www.bcli.org](http://www.bcli.org)

## Backgrounder

### BCLI Report no. 29—Report on Builders Liens After the Shimco Case

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This report examines the decisions of the British Columbia Supreme Court and Court of Appeal in *Shimco Metal Erectors Ltd. v. Design Steel Constructors Ltd.* These decisions changed the understanding of the holdback provisions of the *Builders Lien Act*. A “hold-back” is the percentage of a contract price retained by a contractor or lender until the project is completed and all bills for that project are paid. A “lien” is a claim on the property of another to satisfy an unpaid debt that can prevent it from being sold unless the lien is paid off.

In *Shimco*, landowners hired a general contractor to build a tennis facility who subsequently hired several subcontractors to assist with construction. Upon completion of contract the subcontractors filed claims of builders liens. Only some of the claims were perfected, and the sum owed amounted to less than the holdback fund. The owners desired to use the remainder of the holdback fund to set off certain deficiencies and applied to the court for a declaration that the rights of the unperfected lien claimants had been extinguished. The court held however that the subcontractors were entitled to pursue not only the lien against the land, but also a lien against the holdback funds, even if its lien against the land had been extinguished.

The dual lien theory endorsed in the *Shimco* decisions attracted concern for two broad reasons. First, the interpretation of the *Act* set out in the *Shimco* decisions is controversial. Second, both the Supreme Court and the Court of Appeal acknowledged that the new remedy creates some “awkwardness” in builders lien practice. However, neither decision attempted to resolve the practical problems that arise from implementing this new remedy into existing practice.

This report analyzes the court’s basis for establishing the lien against the holdback and the differences between the lien against holdback and the lien against land improvements. The report addresses the procedural uncertainties and conceptual confusion surrounding *Builders Lien Act* created by the ruling and makes recommendations for reform that would have the effect of abolishing this lien against the holdback.