

SHIMCO, SHIM-GO: FAREWELL TO AN ODDITY

A curious chapter in British Columbia's construction law history is coming to a close. With the enactment of the *Construction Prompt Payment Act*,¹ the days of the much-maligned "Shimco lien" are numbered.

What is a Shimco Lien?

Most readers will be familiar with a builders lien – if a person performs work or supplies material in relation to an improvement, that person has a lien over the land and improvement and the material supplied for the amount they have not been paid.² The *Builders Lien Act* provides a framework for filing a claim of lien in the Land Title Office, cancellation of claims on giving of security or payment of money into court, and potential sale of the encumbered land or improvement in an action to enforce a claim. But search high and low through the *Builders Lien Act* for mention of a Shimco lien and most people will be left befuddled. In fact, the Shimco lien is never mentioned by name in the *Builders Lien Act*, and it has never been apparent that it exists for any reason other than a drafting quirk.

A Shimco lien is a distinct lien against the holdback required to be retained by an owner

under the *Builders Lien Act*. It takes its name from the decision of the Supreme Court of British Columbia in *Shimco Metal Erectors Ltd. v. Design Steel Constructors Ltd.*³ In that case, the owner ("N") had engaged the contractor ("D") to provide labour and materials to construct a tennis facility on N's land. In accordance with section 4 of the *Builders Lien Act*, N retained a holdback amount of ten percent of the contract price. When D failed to pay its various subcontractors, eight builders lien claims were filed against N's land. However, only three of the claims were perfected by commencement of an action and registration of a certificate of pending litigation within one year of the lien claim being filed.⁴

The three perfected claims were for less than the total holdback amount, and N sought a declaration from the Court that the subcontractors who had failed to perfect their claims had no further lien rights. However, the Court, on a close reading of the *Builders Lien Act*, held that a further, separate lien existed against the holdback, to which no

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time limit attaches (except that it must be claimed before the holdback has been paid out). The Court identified this lien notwithstanding that the *Builders Lien Act* describes no procedures for claiming or discharging this lien.

What is wrong with it?

The extent of criticism to which the Shimco lien has been subject is beyond the scope of this article.⁵ Suffice to say that the Shimco lien has been the subject of debate and complaint since *Shimco* was decided. It is effectively the sole (limited) recourse available to a subcontractor who has failed to take the required steps to perfect their regular lien claim in time. However, since the holdback will be paid out *pro rata* between these subcontractors and those who have perfected their claims against land, improvements or materials, the latter will lose a portion of their payment to those who have not followed the procedures within the *Builders Lien Act*. While a regular lien claim must be filed on title to the relevant property,⁶ which provides public notice of a contractor's interest, a *Shimco* lien is unregistered; identifying its existence is more complicated and entails searching court filings for claims.

Finally (for present illustrative purposes), because the *Builders Lien Act* is silent on the procedures for dealing with Shimco liens, the courts have had to craft workarounds. For instance, there is no procedure for discharge of a Shimco lien by giving of security, such that it will allow the owner to pay out the holdback by replacing its value. In *Preview Builders International Inc. v. Forge Industries Ltd.*,⁷ the Court set out its view that it could discharge a Shimco lien in that event, but only by using its jurisdiction to dispose of the portion of a civil claim seeking to enforce the Shimco lien in appropriate circumstances.⁸

What is happening to it?

On November 27, 2025, the *Construction Prompt Payment Act* received royal assent, although it has not yet been brought into force by regulation. When it is,⁹ one of the consequential and related amendments will be to add the following section 4.1 to the *Builders Lien Act*:

Shimco liens abolished

4.1 A person does not have a lien under this Act against a required holdback.

This approach is consistent with a line of case authority identifying the correction of the problems of Shimco liens as beyond the proper remit of the courts. As recently as 2025, the Court of Appeal for British Columbia indicated that, while "*Shimco* created difficulties for the construction industry, [the Court was] not satisfied that it was wrongly decided" and remedying these difficulties was "the role of the legislature, not the Court".¹⁰

Both owners and contractors will be interested to see this simple legislative pen stroke put to rest an issue that has vexed many minds in the construction industry for over two decades. But until the *Construction Prompt Payment Act* takes effect, the Shimco lien will remain a possible recourse for unpaid subcontractors and a likely headache for many others.

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- 1 S.B.C. 2025, c. 24; for an overview of the Act, see our previous article, "Return of Prompt Payment Legislation to British Columbia: A Summary of the proposed *Construction Prompt Payment Act*", published in the November 2025 edition of the NRCA's Northern Construction Connection.
- 2 *Builders Lien Act*, S.B.C. 1997, c. 45.
- 3 2002 BCSC 238, aff'd 2003 BCCA 193 [*Shimco*].
- 4 As required by s. 33(1) of the *Builders Lien Act*, *supra* note 2.
- 5 For a comprehensive early compendium of critiques, see the British Columbia Law Institute's *Report on Builders Liens After the Shimco Case* (<https://www.bcli.org/sites/default/files/Shimco-Rep.pdf>).
- 6 *Builders Lien Act*, *supra* note 2, s. 15(1).
- 7 2013 BCSC 1532.
- 8 *Ibid*, at paras. 75-76.
- 9 Note that not every section must be brought into force at the same time and that a section might never be brought into force.
- 10 *Kingdom Langley Project Limited Partnership v. WQC Mechanical Ltd.*, 2025 BCCA 169 at para. 7.



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