



# Issue Update

## NEW LIEN RIGHTS?

A recent BC Supreme Court case has reviewed the rights of a subcontractor under the Builders Lien Act with some interesting results.

In Shimco Metal Erectors Ltd v. Design Steel Constructors Ltd., Corporation of the District of North Vancouver a subcontractor's lien against the property had been taken off the land due to the fact that he had not registered a certificate of pending litigation within the one year period to "perfect" the lien. The holdback funds were still in the hands of the owner however, so the subcontractor claimed a "lien" against the funds themselves. The issue identified by the court was as follows:

*Does a subcontractor have a lien against the holdback monies required by the Act independent of its lien against land?*

The court held that such a lien does exist, that it exists in addition to the lien rights against the land and, that it exists even if the lien on land has not been perfected. In other words, as long as the funds are still in the hands of the owner, the contractor has the right to lien those funds by commencing legal proceedings against them.

This is a recent decision and it is as yet unclear how it will affect the current system for lien holdbacks. Clearly, however, there will be some ramifications with regards to the release of holdback funds on construction projects. To be safe, the owner will now have to be even more careful prior to releasing any money. Not only will the owner have to be satisfied that no liens have been registered on the property within the 45 day lien period after substantial completion, they will also have to be certain that no legal proceedings have been commenced to lien the holdback money.

Also, it now appears that if you have not been paid on a job and you do not have a lien on the land for some reason you may still have a chance to go after the holdback funds if the owner still has them. Talk to your lawyer about it.

If you wish to read this case it can be found on-line at the BC Supreme Court website at: [www.courts.gov.bc.ca](http://www.courts.gov.bc.ca)

## LET'S GET BC BUILDING!

The mission of the BCCA is to provide leadership and excellence in the representation of, and service to, British Columbia's construction industry.