

CONSULTATION PAPER: REFORM OF THE BUILDERS LIEN ACT – DEADLINE FOR COMMENTS FROM INDUSTRY STAKEHOLDERS IS FAST APPROACHING

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Earlier this fall, the British Columbia Law Institute (the “**BCLI**”) released its consultation paper on reform of the *Builders Lien Act* (the “**BLA**”).^[1] With 2020 almost upon us, the deadline for industry stakeholders to provide comment is fast approaching.

The current *BLA* has been in force since 1997. It is a cornerstone of construction law in British Columbia, providing security of payment for work done on and materials supplied to construction sites. Over the past two decades construction industry advancements have created new issues and uncertainty related to the legislation. The Builders Lien Act Reform Project Committee (the “Committee”) prepared the Consultation Paper on the Builders Lien Act (the “Consultation Paper”) in response to an invitation from the Ministry of the Attorney General to conduct a comprehensive review of the *BLA*.^[2]

Overview of the Consultation Paper

The Consultation Paper discusses threshold questions regarding the modern-day purpose and function of the *BLA*. It also outlines 80 tentative recommendations for *BLA* amendments.

Specifically, the Committee proposes an increase to the current \$200 minimum to claim a lien, a new form of Claim of Lien, and greater leeway for substantial compliance with this form. Other recommendations include greater certainty about the start of the 45 day countdown to the end of the lien filing period, strengthened certificate reliability, clarity about “substantial completion,” and abolition of the so-called *Shimco* lien.^[3] The Consultation Paper also discusses the flow of construction funds down the construction pyramid, holdback accounts, trust claims, current abuses of the *BLA*, the intersection of the *BLA* with both arbitrations and CRA requirements to pay, liening common property in a strata plan, and several other *BLA* procedures.

The Consultation Paper is notably silent on prompt payment and adjudication despite growing national support for these legislative developments. Indeed, the recent introduction of prompt payment and adjudication in Ontario has received positive response from construction industry stakeholders in that

province.^[4] The Committee has indicated that consideration of these procedures is outside of its current mandate, and it remains to be seen whether industry stakeholders in British Columbia will identify them as areas requiring further discussion.

A complete list of the Committee's tentative recommendations for *BLA* reform is provided at pages 189 – 204 of the Consultation Paper.

Call for Comments

With its publication of the Consultation Paper, the BCLI has asked stakeholders for feedback on the tentative recommendations as well as the *BLA* more generally. The Committee may revise or abandon its tentative recommendations in light of the responses received.

Stakeholders are encouraged to provide comments by January 15, 2020.

by Jamieson D. Virgin and Eleanor Rock, Articled Student

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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[1] *Builders Lien Act*, SBC 1997, c 45 [*BLA*]; British Columbia Law Institute, "[Consultation Paper on the Builders Lien Act](#)" September 27, 2019 and see also, the [summary overview](#).

[2] British Columbia Law Institute, "[Media Release: BCLI Issues Consultation Paper on the Builders Lien Act](#)" September 27, 2019.

[3] The "*Shimco* lien" is a separate lien against the holdback, originating with a 2002 case in which a lien was found to exist on the basis of a particularly liberal interpretation of select *BLA* provisions. The *BLA* provides no statutory guidance on this type of lien, which the BCLI suggests is because the legislature never intended to create a "dual-lien theory".

[4] See, for example, [McMillan LLP's Fall/Winter 2019 feature](#) in *The Generals*.