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### **GUIDE TO BUILDERS' LIENS IN BRITISH COLUMBIA**

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This publication features a comprehensive analysis of builders' liens law and practice in British Columbia. It is compact, practical and designed for everyday use.

This release features updates to Chapter 1—The Lien, Chapter 2—Lienable Interests in Land, Chapter 3—Time Limits, Chapter 4—Cancellation of Lien Upon Giving Security, Chapter 5—The Holdback, Chapter 6—Enforcement of the Lien, Chapter 7—The Trust, Chapter 9—Interpretation, Problems and Other Remedies, Chapter 10—Law Reform. Builders' Lien Proceedings in British Columbia.

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**Highlights:**

**TIME LIMITS—TIME FOR FILING THE LIEN—THE CERTIFICATE OF COMPLETION**—Not all of the eight suggested elements of a certificate of completion that were adopted in *W Redevelopment Group Inc. v. Allan Window Technologies* case are expressly required by the legislation, and in the case *Clough Pacific Joint Venture and PPM Civil Contractors, ULC v. AECOM Canada Limited*, 2025 BCSC 164, 2025 CarswellBC 245 (B.C. S.C.) the court determined that failure to set out the date of commencement of the work was not fatal to the validity of a certificate of completion. However, issuing the certificate more than 10 days after it is requested, or posting the certificate more than 7 days after the certificate is issued were more problematic and were held to invalidate the certificate.

**THE HOLDBACK—PAYMENT OF HOLDBACK MON- EYS—PAYMENT**—Where the owner, or other person retaining a holdback, has prematurely released the holdback, or simply failed to retain the holdback at all, is the owner entitled to catch up on the holdback retentions by withholding all of what ought to have been retained earlier from a subsequent progress payment? This question arose in the case *JCB Contracting Ltd. v. Blackett*, 2025 CarswellBC 3397 (B.C. S.C.), in which the owners failed to retain any holdback from the contractor and sought to deduct the holdback amounts from their payment of an otherwise valid later invoice. The court allowed the owners to do so, but required them to pay the catch-up retention into a jointly administered holdback account as required by s. 5 of the Act.

**THE HOLDBACK—OWNER’S LIABILITY FOR THE HOLDBACK—GOOD FAITH**—In *Lonsdale Quay Market Corporation v. Klondike Contracting Corporation*, 2024 BCSC 1605, 2024 CarswellBC 2580 (B.C. S.C.), the owner paid amounts to a general contractor while knowing that there was a lien on title. At the same time, the owner had extensive set-off claims against the general contractor. The set-off claims were so great that even if the improper payment had not been made, the owner would still have been able to set-off against the whole of the amount owing to the general contractor over and above the mandatory 10% holdback. The owner sought to pay into court only the amount of the mandatory holdback, to obtain discharge of the liens from title under s. 23 of the Act. Based on the wording of section 23 and 34 of the Act, however, the court concluded that the owner was required to pay into court the 10% holdback and the amount of the lien which it

had known about at the time of its (larger) payment to the contractor. The amount paid to the contractor was no longer owing in fact, so the owner could not set-off against it. At the same time, the improper payment was ineffective in reducing the amount owing for purposes of the owner's ultimate liability to subcontractors and the amount to be paid into court under s. 23. As a result, the owner was unable to rely upon either the improper payment or its set-off to reduce the amount to be paid into court under s. 23. (As of the date of writing, *Lonsdale Quay* is under appeal.)

**THE HOLDBACK—LIEN AGAINST THE HOLDBACK—SECURITY FOR THE LIEN AGAINST THE HOLDBACK**—In *Kingdom Langley Project Limited Partnership v. WQC Mechanical Ltd.*, 2025 BCCA 169 (B.C. C.A.), the court considered section 24 orders for subcontractor liens, which provided that lien bonds stand as security for both the liens against the land and liens against the holdback. Despite these orders, the court concluded that the liens remained pending against the holdback, and the owner was not permitted to release (notionally) the holdback by asserting a set-off against it. The orders in *Kingdom* did not expressly provide that the holdback liens were dismissed, however. A properly drafted order providing for security for a holdback lien, and that the holdback lien is dismissed or otherwise disposed of, should permit the valid release of the holdback.