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Submission to the British Columbia Law Institute Consultation on the *Builders Lien Act*

Submitted by email at gblue@bcli.org

About CHBA BC and HAVAN

Canadian Home Builders' Association of BC (CHBA BC) is a provincial association made up of 2,200 members affiliated with one of eight local associations in B.C. These member companies in the residential construction industry are home builders, renovators, tradespeople, suppliers, service professionals, and others. Overall, the residential construction industry represents over 207,184 on-site and off-site jobs, \$12.6 billion in wages, and \$28.3 billion in investment value¹.

Homebuilders Association Vancouver is an association of over 1,100 knowledgeable, trusted, resourceful and local professionals who build over 65% of Metro Vancouver's homes. HAVAN provides both industry and consumer education, and actively liaises with local municipal governments with the focus of meeting Metro Vancouver's housing needs. A not-for-profit association, HAVAN is proudly affiliated with both CHBA BC, and national CHBA offices.

Overview

For the purpose of this submission, it is necessary to define our core membership as small business home building and renovation companies. According to the 2018 BC Residential Building Statistics and Trends Report, the average home builder in B.C. completes 4 homes per year. The scope and project size in residential construction can be vastly different than other construction sectors, for example, the contractual differences between a single home renovation and a multi-year, government-led project.

Second, while there are many points raised in the consultation paper we have kept our comments specific to the areas impacting residential construction and of particular concern to our membership. We invite the committee to contact us for further discussion if there are any specific areas where the committee requires additional feedback from our industry.

Prompt Payment

We agree with the project committee that discussions on the *Builders Lien Act* and prompt payment provisions should be kept separate. At present, we are concerned about prompt payment and the impact on our small business members, and have shared these concerns with the provincial government directly. We agree with the project committee that any discussions on prompt payment would require extensive direct consultations with all construction types, such as residential construction, to understand the unique views and impacts across the sector.

In addition, we believe that the best course of action is to pause on prompt payment while we determine the effectiveness of the legislation in Ontario and any lessons learned. This is a necessary step before any discussions in B.C. should take place.

¹ Economic impacts calculated by Will Dunning Inc. Economic Research for the province. Estimates based on 2018 data from Canada Mortgage and Housing Corporation and Statistics Canada. Acquisition cost included in "investment value" total as well.

Chapter 3: Repealing the Act or Restricting Its Scope

1. Exclusion of Residential Construction

We agree with the majority of Committee members that believe the Act should apply to residential construction. The *Builders Lien Act* provides a sufficient ability to assert an interest in a homeowner's property for non-payment, and also based on the fact that builders and those they employ directly enhance the value of the homeowner's property by their labour and materials.

Although a builder acting as a general contractor does have a direct contractual claim against a homeowner, the ability to file a claim of lien still provides a valuable means of securing that claim against an asset that has been improved through the builder's efforts. Although builders and subcontractors working in the residential sector are often smaller businesses than those operating in the commercial sector, they should be able to protect their rights to payment and the *Builders Lien Act* is the most appropriate avenue for this to take place when necessary.

2. New Construction

Renovation contractors comprise a portion of CHBA BC's membership and a significant aspect of the residential construction industry in B.C. In 2018, there were approximately 84,900 on and off-site jobs specifically related to home renovation and repair². In the coming years, British Columbia seniors will be looking to age-in-place through home modifications, and the provincial government is reviewing home retrofits as a key opportunity to meet its climate change goals—renovation contractors across the province will be integral to this work.

Restricting the Act to new construction only would deprive these members and companies of their lien rights should the need arise. Such an amendment would create a disparity of legal rights across the industry, depending on whether they specialized in new construction or renovations. It also encourages contractors and homeowners to avoid the underground economy and enter into a contractual relationship with clear scope, materials, and payment schedules - all of which would be necessary if legal action was required by either party.

We agree with the opinion to not limit the Act to new construction.

Chapter 5: Completion and the 45-day period

There are several recommendations related to time periods for filing liens. We are focusing our comments on the certification process, where we view the greatest difference for residential construction.

² Economic Impacts were calculated by Will Dunning Inc. Economic Research for the province. Estimates based on 2018 data from Canada Mortgage and Housing Corporation and Statistics Canada.

We believe many in the residential construction industry are not familiar with, and as a result do not implement, the payment certification process as set out in the *Builders Lien Act*. Unlike in the commercial construction sector, it is relatively uncommon for a residential homeowner to engage an architect or engineer to act as a consultant.

Architects and engineers who act as consultants are more familiar with the payment certification process under the *Builders Lien Act* and frequently make appropriate payment certifiers. There is likely a difference even within the residential sector between multifamily developers vs. single family builders or renovators in terms of awareness and utilization of the *Builders Lien Act* payment certification process.

Given the fundamental complexity of the certification process, we don't anticipate these proposals will lead to greater ease of use and/or understanding amongst builders and renovation contractors on the ground. Our recommendation would be to consider a simpler, intuitive process for certain members of the residential construction sector, or for contracts under a certain monetary value.

Chapter 7: Holdbacks

1. Timelines

We do not object to the differential between the time period to file a lien and release of funds. We believe this would expedite the release of funds and be of benefit to many.

2. General comments

The 10% holdback is the source of a significant amount of confusion between homeowners and residential contractors. While expressly prohibited, it is used by homeowners and/or contractors in some cases to attempt to negotiate after-sales service or warranty concerns. These issues are not changed by the items proposed in the consultation paper, and may continue to cause concerns amongst members in the residential construction industry.

We suggest further follow up in this area with residential construction stakeholders is warranted, in particular inappropriate retention of holdbacks.

Follow Up

Thank you for the opportunity to participate in this consultation. We recognize this is an ongoing conversation and would be pleased to participate in any additional consultations or discussions on this topic.