



# BRITISH COLUMBIA LAW INSTITUTE

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## Background

### BCLI Report no. 10—New Home Warranties: An Interim Report

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This publication reports on the British Columbia Law Institute's project on warranties and related issues arising from defects in new housing. This area became a matter of public concern during the 1990s, when the problem of water penetration in new multi-unit dwelling complexes in the lower mainland began to assume epidemic proportions. Due to this crisis the inadequacy of existing legal protection for purchasers of new housing units became painfully apparent.

The general law affords very little protection to the buyer of a newly built home that proves to be deficient in workmanship or in materials. This was vigorously pointed out by the British Columbia Court of Appeal in its 1994 decision in *Strata Plan NW2294 v. Oaktree Construction Inc.* The deficiencies in the law were so great that they prompted Mr. Justice Lambert of that court to note the need for statutory reform. Subsequently the former Law Reform Commission of British Columbia was urged to examine and report on how the law could better protect homeowners. In response to this call, the Law Reform Commission added to its program a project on new home warranties.

The project on new home warranties is one that the BCLI inherited from the Law Reform Commission. When it became public that the Ministry of Housing intended to bring forward legislation on this topic in the 1998 Spring legislative session, the BCLI shifted its focus to providing meaningful input into the legislation that was being developed. The project emphasizes the "consumer protection" aspect of this problem.

The report puts forward a number of suggestions concerning the need for statutory warranties—that is warranties that are implied by the law into every contract for the sale and purchase of a newly constructed residence. Reform options to be pursued might include extending existing consumer protection legislation such as the *Trade Practice Act* to new home purchases or developing a "home-buyers bill of rights" that incorporates statutory warranties similar to those available to the buyers of personal property under the *Sale of Goods Act*. The report also discusses whether relief should be available in all cases or only where the seller fails to make a full and fair disclosure that the buyer is not protected under the transaction.

With the enactment of the *Homeowner Protection Act*, which includes provisions addressing home warranties, the Project Committee on New Home Warranties was faced with a decision as to whether it should treat its function as having been overtaken by events or whether it was still positioned to assist in evolving a solution to the problem of defective new housing in British Columbia. The committee met on 13 November 1998 to discuss the available alternatives. No member of the committee was in favour of preparing a final report on what had been done to that point and chose to disband. The committee resolved to remain in existence and to observe the operation of new legislation until it may be possible to reach some conclusion as to its effectiveness and to monitor developments in this area generally.