

Report on Strata Property Law: Phase One

British Columbia Law Institute

1822 East Mall, University of British Columbia, Vancouver, BC, Canada V6T 1Z1

Voice: (604) 822-0142 Fax: (604) 822-0144 E-mail: bcli@bcli.org
WWW: <http://www.bcli.org>

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Introductory Note

Report on Strata Property Law: Phase One

British Columbia's strata-property legislation has gone through three generational changes. The first, bare-bones act was passed in 1966. A new act appeared in 1974. And the current governing legislation—the *Strata Property Act*—was enacted in 1998 and came into force on 1 July 2000.

In Phase One of the Strata Property Law Project the British Columbia Law Institute (BCLI) set out to determine whether the time is ripe to begin thinking about and planning for the next generation of British Columbia's strata-property legislation. To answer this question the BCLI consulted with a number of the leading lights in the strata-property field. Their response, which accorded with our own analysis of the issues, was that a phase-two law-reform project is necessary.

This phase-one report sets out the results of our consultation and provides a blueprint of the issues that should be addressed in Phase Two of the Strata Property Law Project.



R. C. (Tino) Di Bella
Chair,
British Columbia Law Institute

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The BCLI also acknowledges the contribution of its staff members to the completion of this project. Jim Emmerton (executive director) provided executive planning and management for the project. Greg Blue (senior staff lawyer) and Alexandre Blondin (articled student) assisted in legal research and in the planning and execution of consultation sessions for the project. Kevin Zakreski (staff lawyer) acted as project manager and was responsible for drafting this report.

EXECUTIVE SUMMARY

INTRODUCTION

This report is the culmination of the Strata Property Law Project—Phase One. The BCLI began this project in January 2012. The project’s goals were to answer two questions: (1) is the time now ripe to begin a broad-based law-reform project to tackle some of the major long-range legal and policy issues that would need to be addressed in the next generation of strata-property legislation? and (2) if so, what issues should be given priority in such a phase-two law-reform project? The BCLI sought the answers to these questions through initial research and focussed consultation with selected experts in the strata-property field.

The Strata Property Law Project—Phase One was made possible by funding from the Notary Foundation of British Columbia.

THE STRUCTURE OF THIS REPORT

This report’s primary purpose is to set out the results of the project’s initial research and consultation sessions. In addition, it provides some background on strata-property law.

The report has two main chapters. They discuss the origins and development of strata properties and emerging issues for further study.

THE ORIGINS AND DEVELOPMENT OF STRATA PROPERTIES

Introduction

This chapter begins by defining the term *strata property*. Strata properties have two essential elements: (1) the division of a property into units (which are individually owned) and common elements (which are collectively owned by the unit owners); and (2) a system of democratic governance that allows the owners to manage the property collectively.

In other parts of North America what in British Columbia is called a strata property is called a *condominium*. These are simply two different terms for the same concept. British Columbia’s use of *strata property* reflects the historical fact that British Columbia’s first statute in this area drew on an Australian model. British Columbia has retained the Australian terminology.

Strata Property Terminology

Strata-property law has its own distinctive terminology. This chapter introduces readers to some of the key terms used in strata-property law.

It begins by discussing *strata plans*, which are legal survey documents. Strata plans delineate the boundaries of individual units and common elements. They must be deposited in the land title office, and must meet a number of detailed requirements to be accepted for deposit.

The individually owned units on the strata plan are called *strata lots*. Each strata lot has its own land title. The parts on a strata plan that are not strata lots are called *common property*. Common property is an open-ended category, which may include things like building lobbies, elevators, and hallways.

The final terms discussed relate to strata-property governance. When a strata plan is deposited in the land title office a *strata corporation* is created. All the owners of strata lots become members of the strata corporation. Major decisions involving the common property must be taken at a strata-corporation level. The strata corporation must meet at least once a year. At this annual general meeting it elects a *strata council* from its members. The strata council manages or oversees the management of day-to-day operations of the strata property.

Legislation in British Columbia

British Columbia has had three generations of strata-property legislation.

In 1966, British Columbia enacted its first strata-property statute, the *Strata Titles Act*. This skeletal act created a basic legal framework for strata properties. Its main purpose was to provide certainty and security for purchasers and lenders in dealing with a novel type of development.

In 1974, British Columbia passed a new *Strata Titles Act*. This 1974 act built on the foundation of the 1966 act. It carried forward, and often enhanced, the 1966 act's rudimentary provisions on land titles, governance, and other basic issues. In an indication of the increasing complexity of strata-property developments, the 1974 act introduced new procedures for phased strata developments and leasehold strata plans.

In 1998, the *Strata Property Act* replaced the 1974 act. Like its predecessor, the *Strata Property Act* built on the foundations of earlier acts. The *Strata Property Act*

also achieved its stated goals of reorganizing the legislation along plain-language lines, enhancing consumer protection, and creating greater flexibility. In addition, the act has an array of sophisticated provisions on complex operational issues.

The *Strata Property Act* remains the governing legislation for strata properties in British Columbia. The act has been amended a number of times on a small to medium scale, with the most recent amendments coming in 2009.

EMERGING ISSUES FOR FURTHER STUDY

Introduction

The goal of phase one of this project was to determine whether a phase-two law-reform project was needed. And, if there should be a phase-two project, work in phase one was also meant to identify the major issues for reform.

Given the relative newness of the *Strata Property Act* and the fact that the statute has been frequently amended, it was not clear at the start of phase one whether a further law-reform project would be necessary. The project drew on initial research and focussed consultation to arrive at an answer to this question.

The Consultation Process

During this phase-one project, the BCLI met with lawyers, law professors, strata managers, surveyors, and other experts in the strata-property field. Four consultation sessions were held over the course of phase one. Three of these sessions were held in Vancouver and one was held in Victoria.

Consultation participants each received a memorandum from the BCLI which briefly discussed a series of long-range issues in strata-property law. The consultation sessions featured wide-ranging and free-flowing discussions of the issues raised in the memorandum and other issues raised by consultation participants. The feedback received in these consultation sessions was instrumental in phase one reaching its goals.

Recommendation for a Phase Two Project

The BCLI recommends that it should carry out a phase-two law-reform project on strata-property law. Consultation participants were united in agreeing that there should be a phase-two project. Although views differed on the need for immediate amendments to the *Strata Property Act*, consultation participants agreed that a longer-range study that thoroughly examined a number of major issues would be beneficial.

Issues for Further Study in Phase Two

Consultation participants provided considerable assistance to the BCLI in selecting the issues for reform for a phase-two project. Those issues for reform are:

- **Fundamental changes.** This category is meant to capture major, transformative changes to a strata property. The main characteristics of a fundamental change are a requirement for unanimous (or very high majority) approval of strata-lot owners and a court-based process for cases in which that approval cannot be attained but proceeding with the change is in the best interests of the strata property. The clearest example of a fundamental change is the cancellation of a strata plan and the winding up of a strata corporation. There are concerns, given the aging of first-generation strata properties, that this procedure will need to be invoked more frequently in the future. Consultation participants urged the BCLI to look at more than just dissolution issues. Amending a strata plan, appointing an administrator, and amalgamation of strata corporations may also be considered as part of this subject.
- **Complex stratas.** “Complex strata” is another category devised to embrace a number of areas in strata-property law. The category is primarily concerned with problems associated with mixed-use stratas. Mixed-use stratas are becoming increasingly prevalent in British Columbia. Some of these strata properties have sections or types. Consultation participants advised the BCLI that legislation (and regulations) on sections and types is not as clear as it can be. This has led to numerous operational problems. Another area of concern involves phased strata plans. A thorough review of the legislative frameworks for complex stratas is needed.
- **Leasehold stratas.** In a leasehold strata, the land is subject to a ground lease. The occupants of each strata lot are tenants. The landlord of a leasehold strata must be a legislatively identified public authority. The list of bodies that qualify as public authorities is rather short. Consultation participants recommended a thorough examination of this requirement. Expanding opportunities to create leasehold stratas could contribute positively to housing affordability in British Columbia. Consultation participants also suggested that a number of operational issues for leasehold stratas are worthy of further consideration.
- **Common property.** Common property is one of the fundamental building blocks of the strata concept, but some basic questions about its nature remain difficult to answer. Consultation participants recommended that the

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BCLI examine some of these basic questions, such as who should own common property and where should it begin and end. They also recommended examining rules on converting strata lots to common property, and *vice versa*.

- **Governance issues.** Governance is a perennial issue for strata properties. Successful strata-property governance requires careful balancing of the rights and obligations of individual strata-lot owners with the interests of the majority of owners in the development. Consultation participants recommended examining selected governance issues for the possibility of legislative reform.
- **Insurance issues.** Difficult issues can be created when one well-developed body of law intersects with another. Some examples of these issues can be found in the last two items on this list. The first item proposes examining how selected insurance-law issues affect strata properties. There are several discrete areas where the legislation may be in need of fine-tuning.
- **Land-title issues.** Finally, there are a number of discrete issues concerning the intersection of strata-property and land-title law that consultation participants suggested the BCLI examine. These issues relate to concerns about subdivision control and strata properties and air-space parcels.

CONCLUSION

Based on our research and the results of our consultation, the BCLI has concluded that a phase-two project on strata-property law should be carried out. There are a number of long-range issues that call for careful analysis and review. Examination of these issues will contribute to the development of the next generation of British Columbia's strata-property legislation.

CHAPTER I. INTRODUCTION

Strata properties form a dynamic part of the real-estate sector in British Columbia. In the 2006 census, Statistics Canada reported that 239 380 owner-occupied dwelling units in British Columbia were “part of a condominium.”¹ British Columbia also boasted the top four census metropolitan areas in Canada by percentage of owner households in strata properties.² These four CMAs were: Vancouver (31.0 percent); Abbotsford (23.8 percent); Victoria (21.2 percent); and Kelowna (21.1 percent).³

Since 2006, “the trend of increasing condominium ownership . . . [has been] clearly continuing.”⁴ For example, in 2010 Greater Vancouver led Canada in the percentage of housing starts that were intended for strata-title tenure, with just over half of all housing starts falling into this category.⁵ And Greater Victoria was not far behind—the share of its 2010 housing starts that were strata properties came in at a shade under 50 percent.⁶

Not surprisingly, the law governing strata properties⁷ has been in a constant state of evolution, as it tries to keep pace with developments on the ground. In addition to an almost continual stream of discrete amendments to the legislation, new versions of the act have appeared at a frequency of about every 15 to 25 years.

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1. Statistics Canada, *2006 Census of Population*, Statistics Canada catalogue no. 97-554-XCB2006047 (British Columbia/Colombie-Britannique, Code59), online: Statistics Canada <<http://www.statcan.gc.ca/>>. Figures from the 2011 national household survey (which replaced the long-form census) were not yet available at the time of writing this report.
 2. See Statistics Canada, *Changing Patterns in Canadian Homeownership and Shelter Costs, 2006 Census*, Statistics Canada catalogue no. 97-554-XWE2006001, online: Statistics Canada <<http://www.statcan.gc.ca/>>.
 3. See *ibid.* at table 4. The figures cited in this paragraph understate—probably by a significant amount—the number of strata properties in British Columbia, because they only track owner-occupied strata properties and do not include rented strata properties. Canada Mortgage and Housing Corporation estimates that “over 20%” of the strata properties in Vancouver in 2006 were rented. See Canada Mortgage and Housing Corporation, *2006 Census Housing Series: Issue 16 A Profile of Condominiums in Canada, 1981–2006*, Socio-economic Series 12-001 (September 2012) at 5 [*A Profile of Condominiums in Canada, 1981–2006*].
 4. Canada Mortgage and Housing Corporation, *Canadian Housing Observer 2011* (Ottawa: Canada Mortgage and Housing Corporation, 2011) at 46.
 5. See *ibid.*
 6. See *ibid.*
 7. See *Strata Property Act*, SBC 1998, c. 43.

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In Phase One of the Strata Property Law Project the British Columbia Law Institute set out to answer two questions. Is the time now ripe to begin a broad-based law-reform project to tackle some of the major long-range legal and policy issues that would need to be addressed in the next generation of strata-property legislation? If so, what issues should be given priority in such a phase-two law-reform project?

The BCLI sought to answer these questions with legal research and consultation with selected experts in the strata-property field. Four consultation sessions were held with a broad range of experts.⁸

This research and consultation has led the BCLI to the conclusion that a phase-two law-reform project should be carried out to address major emerging issues in the strata-property field, which will support the development of a next-generation act. This phase-one report discusses the results of the BCLI's research and consultations and identifies the issues that should go into the phase-two project. But before it addresses those topics, it provides a brief description of the development of strata properties and strata-property legislation in British Columbia.

The Strata Property Law Project—Phase One has been made possible by project funding from the Notary Foundation of British Columbia.

8. See, below, at 31 (appendix A) for a list of people consulted with in phase one of the project.

CHAPTER II. ORIGINS AND DEVELOPMENT OF STRATA PROPERTIES

A. What Are Strata Properties?

There are “two essential elements” that make up the legal conception of a strata property: “first, the division of property into units, to be individually owned, and common elements, to be owned in common by the owners of the units; and, second, an administrative framework to enable the owners to manage the property.”⁹ At the heart of the strata-property concept is an attempt to accommodate individual ownership within a collective, multi-unit structure.

The idea that a single piece of property may contain multiple ownership interests is an old one, with a long track record.¹⁰ In fact, there are many forms that this idea may take in the law.¹¹ So the question arises, why did the strata-property form rise to such prominence beginning in the late twentieth century?

The answer seems, first and foremost, to turn on the ability of the strata-property form to address some important large-scale social trends. The most significant of these trends is the increasing urbanization of society. This trend has the effect of making residential land in cities scarcer and more expensive.¹² As a result, there is an economic incentive to create multi-unit buildings to house greater numbers of people within the relatively small urban space. Strata properties bolster this incentive by pursuing a “principal goal” of “enabl[ing] occupants of a multi-unit project to achieve more concomitants of ownership than are now available either to renters or to cooperators.”¹³

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9. Ontario Law Reform Commission, *Report on the Law of Condominium* (Toronto: Department of the Attorney General, 1967) at 3.
 10. See John E. Cribbet, “Condominium—Home Ownership for Megalopolis” (1963) 61 Mich. L. Rev. 1207 at 1214 (“The common law has long recognized multiple interests in a single *res*. Indeed, much of the law of property deals with the complex rules and principles developed to regulate the relationships among the owners of these multifarious interests.”).
 11. For example, a trust allows for the separation of legal and beneficial ownership of property. The law also recognizes forms of co-ownership, which allow for two or more owners of a single piece of property. See, e.g., British Columbia Law Institute, *Report on Joint Tenancy* (BCLI Rep. no. 66) (Vancouver: The Institute, 2012) (examining one form of co-ownership—joint tenancy).
 12. See Cribbet, *supra* note 10 at 1213.
 13. Curtis J. Berger, “Condominium: Shelter on a Statutory Foundation” (1963) 63 Colum. L. Rev. 987 at 989. These “concomitants of ownership” would include greater control over the individual

The strata-property form has also proved to be a notably effective way to subdivide a single building. Other legal devices are unable to match the strata property on the capacity to foster multi-unit dwellings.¹⁴

Affordability, relative to other types of housing, has also contributed to the rapid development of strata properties.¹⁵ Relative affordability has created a strong market for strata properties among both younger adults (who are seeking to enter the housing market) and older adults (who are seeking to reduce ongoing shelter costs).¹⁶

Finally, and in contrast somewhat to the reasons set out above, all of which concern primarily residential developments, strata properties have proved to be a “remarkably flexible”¹⁷ legal device. From their roots in residential property, strata properties have been put to all sorts of business and industrial uses. And people continue to find innovative uses for strata properties. This capacity for growth and change within a stable and predictable legal framework will likely continue to contribute to the ongoing popularity of strata properties.¹⁸

B. Strata Property Terminology

1. INTRODUCTION

Strata-property law has some distinctive terminology that is important to master before moving on to discuss issues for reform. The starting place is the key term in British Columbia law: *strata property*. Most North American jurisdictions use a different word to describe this central concept: *condominium*. These terms are in fact

unit than is afforded to renters or co-op residents and the ability to profit from any increases in the value of the unit. Of course, it should also be acknowledged that an individual owner is subject in many areas to the decisions of the majority of owners in a building (which can be a source of conflict in stratas) and is ultimately liable for any decrease in the value of the unit and the costs of upkeep of the building.

14. See Mike Mangan, *The Condominium Manual: A Comprehensive Guide to Strata Law in British Columbia* (Vancouver: Strata Publishing, 2010) at 3.

15. See *A Profile of Condominiums in Canada, 1981–2006*, *supra* note 3 at 17 (“Affordability is also part of the appeal of condominiums.”).

16. See *ibid.* at 9–11.

17. Mangan, *supra* note 14 at 3.

18. This paragraph points to a policy issue that should be borne in mind throughout this report. Although the popular conception of a strata property is often a specific type of residential development, it should always be recalled that the *Strata Property Act* has to address the needs of a vast array of types of real-estate developments.

two different names for the same concept. They each just rely on different metaphors to convey the combination of individual ownership and collective management within a multi-unit building that distinguishes strata properties from other legal arrangements.¹⁹

British Columbia's use of *strata property* reflects a historical fact about the origins of the governing legislation in this province. When British Columbia enacted its first act it drew heavily on an Australian statute.²⁰ Most of the other Canadian provinces looked to American legislation. As a result, their law has continued to employ the common American term *condominium*, while British Columbia has retained the Australian term *strata property*.

2. STRATA PLAN

Strata developments legally come into being by the deposit of a strata plan in the land title office.²¹ A strata plan is a legal survey document, which must meet a detailed series of specific requirements in order to be accepted by the land title office.²²

The legislation distinguishes between two basic types of strata plans. A strata plan that describes boundaries within a building is simply referred to under the act as a *strata plan*. (Sometimes commentators colloquially call this type of strata plan a *building strata plan* or a *conventional strata plan*.) A strata plan on which the boundaries “are defined on a horizontal plane by reference to survey markers and not by reference to the floors, walls, or ceilings of a building” is called a *bare land strata plan*.²³

The subdivision of the building or land effected by the strata plan divides the development into the two basic building blocks of the legal conception of a strata: strata lots and common property.

19. The word *strata* is the plural of *stratum*, which is commonly used in the sciences (especially genetics, geology, biology, and anatomy) to describe a substance that is spread in layers over a horizontal surface. *Condominium* is much more obscure. It entered English in the early eighteenth century as a term used in international diplomacy to describe “[j]oint control of a State’s affairs vested in two or more other States.” See *The New Shorter Oxford English Dictionary, sub verbo* “condominium.”

20. See *Conveyancing (Strata Titles) Act 1961* (NSW).

21. See *Strata Property Act*, *supra* note 7, s. 239.

22. See *ibid.*, s. 244.

23. *Ibid.*, s. 1 (1) “bare land strata plan.”

3. STRATA LOT

A *strata lot* is the act's name for the unit of a strata development that is individually owned. In a residential development, strata lots would be colloquially referred to as "apartments." But it should be borne in mind that strata properties are not necessarily residential developments. A strata lot could, for example, be a unit in a commercial development from which someone carries on business.

The key point is that a strata lot has its own title in the land title office and it can be owned in the same manner as any other piece of real property.

4. COMMON PROPERTY

The parts on a strata plan that are not strata lots are *common property*.²⁴ This category is open-ended, and what appears in it will vary from strata to strata. Typical examples of common property are "lobbies, hallways, elevators, recreational facilities, walkways, [and] gardens."²⁵

The act distinguishes between common property and *limited common property*. Limited common property is "common property designated for the exclusive use of the owners of one or more strata lots."²⁶ Like common property, limited common property comprises an open-ended category. One example of limited common property is a balcony on some residential strata properties.

A strata may also have *common assets*. Common assets include both "personal property held by or on behalf of a strata corporation" and land held "in the name of or on behalf of a strata corporation," which is either (a) "not shown on a strata plan" or is (b) "shown as a strata lot on a strata plan."²⁷

Common property and common assets are owned collectively by the owners of the strata lots.²⁸ Each owner's share is proportionate to the shares of the other owners. This proportion is determined using the concept of *unit entitlement*. A *schedule of*

24. See *ibid.*, s. 1 (1) "common property."

25. *A Profile of Condominiums in Canada, 1981–2006*, *supra* note 3 at 1.

26. *Strata Property Act*, *supra* note 7, s. 1 (1) "limited common property."

27. *Ibid.*, s. 1 (1) "common asset."

28. See *ibid.*, s. 66.

unit entitlement is a necessary component of every strata plan. The act contains detailed requirements for the schedule of unit entitlement.²⁹

Common expenses and common liabilities are also shared among the owners in the same proportionate manner.

5. STRATA CORPORATION

When a developer deposits a strata plan in the land title office, a strata corporation is created.³⁰ All the owners of strata lots in the development are members of the strata corporation.³¹ So purchasing a strata lot grants the purchaser membership in the development's strata corporation.

The strata corporation is the main vehicle for governance of stratas. It "is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners."³² Major decisions involving common property and common assets must be taken at the strata-corporation level. The members of the strata corporation must meet collectively at least once each year,³³ and they may have special general meetings between these annual general meetings.³⁴

A strata corporation bears some similarities to a business corporation³⁵ or a society.³⁶ Most notably, a strata corporation "has the power and capacity of a natural person of full capacity."³⁷ But, unlike the shareholders of a business corporation or the members of a society, the members of a strata corporation do not enjoy limited

29. *See ibid.*, s. 246.

30. *See ibid.*, s. 2 (1) (a).

31. *See ibid.*, s. 2 (1) (b).

32. *Ibid.*, s. 2 (1) (b).

33. *See ibid.*, s. 40 (strata corporation must hold annual general meeting). *But see ibid.*, s. 41 (procedure for waiver of in-person annual general meeting by consent in writing of all members and consent of all members to specific resolutions).

34. *See ibid.*, s. 42.

35. *See Business Corporations Act*, SBC 2002, c. 57.

36. *See Society Act*, RSBC 1996, c. 433.

37. *Strata Property Act*, *supra* note 7, s. 2 (2).

liability. The members of a strata corporation may find themselves liable for certain debts of the strata corporation.³⁸

6. STRATA COUNCIL

The second major governance institution for stratas is the *strata council*. The legislation provides that “[t]he powers and duties of the strata corporation must be exercised and performed by [the strata] council.”³⁹

The strata council is (in the vast majority of cases) made up of strata-lot owners who have been elected to serve on council.⁴⁰ Elections for strata council must be held at each annual general meeting of a strata corporation.⁴¹

The strata council may be thought of as the strata corporation’s executive body. It implements the major decisions made by the owners collectively through general meetings of the strata corporation. The strata council also attends to managing or supervising the management of the day-to-day operations of the strata.

7. SUMMARY

With this terminology in mind, it is time to consider the development of the strata-property form in British Columbia.

38. *See ibid.*, s. 166 (owner’s liability for judgment against strata corporation). *See also Hamilton v. Ball*, 2006 BCCA 243, 42 RPR (4th) 171 at para. 2, Newbury JA (for the court) (“The [strata] corporation has the powers and capacity of a natural person, and its name is required to be ‘The Owners, Strata Plan ____.’ The owners of the strata lots are the members of the corporation, but it does not have share capital and the members are not shareholders. Nor do members enjoy limited liability as do shareholders of ordinary companies: s. 166(1) provides that a judgment against the strata corporation is a judgment against all the owners.”).

39. *Strata Property Act*, *supra* note 7, s. 4. This requirement may be qualified in any given case by a contrary requirement in the *Strata Property Act*, its regulations, or a strata’s bylaws (*see ibid.*).

40. *See ibid.*, s. 28 (limiting eligibility for election to a strata council to (a) strata-lot owners, (b) individuals representing corporate strata-lot owners, and (c) tenants who have been assigned a landlord’s right to stand for council).

41. *See ibid.*, s. 25.

C. Legislation in British Columbia

1. INTRODUCTION

Although it's possible to achieve something like the modern strata development without the enactment of enabling legislation,⁴² in British Columbia (as in all other North American jurisdictions) strata properties are a creature of statute. Legislation was needed to give participants in the real-estate sector the security to make investments in this novel type of development. So in a fundamental way the story of strata properties in this province is a story about legislation.

The following sections of this report set out to tell that story. This discussion is conducted at a fairly high level. The goal is not to present a comprehensive or a critical history of British Columbia's strata-property legislation. Instead, the discussion aims to identify the major legal issues that the legislation has addressed over the years. By giving readers a feel for the type and the scope of issues that have attracted sustained legislative attention in previous versions of the act, this part of the report lays the groundwork for the discussion of potential emerging issues that forms the subject of the sections that follow it.

2. STRATA TITLES ACT, 1966

British Columbia's first strata-property legislation was the *Strata Titles Act*.⁴³ Enacted in 1966, the act's main purpose was to establish a secure legal foundation for the creation of strata properties, providing stability for owners, certainty for lenders, and relative simplicity for conveyancers.⁴⁴ The 1966 act contained just 25 sections. Although the act was not divided into parts, several themes emerge from the organization of its provisions.

The 1966 act began by addressing the basic real-property issues that flow from the creation of a strata property. It contained relatively detailed provisions designed to give legislative effect to the two essential elements of strata properties.⁴⁵ First, the act divided strata properties between strata lots (owned by individual owners) and common property (owned collectively by the owners of strata lots). Then, it dealt with the interface between strata properties and the land-title system by setting out

42. See *Mowat v. Dudas*, 2012 BCSC 454, 33 BCLR (5th) 164 at paras. 35–46, Ehrcke J. [*Mowat* cited to BCLR] (example of so-called common-law condominium).

43. SBC 1966, c. 40.

44. See Irwin Davis, "Condominium and the Strata Titles Act" (1966) 9 Can. Bar J. 469 at 481.

45. See *supra* note 9 and accompanying text.

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rules on the subdivision of land into strata lots and the creation of a strata property by means of registration of a strata plan in the land title office. The act also provided for a system of easements to provide for access, support, and the provision of services (such as, for example, water and electricity) to each of the strata lots.

The 1966 act did not set out any specific restrictions on its reach. It was a comprehensive statute for strata properties. Although the sense at the time was that strata properties would primarily be created for residential accommodation, there was no legislative restriction on the types of uses in which the strata-property form could be employed. There was also no attempt to classify strata properties by means of some other criterion, such as the size of the strata property. So large-scale and small-scale residential developments, industrial facilities, offices, and hotels, for example, could all take the strata-property form and would all be subject to the same rules if they did.

Another major topic covered in the 1966 act was governance of a strata property. This topic is a natural concern of the legislation. By definition, a strata property requires a balancing of the individual interests of a single strata-lot owner and the collective interests of all the strata-lot owners.

The basic building block of the 1966 act's governance provisions was the strata corporation. The act provided that the all the owners of strata lots within a strata property would become members of a strata corporation. This strata corporation was responsible for the control, management, and administration of the strata property's common property. It was also responsible for the enforcement of the bylaws that the strata property was required by the legislation to have. These bylaws set out the rules to govern relations between owners of strata lots and also between those owners and the strata corporation. In addition, the bylaws provided for the creation of a "council of the strata corporation" to exercise and perform the powers and duties of the strata corporation.

The 1966 act also touched on a few other legal issues. For example, it dealt with insurance, requiring the strata corporation to insure (and keep insured) the building or buildings on the strata property to their replacement value. In addition, the act provided for the establishment of a fund for administrative expenses. And it provided special rules for the valuation of strata properties for property-tax purposes.

Finally, the 1966 act dealt in a brief way with the termination of a strata property. Its provisions were focussed on determining when a building on the strata property was considered to be destroyed. The act also contained a procedure for dealing with the disposition of property interests on the destruction of a building.

3. STRATA TITLES ACT, 1974

In 1974, the *Strata Titles Act*, 1966 was repealed and replaced by a new *Strata Titles Act*.⁴⁶ At 67 sections, the 1974 act was more than double the length of the 1966 act. Although the 1974 act was “essentially a new Act,”⁴⁷ it also continued to address issues that were addressed in its predecessor (though not always in the same way as they were addressed in the 1966 act). The 1974 act can be characterized as a mix of provisions from the 1966 act, some of which were recast in a more sophisticated form, and of wholly new provisions.

In describing the legislation, the housing minister of the day noted that it “accomplishes four main purposes.”⁴⁸ These four purposes provided the rationale for the new provisions in the legislation. The first purpose was to enhance the act’s consumer-protection regime and to streamline and clarify its governance provisions.⁴⁹ The second purpose was a general attempt “to accommodate the expansion and sophistication of recent condominium developments.”⁵⁰ The third and fourth purposes were the creation of “two entirely new procedures”: phased strata plans and leasehold strata plans.⁵¹

The 1974 act was divided into four parts. Part one, which dealt with strata titles and strata corporations, made up the bulk of the act. This part of the 1974 act addressed many of the same issues that were taken up in the 1966 act, though often with more-detailed rules.

This part of the 1974 act contained some new provisions that touched on new legal issues for strata-property legislation. For example, the 1974 act addressed dispute resolution. It introduced an arbitration procedure for dispute resolution.

The 1974 act provided for greater sophistication in strata-property governance. The legislation explicitly recognized the existence of strata councils (as opposed to the

46. SBC 1974, c. 89.

47. British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 30th Parl., 4th Sess., Vol. 5 (7 June 1974) at 3834 (Hon. Lorne Nicholson).

48. *Ibid.*

49. *See ibid.* (legislation “provid[ing] for protection of owners of strata lots and for smoother running of the strata corporation”).

50. *Ibid.*

51. *Ibid.*

1966 act, which left all references to strata councils to the bylaws). The 1974 act also called for the establishment of contingency reserve funds for all strata corporations and allowed for the creation of commercial or residential sections within strata properties. And it created a procedure for the amalgamation of strata corporations.

Parts two and three of the 1974 act dealt respectively with phased strata plans and leasehold strata plans. Part four was an assortment of general provisions, including valuation of strata properties for property taxes and a regulation-making power.

4. STRATA PROPERTY ACT, 1998

British Columbia's third generation of strata-property legislation was the *Strata Property Act*.⁵² Enacted in 1998, the *Strata Property Act* repealed and replaced the 1974 act, which was by 1998 going by the name *Condominium Act*.⁵³

The *Strata Property Act*, like its 1974 predecessor, contained provisions addressing all the legal issues addressed in earlier generations of strata-property legislation. It also expanded some of these provisions and added new provisions, directed at emerging issues. This resulted in a lengthy act, containing close to 300 sections (when consequential amendments are removed from the count).

The 1998 act was divided into 17 parts. These parts added new rules or amplified existing ones in a whole host of areas. Introducing the bill that would become the 1998 act, the finance minister identified three major objectives for the legislation:

- reorganizing and redrafting the statute in a plain-language, simple-to-use style;
- fairly balancing the interests of developers, strata corporations, and owners of strata lots, among others; and
- providing enhanced legislative flexibility for strata corporations to respond to diverse and changing circumstances.⁵⁴

In addition to these three major objectives, the minister pointed to a number of other objectives for the 1998 act. These objectives included bringing in an expanded consumer-protection regime, which was based in part on recommendations in the

52. *Supra* note 7.

53. RSBC 1996, c. 64.

54. See British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 36th Parl., 3d Sess. Vol. 12, No. 4 (23 July 1998) at 10379 (Hon. Joy MacPhail).

Barrett Commission's report.⁵⁵ This consumer-protection regime involved heightened disclosure requirements for developers and strata corporations, increased financial contributions to the contingency reserve fund, and enhanced record-keeping and access-to-information rules.

The 1998 act contained enhanced rules regarding the conduct and obligations of owner-developers. These rules were part of the act's broad approach to consumer protection.

In addition to expanded consumer protection, the 1998 act brought in a greater focus on strata-property governance. The act contained greater detail on strata councils, meetings, and voting. It also contained extensive provisions on bylaws and rules.

The 1998 act also brought greater clarity and considerably expanded legislative coverage to financial issues. It addressed in detail such topics as budgets, strata fees, and special assessments.

The 1998 act provided more-detailed coverage of maintenance and repair obligations. The act also provided a set of rules for rentals of strata lots.

Some of the topics initiated in the 1974 act received greater attention in the 1998 act. These topics included sections, phased strata plans, leasehold strata plans, and conflict resolution.

Finally, the 1998 act enhanced the skeletal procedure for dissolution of strata corporations.

5. AMENDMENTS SINCE 1998

Strata-property legislation has been frequently amended in the years between major revisions to the statute. Two noteworthy sets of amendments have been enacted or proposed for enactment since the implementation of the 1998 act.

In 2009, the *Strata Property Amendment Act, 2009* was enacted.⁵⁶ The act brought in changes to strata-property governance and to the legislation's consumer-protection

55. British Columbia, Commission of Inquiry into the Quality of Condominium Construction in British Columbia, *The Renewal of Trust in Residential Construction: An Inquiry into the Quality of Condominium Construction in British Columbia* (Victoria: The Commission, 1998).

56. SBC 2009, c. 17.

regime. It lowered thresholds for members to call meetings. It provided for the completion of depreciation reports and audits.⁵⁷ The act also implemented changes to the rules on rentals of strata lots and on dispute resolution. On the latter issue, the 2009 amending act contemplated an enhanced role for the provincial court in the adjudication of strata-property disputes. Since enactment, pieces of the 2009 amending act have been brought into force.

The dispute-resolution amendments from the 2009 amending act have not been brought into force. They appear to have been overtaken by recent developments. This spring, the government introduced Bill 44 in the legislative assembly.⁵⁸ Bill 44 creates an online alternative dispute resolution process that may be used in a variety of civil disputes. Strata-property disputes are singled out for special treatment under the bill. These disputes must be commenced within the new procedure. Bill 44 has been enacted,⁵⁹ but it's not completely certain when the act will be brought into force.⁶⁰ Dispute-resolution issues may remain in flux for some time.

6. SUMMARY

In the 46 years since the advent of British Columbia's first strata-property legislation, this area of the law has evolved in increasingly sophisticated directions. In three generations of strata-property legislation, British Columbia has moved from a skeletal act to a detailed and comprehensive legal framework.

57. The 2009 amending act's provisions on audits have not yet been brought into force.

58. Bill 44, *Civil Resolution Tribunal Act*, 4th Sess., 39th Parl., British Columbia, 2012.

59. *See Civil Resolution Tribunal Act*, SBC 2012, c. 25.

60. *See* Ministry of Justice for British Columbia, "Civil Resolution Tribunal Act," online: Ministry of Justice <<http://www.ag.gov.bc.ca/>> ("It is anticipated the *Civil Resolution Tribunal Act* will come fully into force and the tribunal will begin operations in 2014.").

CHAPTER III. EMERGING ISSUES FOR FURTHER STUDY

A. Introduction

The British Columbia Law Institute began the Strata Property Law Project—Phase One with a goal of attempting to discover whether British Columbia should be planning now for a fourth generation of its strata-property legislation.

At the outset of phase one the answer to this question was far from clear. As described in the previous section, British Columbia has a relatively new *Strata Property Act*, which has only been fully in force for little over a decade. Further, even in that relatively short period, the act has been amended in some significant ways. In short, the *Strata Property Act* did not seem to fit the profile of an act that was neglected and calling out for law reform.⁶¹

The scope and newness of the *Strata Property Act* appeared to require a somewhat different approach. The approach settled on in phase one was to consider issues for reform through initial research and focussed consultation.

B. Initial Research

Comprehensive, in-depth legal research is a part of every full-scale law-reform project. For this phase-one project, with its emphasis on issue identification, there was a perceived need to take a different tack. This approach to initial research was dedicated to discerning unresolved tensions and emerging issues in the strata-property field. In-depth research into these issues would occur during the phase-two project.

After reviewing commentary and leading cases, the BCLI determined that there was a place for a project that examined a series of large to medium-sized issues in strata-property law. The timeline for such a project would extend over the medium-to-long term.

The BCLI collected its initial research in a short document called a memorandum for discussion. This memorandum for discussion discussed the possibility of a phase-two law-reform project focussed on some of the following areas: scope of the legisla-

61. See, e.g., British Columbia Law Institute, *Report on Proposals for a New Commercial Tenancy Act* (BCLI Rep. no. 55) (Vancouver: The Institute, 2009) (recommending reforms to an act that is largely unchanged since first appearing in the statute books in the 1890s).

tion; consumer protection; governance; enforcement; dissolution; privacy; and land-title issues. These issues were intended primarily as illustrations and a means to spark discussion, rather than as a definitive statement of the issues that should make up a phase-two project.

C. Phase One's Consultation Process

The memorandum for discussion was sent to a range of experts in the strata-property field. These experts included practising lawyers, law professors, strata managers, surveyors, and others with experience in strata properties or related bodies of law.

Four consultation sessions were organized to discuss the memorandum and the need for and possible dimensions of a phase-two project. Three of these consultation sessions took place in Vancouver, and one was held in Victoria. These consultation sessions were largely free-flowing meetings, as consultation participants provided the BCLI with their views on current legal issues and the prospects for reform. After these four multi-participant consultation sessions concluded, the BCLI held a few one-on-one sessions with selected individuals.⁶²

The consultation sessions were instrumental in confirming the BCLI's decision to propose a phase-two project and in identifying the issues for reform that should make up the work plan for that project. The remainder of this part of the phase-one report is largely dedicated to mapping out that phase-two project as the outlines of it emerged in the phase-one consultation sessions.

D. Views on the Current Act

As a way to begin discussion, consultation participants were asked for their views on whether a new *Strata Property Act* is needed, now or in the near future. There was a considerable range of opinion on this question. A few consultation participants were of the view that enactment of a new act should be an immediate legislative priority. Others stressed the relatively young age of the current act and felt that it should be given more time to operate in practice. Still others felt that the current act was very good in design and perhaps only needs some fine-tuning.

Many consultation participants stressed that the act does need study and periodic renewal. These tasks are necessary to respond to the constantly evolving conditions in the strata-property sector.

62. See, below, at 31 (appendix A) for a full list of participants in all consultation sessions.

E. Recommendation for a Phase Two Project

Consultation participants were united in the view that the BCLI should carry out a phase-two project on strata-property law. They agreed that there was a need for a medium-to-long-range project to examine legal issues involving strata properties and to propose legislative reforms.

While very few would go so far as to say that a fundamental overhaul of the act is urgently needed, many consultation participants pointed out that it was important also to avoid complacency. There are significant legal issues that have only emerged fully after the current act was designed and enacted in the 1990s. Further, there are perennial issues that have taken on new aspects since that time.

Although the *Strata Property Act* has been amended frequently, this process of amendment was felt to be less than optimal for tackling the issues for reform discussed in the consultation sessions. A more wide-ranging approach was seen to be desirable.

F. Issues to Be Examined in Phase Two Project

Much of the discussion at the consultation sessions focussed on a range of issues for such a phase-two project. Consultation participants played a critical role in assisting the BCLI with identifying issues for phase two and with assigning levels of priority to those issues.

It nearly goes without saying that the issues raised in the consultation sessions (and discussed in the sections of this report that follow) were not fully resolved in discussion with consultation participants. This was not the goal of the phase-one consultation. The aim was rather to identify, in fairly broad terms, the types of issues that need long-range, comprehensive examination and, potentially, legislative reform.

The sections that follow list the issues for reform that the BCLI recommends including in a phase-two project. These issues for reform are each briefly discussed in general terms. The goal of this discussion is to give readers a sense of each subject and the main issues that would be considered under each subject. The full dimensions and details of each subject, of course, is still something of a work in progress, which will be defined during the initial organization of the phase-two project.

1. FUNDAMENTAL CHANGES TO STRATAS

This issue is intended to capture wide-ranging, transformative changes to a strata development. It was conceived out of discussions on dissolution and termination of strata properties.

British Columbia's strata-property legislation has long had provisions dealing with aspects of the termination of a strata, such as its deemed destruction. Now, part 16 of the current act provides for the cancellation of strata plans and the winding up of strata corporations.⁶³

In practice, cancellation and winding up has historically not been a major area for concern.⁶⁴ Strata properties don't fail in the multifaceted ways that, for example, business corporations may fail. They also don't require dissolution as frequently as business corporations.

But there are concerns that this historical situation may be changing. The stock of first-generation strata properties (built in the mid-to-late 1960s) may be reaching the end of its functional life. As courts⁶⁵ and commentators⁶⁶ have begun to notice, this process of aging will almost certainly result in more strata properties going through the act's dissolution procedure.

A strong majority of consultation participants recommended that the BCLI include an examination of cancellation and winding up in phase two of this project. Noting the recent developments in this area, some consultation participants said that these cases represented the thin edge of the wedge. The concern is that termination of strata properties will be much more frequent in the years to come.

63. *Supra* note 7, ss. 272–89.

64. *See Fraser v. Strata Plan VR1411*, 2008 BCSC 977, [2008] BCJ No. 1393 at para. 27 (QL), Curtis J. (noting that this case represented the first time that the provisions of the act on court-ordered winding up of a strata corporation had been judicially considered).

65. *See Mowat*, *supra* note 42 (application to dissolve “common-law condominium” tracking issues that could arise in analogous application under the *Strata Property Act*).

66. *See* Allyson L. Baker *et al.*, *British Columbia Strata Property Practice Manual*, looseleaf (consulted on 30 October 2012) (Vancouver: Continuing Education Society of British Columbia, 2008) at § 19.26 (“Since the Act and its predecessor legislation have been in force for some years, it is likely that in the future older strata schemes will reach the end of their useful life, and it may become a viable option for owners to cancel their strata plans.”). *See also* Frances Bula, “Should You Sell Your Vancouver Condo Today?” *Vancouver Magazine* (1 March 2012), online: Vancouver Magazine <<http://www.vanmag.com>>.

Several consultation participants suggested that the BCLI attempt to frame this issue in broader terms. They noted that a number of other issues bear some similarity to cancellation and winding up. From this suggestion, the idea to group these issues together was born. Drawing on a name familiar from corporate law, the BCLI decided to call this subject “fundamental changes to stratas.”⁶⁷

The common thread that unites fundamental changes is that the change is of an order that decisively changes the nature of the strata. Often, a fundamental change requires unanimous approval of strata-lot owners to proceed.⁶⁸ Another important component is a legislative procedure to address cases in which the requirement for unanimous approval produces a deadlock that is harmful to or not in the best interests of the strata development and the vast majority of its owners.⁶⁹

Along with cancelling a strata plan and winding up a strata corporation, amending a strata plan can be another example of a fundamental change. Amalgamations of stratas may also fit within this category. A number of consultation participants urged the BCLI to include the appointment of an administrator in this category.⁷⁰ Like the other procedures discussed in this section, the appointment of an administrator is an “exceptional remedy”⁷¹ that is only imposed in dire circumstances. Appointing an administrator can only result after a court has carefully weighed the rights and obligations of the strata and its strata-lot owners. An administrator can create wholesale changes to the character and composition of a strata, which may not enjoy unanimous, or even majority, support.⁷²

These parts of the *Strata Property Act* have rarely been considered.⁷³ Consultation participants were of the view that they may be called upon more and more in the fu-

67. See also *British Columbia Strata Property Practice Manual*, *supra* note 66 at c. 19 (chapter on “fundamental changes” including amendment of strata plans, amalgamation, and dissolution and termination).

68. See *Strata Property Act*, *supra* note 7, s. 272 (unanimous resolution required to wind up strata corporation).

69. See *ibid.*, ss. 284–85 (court-ordered winding up of strata corporation).

70. See *ibid.*, ss. 174.

71. *British Columbia Strata Property Practice Manual*, *supra* note 66 at § 11.1.

72. See *ibid.* (noting that appointing an administrator “represents a serious interference with the democratic governance of the strata community”).

73. See *ibid.* at § 19.1 (“Many of the statutory provisions referred to in this chapter [on fundamental changes] have been infrequently implemented or judicially considered.”).

ture. The time is ripe to examine them comprehensively and to consider necessary reforms.

2. COMPLEX STRATAS

Like the “fundamental changes” discussed in the previous section, *complex stratas* appears nowhere in the *Strata Property Act*. Instead, the phrase is meant to serve as a category to bring together a range of related issues. These issues concern mixed-use stratas, sections, types, and phased strata plans.

A mixed-use strata is a strata that combines several uses in a single development. The most common example of a mixed-use strata has commercial uses on its ground (or lower) floors and residential uses above. But there is no reason to limit the mixed-use category to this single type of development. A mixed-use strata may have any combination of residential, commercial, industrial, recreational, or other uses.

The phrase *mixed-use strata* does not have a statutory basis. It does not show up in the *Strata Property Act*. Nevertheless, the term does point to a type of strata that is becoming increasingly prevalent in British Columbia.

A mixed-use strata may have sections. Unlike the concept of mixed-use strata, *sections* are defined and regulated by provisions of the *Strata Property Act*.⁷⁴ Under the act, a strata corporation may have sections only if the sections are “for the purpose of representing the different interests of”

- owners of residential strata lots and owners of nonresidential strata lots,
- owners of nonresidential strata lots, if they use their strata lots for significantly different purposes, or
- owners of different types of residential strata lots.⁷⁵

Sections may be created at the time the strata plan is deposited in the land title office.⁷⁶ They may also be created at any later time—but this requires the strata corporation to amend its bylaws.⁷⁷ Sections effectively function as another level of strata-property governance, complementing the strata corporation in developments

74. See *supra* note 7, ss. 1 (1) “section,” 190–98.

75. *Ibid.*, s. 191 (1).

76. See *ibid.*, s. 192.

77. See *ibid.*, s. 193.

(such as mixed-use stratas) that have a variety of divergent interests in need of representation.⁷⁸

The third bullet point in the list set out above referred to “different types of residential strata lots.” The *Strata Property Regulation*⁷⁹ has defined *types* of residential strata lots to mean

- apartment-style strata lots,
- townhouse-style strata lots, or
- detached houses.⁸⁰

The act does not contain special rules for types.

Phased strata plans are defined under the act as “a strata plan that is deposited in successive phases” in the land title office, following the rules set out in part 13 of the act.⁸¹ A strata under a phased strata plan “is constructed in stages over a period of time.”⁸² “As each new phase is added” to the development, the plan successively grows: “new sheets are added to the strata plan deposited in the land title office, which incorporates each new phase into itself.”⁸³ The act contains detailed rules on phased strata plans,⁸⁴ including a requirement to obtain the approval of an approving officer of a phased strata plan declaration before the first phase of the plan is deposited in the land title office.⁸⁵ There are a number of reasons for using a phased strata plan, including enhanced flexibility and access to construction financing.⁸⁶

Much of the legislation on complex stratas first appeared in the 1974 act.⁸⁷ Some revisions appeared with the advent of the *Strata Property Act*. But consultation par-

78. See *Lim v. Strata Plan VR2654*, 2001 BCSC 1386, 44 RPR (3d) 243 at para. 48, Boyd J. (“a section is in essence, a mini-strata corporation”).

79. BC Reg. 43/2000.

80. *Ibid.*, s. 11.1.

81. *Supra* note 7, s. 1 (1) “phased strata plan.”

82. *British Columbia Strata Property Practice Manual*, *supra* note 66 at § 17.1.

83. *Ibid.*

84. See *Strata Property Act*, *supra* note 7, ss. 217–38.

85. See *ibid.*, s. 222.

86. See *British Columbia Strata Property Practice Manual*, *supra* note 66 at §§ 17.6–17.7.

87. *Supra* note 46.

ticipants pointed out that complex stratas could be seen as unusual or exotic as the *Strata Property Act* was being developed through the 1990s. Now they are much more prevalent and the trend appears to be toward the development of more and more complex stratas. This was seen as an area that could benefit from further study and, possibly, legislative reform.

Consultation participants recommended a thorough review of the existing legislative framework for complex stratas. That said, many of the issues noted by consultation participants had an operational character. The preparation and adoption of budgets in stratas with multiple sections was mentioned as a particular concern.

3. LEASEHOLD STRATAS

A leasehold strata is created by the deposit of a leasehold strata plan. The *Strata Property Act* defines *leasehold strata plan* simply as “a strata plan in which the land shown on the strata plan is subject to a ground lease.”⁸⁸ Another definition in the act makes it clear that a specific type of ground lease is contemplated.⁸⁹ And the legislation sets out a number of other requirements that must be met to ensure that a leasehold strata plan is accepted for registration in the land title office.⁹⁰

In leasehold stratas, strata lots are held under a model strata-lot lease for the development. The occupants of each strata lot are tenants. The landlord in this landlord-tenant relationship must come from a limited class of what the act calls “public authorities.”⁹¹ This limited class has the effect of keeping a tight rein on the number of leasehold stratas in existence.

As is the case with many of the legislative provisions relating to complex stratas, the legislation governing leasehold strata plans first made its appearance in the

88. *Supra* note 7, s. 199 “leasehold strata plan.”

89. *See ibid.*, s. 199 “ground lease” (defining term to mean “a registered lease of land (a) granted by a leasehold landlord for the purposes of this Part [of the *Strata Property Act*], and (b) to which a model strata lot lease is attached”).

90. *See ibid.*, s. 201.

91. *Ibid.*, s. 199 “leasehold landlord” (defining term to mean “the government of British Columbia, the government of Canada, a municipality, a regional district, a Nisga’a Village or the Nisga’a Nation, a treaty first nation or another public authority as defined by a regulation made under this Act”). *See also Strata Property Regulation*, *supra* note 79, s. 12.1 (defining *public authority* for purposes of s. 199 of the act to mean “(a) a university as defined in the *University Act*, (b) the Sechelt Indian Band established under section 5 (1) of the *Sechelt Indian Band Self-Government Act* (Canada), (c) the Provincial Rental Housing Corporation, or (d) a board as defined in section 1 of the *School Act*”).

1974 act.⁹² These provisions were amended when the *Strata Property Act* was enacted in 1998.

A significant number of consultation participants recommended that the BCLI include a consideration of leasehold stratas in its phase-two project. Similar to the case for complex stratas, there were concerns expressed that this area is developing in ways that could not be appreciated in the 1990s. Issues may have arisen that were not contemplated when the *Strata Property Act* was being developed. There may be opportunities to fine-tune the legal framework under which leasehold stratas operate.

But a key issue for many consultation participants was the restriction that the legislation places on who may act as a leasehold-strata landlord. Consultation participants were concerned that the legislation could be effectively limiting the development of leasehold stratas. The time may be ripe to reconsider the act's approach to this question. One consultation participant observed that expanding opportunities for leasehold-strata developments may make a positive contribution to housing affordability in British Columbia. But it is an issue that requires striking a careful balance.

4. COMMON PROPERTY

Common property is one of the fundamental building blocks of the strata-property concept. It was described in general terms earlier in this report.⁹³

Several consultation participants urged the BCLI to include a review of common-property issues in the phase-two project. Their concerns related to perceived uncertainties in the legislation.

Consultation participants suggested that the BCLI examine a range of issues under this heading. First, despite the essential importance of common property to stratas, there appear to remain some basic issues concerning its character that would benefit from clarification. As one consultation participant put it, it would be worthwhile to examine such foundational questions as who owns common property and where does common property begin and end. The answers to these questions have evolved over time. There is an opportunity to re-examine how the *Strata Property Act* has arrived at its conclusions on these issues.

92. *Supra* note 46.

93. *See, above*, at 6–7 (section II.B.4).

Second, consultation participants recommended examining issues of a more operational nature, such as the rules governing conversion of a strata lot into common property, and *vice versa*. It was observed that some of these issues tie into other subjects considered for phase two, such as fundamental changes of stratas and stratas and land-title issues.

5. GOVERNANCE ISSUES

Governance is a perennial issue for strata properties. In essence, governance of stratas turns on balancing the rights and obligations of individual strata-lot owners with the interests of the majority of strata-lot owners. The issues often involve large-scale themes such as protection for minorities, democratic decision-making, and accountability.

Consultation participants recommended that the BCLI include selected governance issues in the phase-two project. There are apparently a series of issues that would benefit from further examination and, possibly, legislative reform.

A number of these issues relate to protection of individual and minority interests and the accountability of strata councils. Clarification of the duties and obligations of strata-council members was seen as a priority. In addition, the issue of enforcement can be tied into a review of governance concerns. Both Alberta's and Ontario's strata-property legislation contains offence and penalty provisions in respect of non-compliance with the act, regulations, or the strata corporation's bylaws.⁹⁴ British Columbia's legislation lacks similar provisions.

Of course, enhancing individual rights is not the sole touchstone for changes to the legislation's governance model. Arguments could also be made that changes are needed to streamline the ability of strata councils to act in the collective interest. For example, some consultation participants urged the BCLI to re-examine the act's super-majority requirements. These requirements require certain decisions to be taken by a 3/4 vote of strata-lot owners present at a general meeting.

These two approaches do not necessarily need to be in conflict. Certain issues may call for a rebalancing of the act's focus in favour of individual rights, while others may need an enhancement of the collective's powers to act in its best interests.

94. See *Condominium Property Act*, RSA 2000, c. C-22, s. 67; *Condominium Act, 1998*, SO 1998, c. 19, s. 137.

6. INSURANCE ISSUES

The last two areas of study recommended for phase two focus on the intersection of the *Strata Property Act* with other bodies of law. The first area concerns the interplay of strata-property law with insurance law.⁹⁵

Insurance is a major concern for any homeowner. So it is unsurprising that strata-property legislation has long contained provisions on insurance. The current *Strata Property Act* actually contains extensive rules regarding insurance.⁹⁶ Consultation participants informed us that this area does not need a fundamental reorientation, but it does call for some fine-tuning.

The BCLI had the benefit of the participation of a representative of the Insurance Bureau of Canada in one of the consultation sessions. This consultation participant pointed out that there have been recent court decisions of interest on deductibles⁹⁷ and named-insurance coverage.⁹⁸ Some of these decisions have caused a measure of public anxiety.⁹⁹

In other cases, British Columbia's legislation differs from the legislation in force in other provinces. Ontario, for example, has legislative provisions on strata lots and improvements¹⁰⁰ and strata corporation coverage and duty to repair in cases involving damage to a strata lot by a neighbouring strata lot.¹⁰¹ This legislation appears to have helped to avert gaps in coverage caused (at least in part) by the misalignment

95. See *British Columbia Strata Property Practice Manual*, *supra* note 66 at § 15.1 (“The strata corporation concept does not fit neatly into a number of insurance concepts and principles.”).

96. See *supra* note 7, ss. 149–62.

97. See *Strata Corp. VR 2673 v. Comissiona*, 2000 BCSC 1240, 80 BCLR (3d) 350 at para. 16, Levine J. (“My review of the authorities leads me to the conclusion that there is no legal bar to an action by a strata corporation against an owner of a suite in the condominium for damages that are covered by the strata corporation's insurance policy but are not payable by the insurer because they fall within the deductible under the policy.”). See also *Strata Plan LMS 2835 v. Mari*, 2007 BCSC 740, 75 BCLR (4th) 264; *Strata Plan KA 1019 v. Keiran*, 2007 BCSC 727, 75 BCLR (4th) 271.

98. See *Economical Mutual Insurance Co. v. Aviva Insurance Co. of Canada*, 2010 BCSC 783, 85 CCLI (4th) 309 at para. 21, Pitfield J. (“To the extent that it is deficient, the contract of insurance cannot be varied or amended to ensure that it complies with the [*Strata Property Act*]. The policy provides only the coverage that the insurer has agreed to provide.”).

99. See, e.g., Zoe McKnight, “Condo owners advised to check their insurance policies” *The Vancouver Sun* (1 October 2012) A7.

100. See *Condominium Act*, *supra* note 94, ss. 45, 56, 99.

101. See *ibid.*, ss. 89, 99 (1).

of strata-property and insurance law. It would be worthwhile considering whether the Ontario provisions could be adapted for use in British Columbia.

Consultation participants remarked on the practical importance of insurance for strata corporations and the individual strata-lot owners. They suggested that the BCLI carefully study all the competing interests and options and determine if this area requires legislative reform.

7. LAND-TITLE ISSUES

The second area in which the intersection between two bodies of law has raised issues for further examination involves the relationship between land titles and strata properties. This relationship can be highly technical. But how the strata-property form fits into the land-title system is of fundamental importance. British Columbia's strata-property legislation has, since its inception, contained provisions on managing this relationship.¹⁰²

The BCLI and consultation participants were fortunate to receive input on land-title issues from several individuals with expertise in this area of the law. As was the case for insurance issues, consultation participants viewed this as an area requiring something less than a fundamental overhaul. But it was characterized as an area that could benefit from a focussed examination of specific issues.

One issue recommended for further study is how strata properties fit into the broader system of subdivision control. There are ongoing concerns that people may use the *Strata Property Act* to circumvent local authorities. An examination of how the relevant provisions of the *Strata Property Act*¹⁰³ and the *Land Title Act*¹⁰⁴ work together was recommended.

Another issue recommended was the relation of strata properties to the *Land Title Act*'s provisions on air-space parcels.¹⁰⁵ The concern here is that the existing legislation fails to provide adequate clarity and certainty, and may be a bad fit with existing provisions of the *Strata Property Act*.

102. See, e.g., *Strata Property Act*, *supra* note 7, ss. 239–56 (compilation of some of the provisions concerned with the interaction of these two bodies of law).

103. See *ibid.*, s. 241.

104. See RSBC 1996, c. 250, s. 73.

105. See *ibid.*, ss. 138–46.

G. Additional Issues Discussed But Not Included in Phase Two Project

The BCLI raised a number of issues from our initial research with consultation participants which were not ultimately represented in the issues selected for the phase-two project. Although the BCLI will not pursue these subjects in phase two, this doesn't mean that the issues they raised should simply be ignored. Two subjects, in particular, call for further comment.

One issue discussed extensively in consultation sessions concerned the scope of the act and its uniform treatment of stratas. The *Strata Property Act* strives to treat all stratas on the same footing.¹⁰⁶ In doing so, the legislation can ignore the fact that stratas come in many different sizes and that strata properties are put to many different uses. Consultation participants were asked for their views on any problems created by the one-size-fits-all nature of the act. Almost unanimously, consultation participants felt that the uniform application of the act to stratas created benefits that superseded any problems. While there may be discrete areas that could be the subject of limited amendments, the act should continue in the main to apply uniformly to stratas.

Another issue that received considerable attention was the perennial issue of consumer protection. One of the goals of the *Strata Property Act* was to create an enhanced consumer-protection regime. Consultation participants were largely of the view that the act had succeeded in this goal. Many were concerned that adding extensive new consumer protections would create disparities in the marketplace between stratas and other types of real estate. Other consultation participants pointed out that the British Columbia Real Estate Foundation has recently made some recommendations for incremental reforms in this area.¹⁰⁷

106. See Mangan, *supra* note 14 at 5 (“A strata is a strata is a strata.”).

107. See *Improving the Strata Property Act* (Vancouver: British Columbia Real Estate Association, 2010).

CHAPTER IV. CONCLUSION

Based on our initial research and focussed consultations, the BCLI concludes that a Phase Two of the Strata Property Law Project should be carried out. We have determined that there are a series of emerging and long-range issues that require extensive consideration. These issues are united by the fact that they do not admit of easy, obvious answers. In many cases, they involve consideration of multiple options for reform or of striking or recalibrating a balance between competing interests. In other cases, they call for heightened sensitivity to the interaction between strata-property law and another body of law. Finally, the issues selected for phase two all raise the prospect of legislative reform, and the need to carefully think through the implications of such reform.

APPENDIX A

Participants in Consultation Sessions

Jay Bradley

*Land Policy Analyst
Land Tenures Branch
Ministry of Forests, Lands, and
Natural Resource Operations for
British Columbia*

Marie Crawford

*Associate Executive Director
Union of British Columbia Municipali-
ties*

Gerry Fanaken

*Chief Executive Officer (retired)
Vancouver Condominium Services
Ltd.*

Justin Hanson

*Lawyer
Stevenson Luchies & Legh*

Miranda Lee

*Information Officer
Insurance Bureau of Canada*

Jesse Morin

*Managing Partner
Butler Sundvick*

Mary A. M. Brunton

*Lawyer
Reed Pope LLP*

R. C. (Tino) Di Bella

*Lawyer
Jawl & Bundon*

Tony Gioventu

*Executive Director
Condominium Home Owners Asso-
ciation of British Columbia*

Joyce M. Johnston

Lawyer

Elaine T. McCormack

*Associate Counsel
Alexander Holburn Beaudin & Lang
LLP*

Doug Page

*Manager
Housing Policy Branch
Ministry of Energy, Mines and
Natural Gas and Ministry Respon-
sible for Housing for British Columbia*

Report on Strata Property Law: Phase One

Mark Parsons

*Director, Policy and Legislation
Land Title and Survey Authority of
British Columbia*

Prof. Dennis Pavlich

*Faculty of Law
University of British Columbia*

Lynn I. Ramsay, QC

*Partner
Miller Thomson LLP*

Prof. Tony Sheppard

*Faculty of Law
University of British Columbia*

Allan R. Tryon

*Lawyer
Crease Harmon LLP*

Ron Usher

*General Counsel
Society of Notaries Public of British
Columbia*

Elizabeth (Lisa) Vogt

*Partner & Practice Group Leader,
Real Property and Planning
McCarthy Tétrault LLP*

Patrick A. Willams

*Partner
Clark Wilson LLP*

Edward L. Wilson

*Partner
Lawson Lundell LLP*

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