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LAW INSTITUTE

STRATA-PROPERTY LAW PROJECT—PHASE ONE

Backgrounder

Introduction to Strata Property Law Project—Phase One

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INTRODUCTION

Strata properties form a dynamic part of the real-estate sector in British Columbia. Not surprisingly, the law governing strata properties has been in a constant state of evolution, as it tries to keep pace with developments in this area. In addition to an almost continual stream of discrete amendments to the legislation, new versions of the act have appeared at frequency of about every 15 to 25 years. In this project, the British Columbia Law Institute wants to identify broad, long-range legal and policy issues that should be considered in creating the next generation of strata-property legislation for British Columbia. The project aims, through research and consultation with experts in the field, to identify a range of issues for further study in a phase-two law-reform project.

This backgrounder is an introduction to the BCLI's Strata-Property Law Project—Phase One. It begins by briefly setting out some basic information on strata property law, then it describes how that law has developed in British Columbia, moves on to flag some of the types of legal and policy issues that may be considered in the project, and concludes by describing how the project will be carried out, its timeline, and its relationship to a potential phase-two law-reform project.

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LEGAL BACKGROUND

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.”¹ Although it's possible to achieve this

1. Ontario Law Reform Commission, *Report on the Law of Condominium* (Toronto: Department of the Attorney General, 1967) at 3.

result without the enactment of enabling legislation, in British Columbia (as in all other North American jurisdictions) strata properties are a creature of statute.

British Columbia's legislation uses the term *strata property* to describe what other North American jurisdictions call a *condominium*. These terms are just two different names for the same concept. The use of *strata property* simply reflects the fact that British Columbia's legislation derived from legislation in Australia and has adopted Australian, as opposed to American, terminology.

The Development of Strata-Property Legislation in British Columbia

British Columbia's strata-property legislation dates to 1966,² when this province became the first jurisdiction in Canada to enact legislation enabling the creation of strata properties. With a mere 25 sections, the 1966 act did little more than set out the legal framework for the creation of a strata property, provide for the duties and powers of owners' governance through a strata corporation, and briefly address issues such as insurance, bylaws, and disposition or destruction of the stratified building.

The 1966 act was amended a few times. Then, in 1974, that act was repealed and replaced by a new act.³ The 1974 act was more than double the length of the 1966 act, with the added length being the result of the later statute addressing a wider range of legal issues and adopting a heightened sophistication to some of the rules it inherited from the 1966 act.

This pattern repeated itself. The 1974 act, which had been significantly amended in 1977⁴ and renamed in 1979,⁵ was repealed and replaced in 1998.⁶

So, British Columbia has experienced three distinct bouts of development of its strata-property legislation. British Columbia is not unique in experiencing this type of development. Commentators in other North American jurisdictions have taken notice of the propensity for "generational" change to strata-property legislation, as it evolves to accommodate the changes that have taken place in the market for strata properties.⁷

2. *Strata Titles Act*, SBC 1966, c. 46.

3. *Strata Titles Act*, SBC 1974, c. 89.

4. *Strata Titles Amendment Act, 1977 (No. 2)*, SBC 1977, c. 64.

5. *Condominium Act*, RSBC 1979, c. 61.

6. *Strata Property Act*, SBC 1998, c. 43.

7. See, e.g., Donna S. Bennett, "Condominium Homeownership in the United States: A Selected Annotated Bibliography of Legal Sources" (2011) 103 Law Libr. J. 249 at 264.

The Range of Topics Covered by the Current Act

The *Strata Property Act* represents the third generation of strata-property legislation in British Columbia. The main reason⁸ for enacting the current act in 1998 was to create a new consumer-protection regime for strata properties by implementing recommendations from the report of the Barrett Commission.⁹

The *Strata Property Act* also carried forward and amplified rules on a range of issues that first appeared in earlier versions of the legislation. As a result, an act that began as a skeletal legal framework now more closely resembles a code on the subject of strata-property law.

The act's provisions address topics that arise over the course of a strata property's lifespan, beginning with the creation of a strata corporation, the legal entity that results from the registration in the land title office of a strata plan creating a strata property. Then, the act sets out detailed provisions on the rights and responsibilities of an owner-developer. The owner-developer is the major player in a strata property from its creation until the point at which incoming owners of individual strata lots own fifty percent plus one of the strata lots, so special rules are needed to protect those incoming owners.

The legislation contains extensive provisions on strata corporation governance. These provisions cover the strata corporation's governing body (the strata council), records, contracts, notices, and voting and meetings. The act also addresses a strata corporation's governing documents—its bylaws and its rules.

The act sets out wide-ranging provisions on a strata corporation's property (that is, the property held in common by individual owners) and its finances. It also addresses other ongoing issues for a strata corporation, such as insurance, rentals, and the potential for legal proceedings.

Finally, the legislation deals with fundamental changes to a strata corporation (such as amendment of its underlying strata plan or amalgamation with another strata corporation) and with the termination and winding-up of a strata corporation.

ISSUES TO CONSIDER

Initial research has identified several issues that will likely be given further consideration over the course of phase one of this project. It is important to bear in mind that the purpose of this phase of the project is, through consultation, to identify and refine a group of issues that may form the basis of a phase-two law-reform project. The consultation process is not

8. See British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 36th Parl., 3rd Sess., vol. 12, no. 4 (23 July 1998) at 10 379 (Hon. Joy MacPhail).

9. 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).

intended simply to ratify initial ideas. Nevertheless, a few of these initial ideas are described here to give readers a better sense of the scope and range of issues that the BCLI wishes to consider in phase one of the project.

- Different classes of regulation for different sizes of strata properties. Currently, the act applies with equal measure to all strata properties. As the legislation has grown longer and more complex, questions have arisen over whether this is appropriate for very small strata properties. Should the act embrace different classes of regulation?
- Consumer-protection provisions. Major amendments to the *Strata Property Act* were passed in 2009,¹⁰ dealing significantly with consumer-protection issues. Do these amendments adequately protect the interests of purchasers, or should further provisions be contemplated?
- Relations between individual owners and strata councils. Does the legislation strike a satisfactory balance between the regulation of common property, the need for strata corporations to have flexibility to adapt to changing circumstances, and the rights of individual owners? Do strata councils have sufficient tools to carry out their mandate? Do individual owners require further protection?
- Termination and winding-up of strata corporations. As the first generation of strata properties begin to reach the end of its functional life, are the provisions in the act sufficient to deal with the potential for an increasing need to terminate and wind up strata corporations?
- Privacy and strata properties. There is considerable confusion over how strata corporations are to implement new standards for the protection of personal information. Should the *Strata Property Act* be amended to give owners more guidance in this area?

HOW THE BCLI PLANS TO CARRY OUT THE PROJECT

Methodology for Phase One

This project will be carried out through research and consultation. The plan is to research emerging issues in strata-property law and to use that research to put together a brief memorandum. This memorandum will be the basis of consultation with a range of selected figures in the strata-property field. Once these consultations are complete, the results for them will be included in the project's final report.

Timeline for Phase One

Phase one of this project has a one-year term. The term will have three distinct parts.

- An initial part focussed on research in winter and early spring 2012.

10. *Strata Property Amendment Act, 2009*, SBC 2009, c. 17.

- Consultation with selected experts in the strata-property field running from late spring 2012 to fall 2012.
- Writing and publishing the phase one final report in winter 2012.

Potential Strata-Property Law Project—Phase Two

The goal of phase one is to produce a report that identifies the leading issues that should be the focus of phase two of the project. Phase two would be conducted as a major law-reform effort, with a volunteer project committee of experts in the strata-property field assisting the BCLI in making substantive recommendations for reform of the law.

Phase two is subject to the BCLI receiving dedicated project funding.

ABOUT THE BRITISH COLUMBIA LAW INSTITUTE

The British Columbia Law Institute was incorporated in 1997 under the British Columbia *Society Act*. Its mission is to be a leader in law reform by carrying out the best in scholarly law-reform research and writing and the best in outreach relating to law reform.

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