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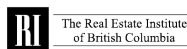
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Consultation Paper on Terminating a Strata

Prepared by the
Strata Property Law
(Phase Two) Project
Committee

May 2014

Supported By:



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- the best in scholarly law reform research and writing; and
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Strata Property Law (Phase Two)

Project Committee

The Strata Property Law (Phase Two) Project Committee was formed in fall 2013. This all-volunteer project committee is made up of some of the leading experts in strata-property law and practice in British Columbia. The committee's mandate is to assist BCLI in developing recommendations to reform strata-property law in the seven areas selected for study in this phase-two project. These recommendations will be set out in the committee's final report, which will be published in December 2016.

The members of the committee are:

Patrick Williams—chair
(Partner, Clark Wilson LLP)

Larry Buttress
(Deputy Executive Officer, Real Estate Council of British Columbia)

Garth Cambrey
(President, Cambrey Consulting Ltd.)

Tony Gioventu
(Executive Director, Condominium Home Owners Association)

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Ed Wilson
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Kevin Zakreski (staff lawyer, British Columbia Law Institute) is the project manager.

**For more information, visit us on the World Wide Web at:
<http://www.bcli.org/project/strata-property-law-phase-two>**

Call for Responses

We are interested in your response to this consultation paper. It would be helpful if your response directly addressed the tentative recommendations set out in this consultation paper, but it is not necessary. We will also accept general comments on reform of the law on terminating a strata.

The best way to submit a response is to use a response booklet. You may obtain a response booklet by contacting the British Columbia Law Institute or by downloading one at **<<http://www.bcli.org/project/strata-property-law-phase-two>>**. You do not have to use a response booklet to provide us with your response.

Responses may be sent to us in one of four ways—

by mail: British Columbia Law Institute
 1822 East Mall
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 Vancouver, BC V6T 1Z1
 Attention: Kevin Zakreski

by fax: (604) 822-0144

by email: strata@bcli.org

by online survey: link from www.bcli.org/project/strata-property-law-phase-two

If you want your response to be considered by us as we prepare our report on terminating a strata, then we must receive it by **30 September 2014**.

Your response will be used in connection with the Strata Property Law (Phase Two) Project. It may also be used as part of future law-reform work by the British Columbia Law Institute or its internal divisions. All responses will be treated as public documents, unless you expressly state in the body of your response that it is confidential. Respondents may be identified by name, title, and organization in the final report for the project, unless they expressly advise us to keep this information confidential. Any personal information that you send to us as part of your response will be dealt with in accordance with our privacy policy. Copies of our privacy policy may be downloaded from our website at: **<<http://www.bcli.org/privacy>>**.

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EXECUTIVE SUMMARY

INTRODUCTION

The British Columbia Law Institute began work on the Strata Property Law Project—Phase Two in summer 2013. The phase-two project builds on the consultation and research carried out in phase one of the project. It addresses legislative reform of the *Strata Property Act*. With the goal of promoting the development of the next generation of the act, the project's purpose is to make recommendations in the following seven areas: (1) fundamental changes to a strata; (2) complex stratas; (3) leasehold stratas; (4) common property; (5) selected governance issues; (6) selected insurance issues; (7) selected land-title issues.

This consultation paper is about one aspect of the first area. It concerns what the *Strata Property Act* calls cancellation of a strata plan and winding up of a strata corporation, which this consultation paper labels, for simplicity's sake, termination of a strata. Termination can be considered the end of life for a strata—the ultimate fundamental change. The timing is right to consider termination, as the earliest stratas created in British Columbia, which date to the 1960s, may soon be encountering difficult choices over repairs, renewal, or termination.

This consultation paper contains proposals for reform of the *Strata Property Act*. Readers may give their views on these proposals by a variety of means—filling out all or part of a response booklet, sending a letter to BCLI, or completing an online survey. BCLI plans to use these responses in crafting its final recommendations for reform. For a response to be considered in this process, BCLI must receive it by **30 September 2014**.

SUMMARY AND FULL CONSULTATIONS

There are two versions of this consultation paper available for public comment.

The summary consultation sets out highlights from the full slate of proposals made on terminating a strata. It contains little in the way of background information and no citation of sources. The summary consultation is located in appendix B to the consultation paper. A freestanding copy may be downloaded from www.bcli.org.

Consultation Paper on Terminating a Strata

The full consultation contains all 21 proposals made on reforming the law of terminating a strata. It also provides the detailed research that was relied on in making those proposals.

The remainder of this executive summary describes only the full consultation.

OUR SUPPORTERS

The Strata Property Law Project—Phase Two has been made possible by project funding from the Real Estate Foundation of British Columbia, the Notary Foundation of British Columbia, the Ministry of Natural Gas Development and Responsible for Housing for British Columbia, the Real Estate Council of British Columbia, the Real Estate Institute of British Columbia, Strata Property Agents of British Columbia, the Association of British Columbia Land Surveyors, and the Vancouver Island Strata Owners Association.

THE STRATA PROPERTY LAW (PHASE TWO) PROJECT COMMITTEE

BCLI is carrying out the Strata Property Law Project—Phase Two with the assistance of an all-volunteer project committee. The members of the project committee are:

Patrick Williams—chair
(Partner, Clark Wilson LLP)

Larry Buttress
(Deputy Executive Officer, Real Estate Council of British Columbia)

Garth Cambrey
(President, Cambrey Consulting Ltd.)

Tony Gioventu
(Executive Director, Condominium Home Owners Association)

Tim Jowett
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Judith Matheson
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Elaine McCormack
(Associate Counsel, Alexander Holburn Beaudin Lang LLP)

Doug Page
(Manager, Housing Policy, Office of Housing and Construction Standards, Ministry of Natural Gas Development and Responsible for Housing)

David Parkin
(Assistant City Surveyor, City of Vancouver)

Allen Regan
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Stanley Rule
(*Lawyer, Sabey Rule LLP*)

Sandy Wagner
(*President of the Board of Directors,
Vancouver Island Strata Owners Association*)

Ed Wilson
(*Partner, Lawson Lundell LLP*)

BACKGROUND ON TERMINATING A STRATA

Introduction

The consultation paper contains two chapters setting out the background to the law on terminating a strata. One chapter describes the development of the law in British Columbia; the other provides a brief survey of how other jurisdictions in Canada, Australia, the United States, and Asia approach termination. But the paper begins with a short overview of the main issues at play in terminating a strata.

An Overview of the Issues

There are many reasons that may drive a strata to seek termination. For example, a strata may be motivated to terminate if the strata building requires extensive repairs or renewal, which may strain the financial means of strata-lot owners. Termination may also seem like an attractive option if the land the strata sits on could be rezoned to enable higher-density development.

Both of these situations crop up relatively rarely in British Columbia, but the first, in particular, may occur with increasing frequency in the near future. This is because the first wave of strata buildings in British Columbia are entering the sixth decade of their existence, a time when major building components may begin to fail.

The *Strata Property Act* borrows a number of corporate-law procedures to facilitate the termination of a strata. But its procedures may only be initiated with the unanimous consent of strata-lot owners. If this demanding standard cannot be met, then an application to the Supreme Court of British Columbia becomes the only option to move the process forward.

Development of the Law in British Columbia

The consultation paper discusses how termination of a strata has evolved in British Columbia from the first strata-property statute enacted in the 1960s to the present day. Legislative provisions on terminating a strata originated in rules that applied when a strata building was destroyed due to a catastrophic event. The act allowed

for the extension of these rules by a legal fiction: strata-lot owners could “deem” their strata to be destroyed, even though the building had suffered no physical damage.

This approach persisted until the development of the *Strata Property Act* in the 1990s. With the enactment of that act, the legislation began to address termination directly. The act provides three procedures for terminating a strata: (1) voluntary winding up without a liquidator; (2) voluntary winding up with a liquidator; and (3) court-ordered winding up. These procedures are modelled on equivalent procedures for for-profit companies. But in a distinctive nod to real-property law, stratas were obliged to obtain the unanimous consent of strata-lot owners to use the two voluntary procedures. There is also extensive court oversight of the process, which especially comes into play if a strata cannot reach the unanimous-consent threshold.

The Law in Other Jurisdictions

The consultation paper examines how other jurisdictions approach termination issues. It shows that British Columbia’s legislation is distinctive in Canadian terms in requiring unanimous consent and in the level of court oversight. A few other Canadian jurisdictions adopt unanimous consent as their threshold for terminating a strata, but most other provinces and territories allow for their procedures to be engaged upon the approval of a supermajority of owners.

The consultation paper also examines how a few international jurisdictions have sought to reform their laws on terminating a strata.

ISSUES FOR REFORM AND TENTATIVE RECOMMENDATIONS

Introduction

The consultation paper makes 21 tentative recommendations for reform of the *Strata Property Act*’s approach to terminating a strata, which can be grouped into the following four areas: (1) general reform and voting threshold; (2) voting and procedural issues; (3) protecting the interests of dissenting owners and registered chargeholders; and (4) transitional and other issues.

General Reform and Voting Threshold

This chapter of the consultation paper begins by grappling with the basic question of whether the time is right to reform the act’s termination provisions. Although those provisions are little used today, they may be called upon more frequently as strata buildings age. The committee proposes tackling reforms before problems arise, rather than in the midst of them.

Next, the consultation paper considers arguments for and against maintaining the voting threshold for authorizing termination at unanimity. While this threshold provides the strongest protection for individual property rights, it creates the possibility that a large majority of owners could be thwarted by the demands of a small minority group. When this occurs, it may be left to the courts to deal with an intractable dispute. In the committee's view, a supermajority threshold, requiring at least 80 percent support from eligible votes, would strike a better balance.

This chapter concludes by examining ideas for incorporating legislative flexibility into setting the voting threshold. One way to achieve this flexibility would be to allow stratas to set for themselves a higher threshold; another would be for the legislation to create different thresholds for different kinds of stratas. The committee viewed these ideas as interesting, but was not prepared to add to the complexity of the act by endorsing them.

Voting and Procedural Issues

The committee's proposal to adopt a different voting threshold for terminating a strata effectively creates a new type of resolution. This chapter is concerned with examining a number of gaps that could arise as a result of creating a new resolution and with making proposals to ensure that this resolution fits seamlessly into the structure of the *Strata Property Act*.

The chapter begins by defining the key phrase *eligible vote* by reference to a strata's Schedule of Voting Rights, or, if it doesn't have one, to the rule of one vote per strata lot. The committee proposes an extended notice period for meetings considering a resolution to terminate, which would be set at 30 days. Votes on this type of resolution should be calculated on the same total-votes basis as is used for resolutions requiring passage by a unanimous vote. Finally, the committee proposes that strata-lot owners should have the right to vote on a resolution authorizing termination, even if the owner is in arrears of certain fees or charges or if the owner's mortgagee ordinarily has the right to exercise the vote attached to the strata lot.

Protecting the Interests of Dissenting Owners and Registered Chargeholders

The two procedures for terminating a strata that do not involve an application to court require the consent of all strata-lot owners and (when the strata is proceeding without the appointment of a liquidator) all holders of registered charges in respect of the strata. Moving to different thresholds for approving termination raises the question of how to protect dissenting owners and registered chargeholders.

The chapter begins by examining the role of the courts in protecting dissenting owners' interests. In British Columbia, the *Strata Property Act* contains a general provision that allows the supreme court to remedy unfair acts. Some other jurisdictions go further, giving their courts oversight of termination disputes motivated by financial issues or other issues that can't be classified as unfair or bad-faith behaviour. The committee does not favour extending the British Columbia court's oversight in this manner. The committee also considered mandatory alternative dispute resolution for termination disputes, ultimately deciding that it is not appropriate for British Columbia's legislation.

The chapter then considers the rule that requires stratas to obtain the unanimous consent of registered chargeholders to termination, if the strata is proceeding without the appointment of a liquidator. The committee proposes replacing this rule with a requirement to give notice to registered chargeholders. Dissenting chargeholders would have an opportunity to apply to court, if they continue to object to termination after the resolution authorizing it has been approved.

Transitional and Other Issues

The consultation paper concludes by examining two issues.

First, it considers the appropriate transitional rule for the committee's proposals. Some legislation does not apply to litigation, contracts, or other arrangements in place before the legislation comes into force. In the committee's view, this transitional rule is not appropriate for its proposals, as it would lead to a very long period before those proposals could begin to be consistently applied. The proposals should apply to all stratas, once they are implemented.

Second, the committee confirms that its proposals are meant to apply to bare-land strata plans. This proposal is included to ensure that there are no doubts on this point.

CONCLUSION

The committee encourages responses to its proposals. Public comments will be fully considered by the committee, as they play an important part in the process of crafting this project's final recommendations. Those final recommendations will be reviewed by the provincial government, for possible implementation by the legislative assembly.

PART ONE—BACKGROUND

CHAPTER I. INTRODUCTION

A. Overview of the Phase-Two Project

BCLI began the Strata Property Law Project—Phase Two in summer 2013. The project's goals are to study seven areas of strata-property law, identify issues calling for reform of the law, and recommend changes to the *Strata Property Act*¹ to address those issues.

The phase-two project builds on BCLI's Strata Property Law Project—Phase One, which was completed in 2012. Over the course of the phase-one project, BCLI carried out initial legal research and focussed consultation with leading experts in the strata-property field. The results of this research and consultation were published in BCLI's *Report on Strata Property Law: Phase One*,² which recommended that BCLI undertake a law-reform project to examine the following subjects: (1) fundamental changes to a strata; (2) complex stratas; (3) leasehold stratas; (4) common property; (5) selected governance issues; (6) selected insurance issues; (7) selected land-title issues.

This consultation paper covers a group of issues connected with the first subject. In many ways, termination is the ultimate fundamental change for a strata: it is a process that results in the cancellation of the strata plan, the dissolution of the strata corporation, and the conversion of the strata ownership model to common-law tenancy in common (or to ownership vested in a liquidator). In a real sense, it is the end of a strata's existence.

This consultation paper contains proposals to reform how the *Strata Property Act* deals with termination. These proposals are open for public comment until **30 September 2014**. After this consultation period closes, responses to the consultation paper will be taken into account in preparing a report that will contain the final recommendations on terminating a strata. This report is projected to be pub-

1. SBC 1998, c. 43.

2. BCLI rep. no. 70 (Vancouver: The Institute, 2012), online: British Columbia Law Institute <<http://www.bcli.org>>.

lished in 2014. The full final report for the project, covering all seven subjects, will be published in December 2016.

The Strata Property Law Project—Phase Two Project has been made possible by project grants from the Real Estate Foundation of British Columbia, the Notary Foundation of British Columbia, the Ministry of Natural Gas Development and Responsible for Housing for British Columbia, the Real Estate Council of British Columbia, the Real Estate Institute of British Columbia, Strata Property Agents of British Columbia, the Association of British Columbia Land Surveyors, and the Vancouver Island Strata Owners Association.

B. The Strata Property Law (Phase Two) Project Committee

In carrying out this phase-two project, BCLI is being assisted by an all-volunteer project committee. The members of the committee are:

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Stanley Rule
(Lawyer, Sabey Rule LLP)

Sandy Wagner
(President of the Board of Directors, Vancouver Island Strata Owners Association)

Ed Wilson
(Partner, Lawson Lundell LLP)

Brief biographies of committee members may be found in appendix D.³

C. Why Publish a Consultation Paper Just on Termination?

This consultation paper is concerned with issues that arise from what the *Strata Property Act* calls cancellation of a strata plan and winding up of a strata corporation. A simpler, generic description of this process is *termination*, which is the word this consultation paper will use when it generally addresses this subject.⁴

The creation of a strata results in a distinctive set of relationships, which has the following major elements: (1) division of piece of land into (a) individual units, which the *Strata Property Act* calls *strata lots*,⁵ which are owned by separate and distinct owners and (b) *common property*,⁶ which (along with any *common assets*)⁷ are owned collectively by the strata-lot owners; and (2) creation of an administrative entity, called a *strata corporation*,⁸ which is responsible for managing and maintaining the common property and common assets for the benefit of the strata-lot owners. The process of termination unwinds these legal relationships, ending the interplay between individual and collective ownership, dissolving the strata corporation, and leaving the former strata-lot owners either as common-law tenants in common

3. See, below, at 111.

4. But note that when this consultation paper makes specific tentative recommendations to reform the *Strata Property Act*, those tentative recommendations will adopt the act's terminology.

5. See, *Strata Property Act*, *supra* note 1, s. 1 (1) "strata lot" ("means a lot shown on a strata plan").

6. See *ibid.*, s. 1 (1) "common property" ("means (a) that part of the land and buildings shown on a strata plan that is not part of a strata lot, and (b) pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located (i) within a floor, wall or ceiling that forms a boundary (A) between a strata lot and another strata lot, (B) between a strata lot and the common property, or (C) between a strata lot or common property and another parcel of land, or (ii) wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property").

7. See *ibid.*, s. 1 (1) "common asset" ("means (a) personal property held by or on behalf of a strata corporation, and (b) land held in the name of or on behalf of a strata corporation, that is (i) not shown on the strata plan, or (ii) shown as a strata lot on the strata plan").

8. See *ibid.*, s. 2 ("(1) From the time the strata plan is deposited in a land title office, (a) a strata corporation is established, and (b) the owners of the strata lots in the strata plan are members of the strata corporation under the name 'The Owners, Strata Plan [the registration number of the strata plan].' (2) Subject to any limitation under this Act, a strata corporation has the power and capacity of a natural person of full capacity.").

or as the ultimate recipients of the strata's property after distribution by a liquidator.

There are several reasons for giving priority to termination issues in the phase-two project by publishing a consultation paper dedicated just to them. These reasons all touch on broader themes, which will play out over the whole of this consultation paper. But it is possible to give a brief initial sketch of them.

First, there is the matter of timing. British Columbia has had strata-property legislation since the mid-1960s. Given the expected lives of major building components, strata developments that went up in the first wave of strata construction may soon be facing obsolescence. Yet termination has received little attention in British Columbia, in contrast to the studies that have been undertaken in other jurisdictions. There is a rare opportunity to take a sustained look at how the *Strata Property Act's* provisions on termination can best work to balance interests fairly, on what is likely going to be the eve of their most serious test.

Second, there has been a recent spate of public interest in terminating a strata. This interest has led BCLI to conclude that a consultation paper (and ultimately, a report) dedicated to termination and published early in the phase-two project may have better prospects for implementation than a report published later.

Third, this topic ties into some broader ideas that are of importance for this project. Although termination can be—and in this consultation paper is—treated as a discrete subject, it also forms an object lesson on some of the trickiest problems in strata-property law. As is well known, this body of law is largely an amalgam of rules drawn from real-property law, land-title practice, easements, corporate law, and contract law. Combining rules from diverse sources can be a difficult task, one which always carries the risk of having unacknowledged tensions. These tensions show through particularly strongly in the *Strata Property Act's* termination provisions. These provisions also highlight in a particularly dramatic way one of the major concerns of strata-property law: balancing individual rights with collective interests. This consultation paper presents an early opportunity to engage with some themes that are likely to set the tone for the whole phase-two project.

D. How to Have Your Say

This consultation paper contains the committee's tentative recommendations for reform of the law of terminating a strata. It offers two ways to comment on them.

The full consultation paper contains all tentative recommendations made by the committee. It also sets out a detailed discussion on the history of British Columbia's

legislation on terminating a strata, the current rules in the *Strata Property Act*, and options for reform pursued in Canada and internationally.

The summary consultation has highlights from the committee's tentative recommendations. It does not include detailed background information. The summary consultation can be found in appendix B.⁹ It can also be obtained as a separate, free-standing document by downloading a copy from www.bcli.org.

E. The Structure of this Consultation Paper

This full consultation paper comprises two parts.

Part one sets out background information on the phase-two project, the development and current position of the law in British Columbia, and how other jurisdictions have tackled termination of a strata.

This background information is extensive and detailed, as it brings together the historical and comparative research that the committee relied on in forming its tentative recommendations. It may be more immediately of interest to legal researchers. But it may be worth the time of all readers to review part one, as it helpfully sets the stage for the committee's proposals to change the law.

Part two contains those proposals, the committee's tentative recommendations for reform. These tentative recommendations are declarative statements of policy positions that the committee is proposing to form the basis of its eventual recommended legislative reforms. The tentative recommendations are grouped in four themes, which form separate chapters in part two. These themes are: (1) general reform and the voting threshold for authorizing termination; (2) voting and procedural issues; (3) protecting the interests of dissenting owners and registered chargeholders; and (4) transitional and other issues.

9. See, below, at 93.

CHAPTER II. BACKGROUND ON THE CURRENT LAW IN BRITISH COLUMBIA

A. An Overview of the Problem

There are many reasons that may motivate a strata to seek termination. These reasons can range from changes in land-use policies to financial pressures to a simple desire on the part of owners to revert to a different ownership system. A recent report noted three such fact patterns that can cause people to want to terminate a strata:

- A strata building requires so much remedial work that it makes more sense to knock the building down and build a new one in its place than to undertake the work.
- A low-rise strata building is in an area that is rezoned to enable higher-rise developments, and there is profit to be made by the property owners in knocking down the low-rise property and building a higher-rise property in its place.
- A strata building (or buildings) [is] situated in a larger area (e.g. a few blocks) that could be redeveloped as part of a broader urban renewal project.¹⁰

These situations do occur from time to time in British Columbia. But they have not cropped up here with great frequency. According to figures provided to the committee by the Land Title and Survey Authority of British Columbia, from September 2011 to December 2013 there were 29 applications made to terminate a strata. Of these 29 applications, 18 involved a duplex. Only four applications concerned stratas with 10 or more strata lots. So it is reasonable to conclude that this province's legislation on termination of a strata has not really been tested in practice.¹¹

But many people see problems lurking just over the horizon, especially in connection with the first point on this list.¹² This view is largely based on the simple pas-

10. Hazel Easthope, Bill Randolph & Sarah Judd, *Governing the Compact City: The Role and Effectiveness of Strata Management: Final Report* (Sydney: City Futures Research Centre, University of New South Wales, 2012) at 26–27.

11. See, e.g., Continuing Legal Education Society of British Columbia, ed., *British Columbia Strata Law Practice Manual*, looseleaf (consulted on 9 May 2014) (Vancouver: Continuing Legal Education Society of British Columbia, 2008) at § 19.1 (“Many of the statutory provisions referred to in this chapter [on fundamental changes to a strata] have been infrequently implemented or judicially considered.”).

12. See, e.g., Frances Bula, “Should You Sell Your Vancouver Condo Today?” *Vancouver Magazine* (1 March 2012), online: Vancouver Magazine <<http://www.vanmag.com>> (sensing “early warning signs of a coming legal apocalypse”).

sage of time. British Columbia's first generation of strata-property legislation appeared in 1966.¹³ Strata buildings that went up in the wake of that legislation are now entering the sixth decade of their existence.¹⁴ At this age, major building components begin to fail. Structural deterioration forces difficult decisions on strata-lot owners. The life of a building can be extended. But renewing buildings can entail extensive, costly repairs. Owners can find themselves financially unable to fund such repairs. But staying in place exacts its own toll. If necessary repairs are delayed, then the value of strata lots in a building can decline. Since a strata lot is the major asset owned by many people, this decline can be a form of impoverishment. It's easy to see how a downward spiral could occur for many stratas.¹⁵

Other developments since 1966 could also exert pressure on stratas. Foremost among these developments are long-term trends in land use and residential development. Land for housing has become increasingly scarce in many British Columbia municipalities, particularly in the Lower Mainland. As a result, land values have spiraled upward. In addition, low-density, greenfield development has fallen in favour. The policy of many municipalities has been more and more to encourage infill residential development at higher densities. This combination of increasing land values and policies in favour of higher-density housing may begin to encourage owners in older stratas to consider termination as a prelude to redevelopment.

A third consideration exists at a conceptual level. People have long acknowledged that strata legislation "reflects the combination of several legal concepts and relies on, and to a degree incorporates by reference, principles drawn from several different areas of law."¹⁶ Within a single legislative framework, strata laws incorporate

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

14. And it should also be borne in mind that some stratas contain buildings that are 80 to 90 years old, making them even older than the first-generation act. This is possible because the stratas are made up of older apartment buildings that were converted into stratas after the passage of the 1966 act. A recent law-review article calculates that, for the period 1970 to 2010, 15 percent of the "new" strata plans in the city of Vancouver were in fact apartment conversions. See Douglas C. Harris, "Condominium and the City: The Rise of Property in Vancouver" (2011) 36 *Law & Soc. Inquiry* 694 at 707. Since 1973, such apartment conversions have required the approval of the municipality, regional district, or first nation in which the building is located. See *Strata Titles (Amendment) Act*, SBC 1973, c. 86, s. 1; *Strata Property Act*, *supra* note 1, s. 242.

15. See *British Columbia Strata Law Practice Manual*, *supra* note 11 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 of strata lots to cancel their strata plan.").

16. *2475813 Nova Scotia Ltd. v. Rodgers*, 2001 NSCA 12 at para. 5, 41 RPR (3d) 129, Cromwell JA (for the court) [*Rodgers*]. See also *Shaw Cablesystems v. Concord Pacific Group*, 2007 BCSC 1711 at

rules drawn from real-property law, corporate law, and contract law.¹⁷ The values that inform these rules can be in tension. On the one hand, property law tends to value individual autonomy, permanence, and stability. On the other, corporate and contract law value majority-rule decision-making, flexibility, and adaptation to changing circumstances. Tensions between these values can be especially acute in high-stakes termination disputes. Striking the right balance in the legislation poses an ongoing challenge for policymakers.

B. Introduction to the Law in British Columbia

This chapter examines how British Columbia law on termination of a strata has developed. This province has had legislation on the subject since the 1966 *Strata Titles Act*.¹⁸ The content of this legislation has changed as the act has changed, going through its own form of generational development. Seeing where British Columbia has come from on termination can help to illuminate why the *Strata Property Act* has adopted its current approach to termination. This chapter closes with a brief discussion of two recent court decisions that highlight some of difficulties of dealing with termination through the civil-litigation system.

C. Origins and Development of the Legislation

1. STRATA TITLES ACT 1966

(a) Introduction

Among the many innovative features of strata properties, the idea of providing for a strata's termination stood out in early legislation as one of the most groundbreaking. An early commentator on British Columbia's act described termination as "an area which is foreign to most people dealing with land law. . . ."¹⁹ The relative strangeness of the concept had a hand in shaping how the 1966 act addressed termination.

The 1966 act contained just two sections dealing with termination of a strata. But it might not have been clear to a casual reader that termination was the sections' subject. The sections' headings announced that their main concern was with "disposi-

para. 10, 288 DLR (4th) 252, Leask J. ("Living in a strata development . . . combines many previously developed legal relationships.").

17. See *Rodgers*, *supra* note 16.

18. *Supra* note 13.

19. K. C. Woodsworth, ed., *Condominiums: Being the edited transcript of a lecture course in Continuing Legal Education held at Vancouver in November, 1971* (Vancouver: Centre for Continuing Education, University of British Columbia, 1971) at 7 [*Condominiums (1971)*].

tion on destruction of a building” and “destruction of a building.”²⁰ This language makes it sound as if they were only engaged by a natural disaster or catastrophic event. In fact, their scope was broader. But it is worthwhile looking first at how they would operate when a strata building suffered damage tantamount to physical destruction. The procedure in these cases was clearer, and it established some ideas that continue to be used today.

(b) Termination on Destruction

The 1966 act did not define “destruction.” In practice, this meant that an architect, engineer, or municipal authority would help a strata to determine if a building was “destroyed” within the scope of the act.²¹ But ultimately the call rested with the owners, who would have to decide whether a building was destroyed and to record this decision by passing a “unanimous or special resolution.”²²

Under the 1966 act, a unanimous resolution required, in effect, the consent of all voters,²³ while a special resolution needed the consent of the holders of 3/4 of the total unit entitlement and 3/4 of the owners.²⁴

Next, the strata would “forthwith” lodge a notice of destruction for registration in the land title office.²⁵ Upon receipt of this notice, the registrar would make an entry

20. *Supra* note 13, ss. 18, 19.

21. See Margaret Fairweather & Lynn Ramsay, *Condominium Law & Practice in British Columbia* (Vancouver: Continuing Legal Education Society of British Columbia, 1996) at § 16.36.

22. *Supra* note 13, s. 19 (1) (a).

23. *Ibid.*, s. 2 “unanimous resolution” (“a resolution unanimously passed at a duly convened meeting of the strata corporation at which all persons entitled to exercise the powers of voting conferred by or under this Act are present personally or by proxy at the time of the motion”). The “persons entitled to exercise the powers of voting” would be, in the main, strata-lot owners, but the 1966 act did allow voting by an owner’s mortgagee in certain defined circumstances (*see ibid.*, s. 7) and it also provided for a substitute voter in cases in which an owner lacked the legal capacity to vote (*see ibid.*, s. 22).

24. *Ibid.*, s. 2 “special resolution” (“a resolution passed at a general meeting of the strata corporation of which at least fourteen days’ notice specifying the purpose of the special resolution has been given by a majority of not less than three-fourths of the total unit entitlement of the strata lots, and not less than three-fourths of all members”). See also *Condominiums (1971)*, *supra* note 19 at 12 (“Now the portion of these unit entitlements [under the 1966 act] settles the voting rights of the strata lot owners; the quantum of share in the common property; and the proportion of contributions to be made by each of them. These unit entitlements are arbitrarily fixed by the owner [developer] at the time of the creation of the strata corporation. He can use whatever basis he wishes—square footage, market value, or a toss of the coin—there’s no guide given in the [1966] Act as to the amount of the unit entitlement of each strata lot.”).

of it on the strata plan.²⁶ Once this entry was made, the owners became “entitled to the land included in the strata plan as tenants in common in shares proportional to the unit entitlement of their respective strata lots.”²⁷

As it can be difficult for a group of co-owners to deal with a piece of property, the act allowed the owners, “by unanimous or special resolution,” to direct the strata corporation to transfer the land or a part of it to a purchaser.²⁸ When such a resolution was passed, owners were obliged to surrender their duplicate certificates of title to the registrar.²⁹ The registrar cancelled these “individual strata lot titles and [issued] a new certificate of title in the name of the strata corporation.”³⁰

After the sale, the owners had the option of winding up the strata corporation, under the supreme court’s supervision.³¹

(c) Termination on Deemed Destruction

These two sections ended up being a functional termination regime that could work in situations other than a natural disaster or catastrophic physical damage to a strata building. This was because their operation turned on owners’ passing a resolution that “deemed a building to be destroyed.”³² Since the 1966 act didn’t define “destroyed,” the owners were free to pass such a resolution “even if no damage exist[ed].”³³ So by means of this legal fiction the sections could be used to terminate a strata “for a variety of purposes the statute did not contemplate.”³⁴

But the 1966 act did not provide the same kind of detailed procedure for termination after a deemed destruction that it provided for termination upon actual destruc-

25. *Supra* note 13, s. 18 (1).

26. *Ibid.*, s. 18 (2).

27. *Ibid.*, s. 18 (3).

28. *Ibid.*, s. 18 (4).

29. *See ibid.*, s. 18 (5).

30. Continuing Legal Education Society of British Columbia, ed., *Condominiums—1977: Being the edited transcript of a lecture course in Continuing Legal Education held in Vancouver in October 1977* (Vancouver: Continuing Legal Education Society of British Columbia, 1977) at 22.

31. *See supra* note 13, s. 19 (7) (a).

32. *Ibid.*, s. 19 (1) (a).

33. *Condominium Law & Practice in British Columbia*, *supra* note 21 at § 16.49.

34. *Ibid.*

tion. In effect, it left it to the owners to work out the steps required in each case for a practical and effective termination of the strata.³⁵

(d) Just and Equitable Winding Up by Court Order

There was an alternative procedure that could be invoked if a unanimous or special resolution could not be obtained. This procedure involved applying to court seeking an order that it was “just and equitable” that the strata be deemed to have been destroyed.³⁶ In considering whether to make this order, the court was directed to have regard “to the rights and interests of the owners as a whole.”³⁷

2. STRATA TITLES ACT 1974—CONDOMINIUM ACT

The next generation of strata-property legislation appeared in British Columbia in 1974.³⁸ This 1974 act was originally entitled the *Strata Titles Act*, but in 1979 it was renamed the *Condominium Act*.³⁹ It retained that name for 19 more years,⁴⁰ until it was repealed and replaced by the *Strata Property Act*.⁴¹

This second-generation act carried forward the deemed-destruction approach to termination found in the first-generation act. But, since the *Condominium Act* was in force for a long and critical period of the development of strata properties in this province and since the current legislation on termination appears to have been shaped, to some degree, as a reaction to earlier approaches to termination, it is worthwhile setting out how the legislation looked on the eve of the enactment of the *Strata Property Act*.

The deemed-destruction process under the *Condominium Act* was invoked by the passage of a special resolution.⁴² Unlike the 1966 act, the *Condominium Act* did not include references to invoking the process by passage of a unanimous resolution.

35. See *ibid.* at § 16.50.

36. *Supra* note 13, s. 19 (1) (b).

37. *Ibid.*, s. 19 (1) (b).

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

39. RSBC 1979, c. 61.

40. See *Condominium Act*, RSBC 1996, c. 64.

41. *Supra* note 1.

42. See *supra* note 40, s. 65 (1). See also *ibid.*, s. 1 (1) “special resolution” (“a resolution passed at a properly convened general meeting of the strata corporation, of which at least 14 days’ notice specifying the purpose of the special resolution has been given, by not less than 3/4 of the votes

Like the 1966 act, the *Condominium Act* did not specify the procedure to be followed after the passage of the special resolution deeming the building to be destroyed. The procedural rules were instead tied into a corresponding section dealing with actual destruction.⁴³ These procedural rules were broadly similar to the procedural rules under the 1966 act, discussed in the previous section.

Finally, the *Condominium Act* allowed for an application to court for a declaration that “it is just and equitable that the building be considered destroyed. . . .”⁴⁴ The act did not set out any guidelines or criteria for the court to consider in determining whether such a declaration was “just and equitable” in any given case.

3. TRANSITION TO THE STRATA PROPERTY ACT

The advent of the *Strata Property Act*⁴⁵ brought about a wholesale change in approach to termination of a strata. The *Strata Property Act* ended the use of the deemed-destruction concept and implemented an approach that dealt directly with termination, without reliance on a legal fiction.

The *Strata Property Act* was the culmination of a reform process carried on throughout the 1990s. The public documents associated with this process do not explain why the act took a new approach to termination of a strata. They don’t really dwell on this topic at all. But it is possible to get a sense from commentary at the time why the legislation went in a new direction.

First, the use of a legal fiction was not a good fit with one of the primary objectives of the reform process: to create a plain-language statute.⁴⁶ Further, there were complaints from lawyers that the deemed-destruction provisions were confusing.⁴⁷ Policymakers were concerned with the anomaly created by focussing on strata buildings and thereby leaving bare-land strata plans outside this system, which meant that

of all persons entitled to vote on the resolution under this Act or the bylaws, present at the meeting in person or by proxy at the time the resolution is passed”).

43. See *ibid.*, s. 64.

44. *Ibid.*, s. 65 (1).

45. *Supra* note 1.

46. 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).

47. See, e.g., *Condominium Law & Practice in British Columbia supra* note 21 at § 16.33 (“They are, without question, the most poorly thought-out sections of the Act.”).

bare-land stratas required their own form of termination.⁴⁸ There were also concerns that “the current rules [under the *Condominium Act*] do not provide sufficient flexibility for strata plan reorganizations” and “do not anticipate all types of potential reorganization.”⁴⁹ Finally, policymakers wanted new legislation to provide, on termination of a strata, for the mandatory winding up of strata corporations “in a manner analogous to the winding-up requirements of the *Company Act*.”⁵⁰

D. The Strata Property Act’s Termination Regime

1. INTRODUCTION

The *Strata Property Act*’s termination regime was crafted to respond to these problems. Notably, it is extensively detailed where the previous process was lacking in detail, and it provides procedural certainty—and even rigidity—in the place of open-ended vagueness.

The *Strata Property Act*’s approach to termination exemplifies to a great degree the point made earlier in this consultation paper that strata-property law is an amalgam of other bodies of law.⁵¹ Conceptually, the termination provisions of the *Strata Property Act* are in tune with property law. Procedurally, they tend to mirror corporate law.

2. THE ROLE OF UNANIMOUS CONSENT

(a) *Consent of Owners*

In order to initiate the process to terminate a strata, “a resolution must be passed by a unanimous vote at an annual or special general meeting.”⁵² A resolution passed by a unanimous vote requires the consent of *all* strata-lot owners to the resolution. This point might not be clear from a first-glance look at the legislation, so it is worth spelling out.

48. See British Columbia, Ministry of Finance and Corporate Relations, *Discussion Paper: Amendments to the Condominium Act* (Victoria: Ministry of Finance and Corporate Relations, 1990) at 23.

49. *Ibid.*

50. *Ibid.*

51. See *supra* note 16 and accompanying text.

52. *Supra* note 1, s. 272 (1).

The act defines *unanimous vote* as “a vote in favour of a resolution by all the votes of all the eligible voters.”⁵³ “Eligible voters” are presumptively strata-lot owners,⁵⁴ but in some cases “a tenant or mortgagee” may have the right to vote in place of an owner.⁵⁵

If a tenant has the owner’s right to vote, the tenant must not exercise that right to vote on the termination of a strata “without the owner’s consent.”⁵⁶ A mortgagee’s right to vote is even more constrained, as the legislation limits it to a list of subjects, which does not expressly mention termination.⁵⁷

A strata lot may have more than one owner. In this instance, the owners share the strata lot’s vote. When owners share a vote, “only one of them may vote on any given matter.”⁵⁸ But if the owners disagree on how to cast that vote, and the chair of the general meeting is advised of that disagreement, then “the chair must not count their vote in respect of that matter.”⁵⁹ This rule effectively requires all owners to consent to termination, as a vote “not counted” means that the proposed resolution has failed to reach the unanimous-vote threshold.

(b) Consent of Chargeholders

The act calls for the written consent to termination of all registered chargeholders, for the bulk of termination applications.⁶⁰ This class would include mortgagees of

53. See *ibid.*, s. 1 (1) “unanimous vote.”

54. See *ibid.*, s. 54 (a). Owners who are in arrears of certain fees and charges may lose the right to vote if the strata (1) is entitled to register a lien on the owner’s strata lot and (2) has a bylaw expressly enabling this rule (see *ibid.*, s. 53 (2)). But this eligibility rule cannot be made to extend to “matters requiring a unanimous vote” (*ibid.*).

55. *Ibid.*, s. 54 (a).

56. *Ibid.*, s. 148 (6).

57. See *ibid.*, s. 54 (c). It’s an open question whether a mortgagee, who meets all the other conditions set out in the act, may implicitly have the right to vote on a resolution authorizing termination. See, below, Part Two, II.4 (c) at 61. But mortgagees’ interests are protected if the strata is proceeding by way of voluntary winding up without a liquidator by a unanimous-consent requirement applicable to registered chargeholders.

58. *Ibid.*, s. 57 (1).

59. *Ibid.*, s. 57 (2).

60. See *ibid.*, s. 274 (b). If the strata is proposing to appoint a liquidator, then the legislation does not expressly impose a requirement to obtain the consent of registered chargeholders.

strata-lot owners, but it is actually much broader in scope, embracing both creditors and holders of non-financial charges.⁶¹

(c) Rationale for Unanimous Consent

It is not completely clear why the *Strata Property Act* reverted to a requirement that the termination process be initiated by a resolution passed by a unanimous vote. The committee understands that this requirement was meant to affirm a guiding place for property-law principles in the new termination regime. There was heightened sensitivity to providing for this guiding role in view of the move to creating, for the first time, an administrative procedure for terminating a strata. (Recall that neither the 1966 act nor the *Condominium Act* spelled out the procedure that should be followed when a strata was deemed to be destroyed.) The concern was that the administrative procedure could be seen as a means to take away property rights.

3. COURT APPLICATIONS REGARDING UNANIMOUS VOTES

What happens if a vote is taken on a resolution to terminate a strata and it falls just short of the unanimous-vote threshold? The act allows the strata to apply, with approval of a resolution passed by a 3/4 vote, to the court for a remedy, if the resolution would have commanded unanimous support except for the vote or votes of

- one strata lot, or
- more than one strata lot but totaling less than five percent of the strata corporation's total votes.⁶²

The court may, "if satisfied that the passage of the resolution is in the best interests of the strata corporation and would not unfairly prejudice the dissenting voter or voters," order that the "vote proceed as if the dissenting voter or voters had no vote."⁶³ The court is also empowered to make "any other order it considers just."⁶⁴ This provision for court applications does not apply to stratas that have fewer than 10 strata lots.⁶⁵

61. See *Land Title Act*, RSBC 1996, c. 250, s. 1 "charge."

62. See *supra* note 1, s. 52 (2).

63. *Ibid.*, s. 52 (3).

64. *Ibid.*, s. 52 (4).

65. *Ibid.*, s. 52 (1).

4. PROCEDURES FOR TERMINATING A STRATA

Once the strata has obtained the owners' unanimous consent (or a court order in the circumstances described in the previous section) then the strata must follow the act's detailed procedures for termination.

The *Strata Property Act* organizes its termination provisions in a way that mirrors equivalent provisions in the province's legislation governing for-profit corporations, the *Business Corporations Act*.⁶⁶ Understanding some of the distinctive terminology used in corporate statutes like the *Business Corporations Act* helps to shed light on how the *Strata Property Act*'s termination procedures are meant to work.

First, as a basic principle of corporate law, the "shareholders, creditors or members of a corporation have no power among themselves to dissolve the corporation, except with the consent of the sovereign or under the authority of the legislation under which the corporation operates."⁶⁷ These people can only "start the process of dissolution into motion."⁶⁸ "[T]he authority to dissolve a corporation," a corporate-law textbook notes, "has always involved either some judgment of a court of competent jurisdiction or a lawful administrative order to that effect."⁶⁹

In corporate law, there are two procedures that may be invoked at the end of a corporation's existence. One or both of these procedures may be used in any given termination of a corporation.

Dissolution is the "final act" for a corporation, the procedure by which its existence is brought to an end.⁷⁰ Or, as one commentator has put it, "the dissolution of a corporation may be equated with the death of the corporation."⁷¹ Corporations are considered to have perpetual existence,⁷² so some affirmative act is necessary to bring that existence to an end. As noted earlier, this act typically entails an application to an

66. SBC 2002, c. 57.

67. Kevin Patrick McGuinness, *Canadian Business Corporations Law*, 2d ed. (Markham, ON: LexisNexis Canada, 2007) at § 15.13.

68. *Ibid.*

69. *Ibid.* [footnote omitted].

70. Continuing Legal Education Society of British Columbia, *British Columbia Company Law Practice Manual*, looseleaf (consulted on 9 May 2014), 2d ed., vol. 1 (Vancouver: Continuing Legal Education Society of British Columbia, 2003) at § 12.1.

71. McGuinness, *supra* note 67 at § 15.6 [footnote omitted].

72. See *Interpretation Act*, RSBC 1996, c. 238, s. 17 (1).

administrative official for an order for dissolution. Less frequently, dissolution may come about by way of a court order.

Dissolution may, or may not,⁷³ be preceded by *liquidation*. Liquidation “is the process by which the ongoing operations of a corporation are brought to an end, its assets are realized, its liabilities discharged, the persons liable to contribute to any shortfall are identified and collected from and in connection therewith all necessary accountings are made, and disputes concerning it are settled or otherwise resolved.”⁷⁴ Another way of thinking of liquidation is to view it as the process of winding down the business or operations of a corporation as a prelude to terminating its corporate existence.

The *Business Corporations Act* uses these two concepts in three distinct procedures:

- voluntary dissolution without liquidation—this is an administrative procedure that is available to business corporations with no assets and either (a) no liabilities or (b) for which adequate provision (as defined by the statute) has been made for any liabilities;⁷⁵
- voluntary liquidation—this occurs when a business corporation has assets or liabilities and the corporation’s shareholders resolve to appoint a liquidator to deal with those assets and liabilities so that the corporation may be dissolved;⁷⁶
- court-ordered liquidation—this occurs when an “appropriate person” (which may be, among others, a shareholder, director, or creditor) applies to the supreme court for an order to appoint a liquidator to liquidate and dissolve the corporation under court supervision.⁷⁷

73. See *British Columbia Company Law Practice Manual*, *supra* note 70 at § 12.1 (“Dissolution may occur if the company has already distributed its assets and discharged or made adequate provision for its debts and liabilities”). In addition, some corporations are dissolved after committing an administrative default. See *Business Corporations Act*, *supra* note 66, s. 422. The classic example of dissolution upon administrative default occurs when a business corporation “fails, in each of 2 consecutive years, to file with the registrar [of companies] an annual report required by [the *Business Corporations Act*] or a former *Companies Act* to be filed” (*ibid.*, s. 422 (1) (a)). The *Strata Property Act* does not have an equivalent to this procedure.

74. See McGuinness, *supra* note 67 at §15.1.

75. See *Business Corporations Act*, *supra* note 66, ss. 314–18.

76. See *ibid.*, ss. 319–23.

77. See *ibid.*, ss. 324–26.

The equivalent procedures in the *Strata Property Act* are called:

- voluntary winding up without liquidator;⁷⁸
- voluntary winding up with liquidator;⁷⁹
- court-ordered winding up.⁸⁰

It is immediately apparent that, although the *Strata Property Act* provisions mirror those found in the *Business Corporations Act*, the two acts don't completely match up. One obvious point of difference concerns language. The *Strata Property Act* uses the term *winding up* in place of *liquidation*. But, legally, nothing of substance turns on this change in expression.⁸¹

A more significant difference between the two acts resides in the need of the *Strata Property Act* to accommodate property-law and land-title issues within the *Business Corporations Act*'s procedural framework. This accommodation is achieved, in part, by making the main administrative official overseeing the process a *registrar*, which is a defined term meaning "a registrar of titles as defined in the *Land Title Act*, includ[ing] a deputy registrar or acting registrar under that Act."⁸²

The sections that follow summarize the three procedures in the *Strata Property Act* for terminating a strata.

5. VOLUNTARY WINDING UP WITHOUT LIQUIDATOR

(a) Introduction

Voluntary winding up without a liquidator is available if the strata has no debts, other than debts secured by registered charges against land shown in the strata plan (a category that would include mortgagees of strata-lot owners) or land held in the name of or on behalf of the strata corporation. So long as this condition can be met,

78. See *supra* note 1, ss. 272–75.

79. See *ibid.*, ss. 276–83.

80. See *ibid.*, ss. 284–85.

81. See McGuinness, *supra* note 67 at § 15.1, n. 1 ("The terms 'winding-up' and 'liquidation' are synonymous."). McGuinness speculates that for-profit corporate statutes prefer *liquidation* as a way of "reflecting the fact that the process normally results in the conversion of all assets of the corporation into money..." (*ibid.* at § 15.1). In this sense, using *winding up* in the *Strata Property Act* would make sense as a matter of diction, since stratas would not be concerned with converting business assets to money for distribution to owners.

82. *Strata Property Act*, *supra* note 1, s. 1 (1) "registrar."

this procedure is likely to be the one favoured by most stratas wishing to terminate, as it avoids the expense involved in appointing a liquidator. This procedure is also wholly administrative in nature. It does not require an application to court.

The procedure is spelled out in four sections of the act, which focus on: (1) the resolution to terminate; (2) the conversion schedule; (3) the application to the registrar; and (4) the registrar's order.

(b) Resolution to Terminate

The resolution to terminate a strata must approve all of the following:

- the cancellation of the strata plan;
- the dissolution of the strata corporation;
- the conversion schedule . . .;
- the conversion of each owner's interest, in the owner's strata lot and in the common property and common assets of the strata corporation, to an interest as a tenant in common in the shares set out in the conversion schedule in
 - land that was shown on the strata plan immediately before it was cancelled,
 - land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, and
 - personal property held by or on behalf of the strata corporation.⁸³

(c) Conversion Schedule

The conversion schedule is an important document for this procedure. It essentially describes how the distinctive ownership structure of a strata will be unwound and converted into a form of common-law joint ownership called tenancy in common.

The act contains extensive requirements for what a conversion schedule must contain and do. A conversion schedule must do all of the following:

- state whether the strata corporation holds land in its name, or has land held on its behalf, that is not shown on the strata plan;
- identify land shown on the strata plan and land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, by legal description sufficient to allow the registrar to identify it in the records of the land title office;
- list the name and postal address of each owner and registered charge holder of the land;

83. *Ibid.*, s. 272 (2).

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- list all registered interests in the land
 - as they exist at the time of the resolution, and
 - as they will exist if the registrar grants an order and the owners become tenants in common in shares calculated according to the following formula:

most recent assessed value of an owner's strata lot

most recent assessed value of all the strata lots in the
strata plan, excluding any held by or on
behalf of the strata corporation.⁸⁴

The last bullet point sets out the formula for converting a strata-lot owner's interest in the strata into an interest in the property as a tenant in common with the other owners. This formula turns on the values of the strata lots as determined by BC Assessment. For cases in which an assessment has not been made of a strata lot, the legislation provides that "in place of the assessed value" in this formula, the strata may use "an appraised value"

- that has been determined by an independent appraiser, and
- that is approved by a resolution passed by a 3/4 vote at an annual or special general meeting.⁸⁵

(d) Application to Registrar

Voluntary winding up without a liquidator is an administrative procedure. Once a strata has held its general meeting and created its conversion schedule, it is in position to apply not to the court but rather to the registrar of land titles for approval to terminate the strata.

The application to the registrar must be accompanied by the following documents:

- the conversion schedule;
- the written consent to the winding up signed by all holders of registered charges against land shown on the strata plan and land held in the name of or on behalf of the strata corporation, but not shown on the strata plan;
- a Certificate of Strata Corporation in the prescribed form stating that

84. *Ibid.*, s. 273 (1).

85. *Ibid.*, s. 273 (2). Another rule applies if the strata has a schedule of interest on destruction, which was required under previous legislation. In these cases, "that schedule determines the owner's interests in the land and personal property on the winding up of the strata corporation and for that purpose replaces the formula" described in the text (*ibid.*, s. 273 (3)).

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- the unanimous resolution . . . has been passed and the conversion schedule conforms to the resolution, and
- the strata corporation has no debts other than debts held by persons [*i.e.*, the registered chargeholders described in a previous bullet point] who have consented in writing . . . to the winding up of the strata corporation;
- a reference plan, in a form required under the *Land Title Act*, that shows
 - the land shown on the strata plan, and
 - the land held in the name of or on behalf of the strata corporation, but not shown on the strata plan; and
- any document required by the registrar
 - to resolve the priority of interests of any registered charges against the land shown on the strata plan or held in the name of or on behalf of the strata corporation, but not shown on the strata plan, or
 - to transfer title.⁸⁶

This list of documents has the effect of imposing some important substantive requirements on a voluntary winding up of a strata without a liquidator. For instance, the strata is required to submit the written consents to its termination from all registered chargeholders. A registered chargeholder could be the holder of a financial or a non-financial charge. It is a very broad class. In fact, when the strata is proceeding without the appointment of a liquidator, the broader class of registered chargeholders must include all of the strata's creditors. This conclusion follows from the requirements of using this procedure and is illustrated by the Certificate of Strata Corporation, from the list of documents set out above, which calls for the strata to certify that it has no debts, other than those held by registered chargeholders.

(e) Registrar's Order

If the registrar is satisfied with the application, then the registrar may order that:

- the strata plan is cancelled, and
- land that was shown on the strata plan or held in the name of or on behalf of the strata corporation, but not shown on the strata plan, vests in the owners as tenants in common in the shares set out in the conversion schedule.⁸⁷

The legislation spells out the effect of this order:

- the strata corporation is dissolved,

86. *Ibid.*, s. 274.

87. *Ibid.*, s. 275 (1).

- the owners are owners, as tenants in common, of
 - the land in accordance with the titles registered by the registrar, and
 - the personal property in shares equal to their shares of the land as set out in the conversion schedule,
- any encumbrances against each strata lot and the common property are claims against the interest of each owner in the land and interests appurtenant to the land in the strata plan, and have the same priority they had before the registrar's order,
- all claims against the property created after the deposit of the strata plan, other than the encumbrances mentioned in [the preceding bullet point], are extinguished, and
- owners are jointly and individually liable for the debts of the strata corporation to the creditors who do not have claims against the property of the strata corporation.⁸⁸

6. VOLUNTARY WINDING UP WITH LIQUIDATOR

(a) Introduction

The next two procedures are more complex and expensive than voluntary winding up without a liquidator. They would typically be used if the strata is not able to certify that it has no debts (other than those held by registered chargeholders) or if there were some dispute in existence or on the horizon that would lead the strata to prefer a court-directed process to an administrative one.⁸⁹

Voluntary winding up with a liquidator is modeled on an equivalent procedure in the *Business Corporations Act*. It also draws on the *Business Corporations Act* to fill any gaps that may be found in the *Strata Property Act* provisions.⁹⁰ The sections that follow review the major pieces of the complex system of voluntary winding up with a liquidator, which are (1) liquidators; (2) the resolution to terminate; (3) the interest schedule; (4) the vesting order; (5) filing the vesting order with the registrar; (6) approval of disposition of property; (7) application for dissolution.

(b) Liquidators

The liquidator holds an office with some distinctive qualities. A liquidator essentially steps into the shoes of the corporation's governing body and manages the corporation during the liquidation process. The liquidator's goal is not to manage the corporation's operations on an ongoing basis; it is to bring the corporation's operations to

88. *Ibid.*, s. 275 (4).

89. See McGuiness, *supra* note 71 at §15.40 (noting that for business corporations "where there are disputes even if relatively amiable, or outstanding or expected proceedings[,] a court-supervised liquidation is the more rational course of action").

90. See *supra* note 1, s. 276.

an end. This is done by calling in any assets and converting them to money, paying any liabilities, and compromising any disputes. But the liquidator is considered to be more than an interim manager of the corporation. The liquidator is also an officer of the court, with special powers to carry out its mandate.⁹¹

A liquidator must meet certain statutory standards, which are imposed by the *Business Corporations Act*,⁹² which incorporates by reference standards for receivers found in the *Personal Property Security Act*.⁹³

(c) *Resolution to Terminate*

Under this procedure, a liquidator is appointed by a resolution of the strata. As was the case with the previous procedure, this resolution must be presented at an annual general meeting or at a special general meeting. The resolution must be approved by a unanimous vote.⁹⁴

In addition to appointing the liquidator, and setting out that person's name and address, the resolution must approve a series of other actions, which are similar to the actions approved by a unanimous resolution under the previous procedure. Specifically, the resolution must approve all of the following:

- the cancellation of the strata plan;
- the dissolution of the strata corporation;
- the surrender to the liquidator of each owner's interest in
 - land shown on the strata plan,
 - land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, and
 - personal property held by or on behalf of the strata corporation;
- an estimate of the costs of winding up;
- the interest schedule. . . .⁹⁵

91. See McGuiness, *supra* note 71 at §15.39.

92. See *supra* note 66, s. 327.

93. See RSBC 1996, c. 359, s. 64 (2) (requiring receivers to meet standards in relation to age, mental capacity, corporate registration, bankruptcy, corporate-insider status, trusteeship, criminal convictions, and residency).

94. See *Strata Property Act*, *supra* note 1, s. 277 (1).

95. *Ibid.*, s. 277 (3).

(d) Interest Schedule

The interest schedule is this procedure's equivalent to the conversion schedule. It provides the roadmap for how the strata's property will be converted from strata-titled ownership to property held by the liquidator for the purpose of ratable distribution to the owners.⁹⁶

Most of the information required under the interest schedule is the same as that required under the conversion schedule.⁹⁷ The interest schedule also relies on the same conversion formula using assessed value of strata lots or, if assessed value is unavailable, appraised value.⁹⁸

The only significant difference between the two is that the interest schedule requires more information on creditors. Unlike the conversion schedule, the interest schedule requires the listing of "the name, postal address and interest of each creditor of the strata corporation who is not a holder of a registered charge against the land."⁹⁹ Such a requirement is not necessary for the conversion schedule because these creditors will not be in existence if the strata is proceeding by way of voluntary winding up without a liquidator. In a corporate winding up, a liquidator typically takes "more elaborate steps to identify creditors ..." than would be seen in a voluntary winding up without a liquidator.¹⁰⁰

(e) Vesting Order

The liquidator is required to apply to the supreme court for an order within 30 days of appointment. The court order confirms the liquidator's appointment and vests in the liquidator

- land shown on the strata plan,
- land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, and
- personal property held by or on behalf of the strata corporation.¹⁰¹

96. See *ibid.*, s. 278.

97. See *supra* note 84 and accompanying text.

98. See *supra* note 85 and accompanying text.

99. *Strata Property Act*, *supra* note 1, s. 278 (1) (e).

100. Andrew J. McLeod & Ian N. MacIntosh, *British Columbia Business Corporations Act & Commentary* (Markham, ON: LexisNexis Canada, 2011) at 55.

101. *Strata Property Act*, *supra* note 1, s. 279 (1).

The liquidator holds all these property interests “for the purpose of selling the land and personal property and distributing the proceeds as set out in the interest schedule.”¹⁰² The court may only grant this order if the strata has met the act’s requirements for the resolution appointing the liquidator.¹⁰³

At this point it is worthwhile noticing a significant difference between a voluntary winding up of a strata without a liquidator and a voluntary winding up with a liquidator. When a strata applies to the registrar in a voluntary winding up without a liquidator, the strata must certify that it has obtained “the written consent to the winding up signed by all holders of registered charges.”¹⁰⁴ There is no equivalent requirement when a liquidator applies for a vesting order from the supreme court.¹⁰⁵

(f) Filing Vesting Order

The liquidator must deliver the vesting order and interest schedule to the registrar. If the registrar is satisfied that “the legal description of the land in the interest schedule is sufficient to allow the registrar to identify it in the records of the land title office, and the liquidator will have a good, safeholding and marketable title to the land,” then the registrar must file the vesting order and interest schedule.¹⁰⁶

The effect of filing the vesting order is the following:

- the strata plan is cancelled,
- the registrar must register indefeasible title in the name of the liquidator to
 - the land that was shown on the strata plan immediately before it was cancelled, and
 - the land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, and
- the personal property of the strata corporation vests in the liquidator.¹⁰⁷

102. *Ibid.*

103. *See ibid.*, s. 279 (2). *See also supra* note 95 and accompanying text.

104. *Strata Property Act*, *supra* note 1, s. 274 (b).

105. *See ibid.*, s. 279.

106. *See ibid.*, s. 280 (2).

107. *Ibid.*, s. 281.

(g) Approval of Disposition

The liquidator must obtain the owners' approval before disposing of any land or personal property. This approval must come in the form of a resolution passed by a 3/4 vote at an annual general meeting or a special general meeting.¹⁰⁸

(h) Application for Dissolution

The registrar may not file an application for dissolution of the strata corporation unless it is accompanied by "a Certificate of Strata Corporation in the prescribed form stating that the final accounts referred to in the application have been approved by a resolution passed by a 3/4 vote at an annual or special general meeting."¹⁰⁹

7. COURT-ORDERED WINDING UP

(a) Introduction

The first two procedures for terminating a strata rely on the voluntary consent of owners. They are initiated by the passage of a resolution by a unanimous vote. If a resolution passed by a unanimous vote can't be obtained, then section 52 allows stratas with 10 or more strata lots to seek an order allowing the process to go ahead if the resolution is supported by all of the strata corporation's votes except for

- the vote in respect of one strata lot, in a strata corporation comprised of at least 10 strata lots, or
- the votes in respect of more than one strata lot, if those votes together represent less than 5% of the strata corporation's votes.¹¹⁰

The court may only make this order if passage of the resolution is in the best interests of the strata corporation and would not unfairly prejudice the dissenting voter or voters.¹¹¹

If these high thresholds can't be met, then there is another procedure that remains available to terminate a strata—a court-ordered winding up.

108. *See ibid.*, s. 282.

109. *Ibid.*, s. 283.

110. *See ibid.*, s. 52 (2).

111. *See ibid.*, s. 52 (3).

(b) Application for Court Order

The legislation allows any of the following people to apply to the supreme court for an order to wind up the strata:

- an owner of a strata lot;
- a mortgagee of a strata lot;
- any other person the court considers appropriate.¹¹²

The court may grant the order if it is of the opinion that “the winding up would be in the best interests of the owners, registered charge holders and other creditors.”¹¹³

In determining whether this best-interests standard is met, the court must consider

- the scheme and intent of the *Strata Property Act*,
- the probability of unfairness to one or more owners, registered charge holders or other creditors, if winding up is not ordered, and
- the probability of confusion and uncertainty in the affairs of the strata corporation or the owners if winding up is not ordered.¹¹⁴

(c) Procedure

The procedure for a court-ordered winding up follows the procedure for a voluntary winding up with a liquidator, with the exception that the court retains the power to vary any of the procedural requirements.¹¹⁵

(d) When a Court Will Order Winding Up and Dissolution

The *Strata Property Act*’s provisions on court-ordered winding up have not received much judicial consideration, but there is a vast body of jurisprudence on the application of similar legislation in corporate law. As one commentator on this jurisprudence has observed, “[t]he court may order the compulsory winding up of a corporation in three general situations: first, where such an order is justified by oppressive or unfairly prejudicial conduct; second, where the corporate purpose of the corpora-

112. See *ibid.*, s. 284 (1).

113. *Ibid.*, s. 284 (2).

114. *Ibid.*, s. 284 (3).

115. See *ibid.*, s. 285. See also *British Columbia Company Law Practice Manual*, *supra* note 70 at § 12.29 (noting that “[f]or the most part, the process of liquidation is the same regardless of whether the liquidation is voluntary or court ordered”).

tion is spent or frustrated; and third, where it is otherwise just and equitable to do so.”¹¹⁶

It is an open question whether, or the extent to which, any of this corporate-law jurisprudence applies to stratas. The third situation—a “just and equitable” winding up—appears to have been restated or replaced by the best-interests standard and guidelines in the act.¹¹⁷ As for the other two situations, there is one example of a court¹¹⁸ that was willing to consider ordering the winding up of a strata in the course of considering a remedy under section 164 of the *Strata Property Act*,¹¹⁹ which is concerned with “preventing or remedying unfair acts.”¹²⁰ This provision is the equivalent of corporate legislation directed at “oppressive or unfairly prejudicial conduct,”¹²¹ which is the first situation in which courts have ordered the winding up of a corporation. On the other hand, it is difficult to see how the second situation (“where the corporate purpose of the corporation is spent or frustrated”) could apply to a strata.

G. Cancellation of a Bare-Land Strata Plan

1. INTRODUCTION

Some special procedural requirements apply when termination concerns a bare-land strata plan.

2. WHAT IS A BARE-LAND STRATA PLAN?

The act defines “bare land strata plan” to mean “a strata plan on which the boundaries of the strata lots are defined on a horizontal plane by reference to survey markers and not by reference to the floors, walls or ceilings of a building.”¹²² The act also empowers the executive council to add any other type of strata plan to this defini-

116. McGuinness, *supra* note 67 at §15.42.

117. *See supra* note 1, s. 284.

118. *Buchanan v. Strata Plan VR 1411*, 2008 BCSC 977, 170 ACWS (3d) 882 [*Buchanan*].

119. *Supra* note 1.

120. *See Buchanan*, *supra* note 118 at para. 38, Curtis J. (“... I am convinced that the probability of confusion and uncertainty if winding up is not ordered very significantly exceeds the probable extent of those factors if it is.”). But, in the end, the court held off on its order, giving the parties some time “to contemplate the possibilities as there may be better ways to realize their respective interests” (*ibid.* at para. 39).

121. *See, e.g., Business Corporations Act*, *supra* note 66, s. 227.

122. *Supra* note 1, s. 1 (1).

tion by adopting a regulation to that effect, but no such regulation has ever been adopted.

A legal textbook notes that “[a] bare land strata lot has in many ways more in common with a lot subdivided under the *Land Title Act* than with a conventional strata lot.”¹²³ Typically, bare-land stratas are used when the developer—rather than a municipality or public agency—plans to install utilities or roads on the site.¹²⁴ They are commonly used for recreational developments, but can also be employed for commercial or residential developments.¹²⁵

By virtue of surveying guidelines, any building depicted in a bare-land strata plan must be shown on the common property for the strata.¹²⁶

3. PROCEDURE FOR CANCELLING A BARE-LAND STRATA PLAN

In many respects, cancellation of a bare-land strata plan does not differ from cancellation of any other strata plan. The major substantive requirements are the same. Most notably, cancellation requires a unanimous resolution of the strata corporation that the plan be cancelled. It also requires the unanimous consent of holders of charges or encumbrances against the land in the plan (unless the strata has appointed a liquidator).¹²⁷

There are some “specific requirements”¹²⁸ that only apply to cancellation of bare-land strata plans. These requirements are found in the *Bare Land Strata Plan Cancellation Regulation*.¹²⁹ In the main, they amount to special procedures that are adopted for owners applying to the registrar to cancel a bare-land strata plan.

123. *British Columbia Strata Law Practice Manual*, *supra* note 11 at § 2.5.

124. *See ibid.*

125. *See ibid.*

126. *See* Association of British Columbia Land Surveyors, *General Survey Instruction Rules*, version 3.5, March 2014, s. 209, adopted under *Land Surveyors Act*, RSBC 1996, c. 248, s. 75.

127. *But see Bare Land Strata Plan Cancellation Regulation*, BC Reg. 556/82, s. 2 (4) (enabling registrar to “accept an application to cancel a bare land strata plan that has not been consented to by all the owners of charges against the land in the plan if the interests of the owners who have not consented to the cancellation will not be affected by the cancellation”).

128. *British Columbia Strata Law Practice Manual*, *supra* note 11 at § 19.27.

129. *Supra* note 127.

The regulation requires that an application (in a prescribed form) to the registrar to cancel a bare-land strata plan include the following:

- the date of deposit of the plan in the land title office, its number and the description of the land within the plan,
- a statement as to whether the land is situated in a certain municipality or in a rural area,
- a statement of the improvements to and the occupation of the land in the plan,
- a statement of the assets, other than the common property, and the debts and liabilities of the strata corporation,
- proposals for the vesting or other disposition of the land in the plan, including the common property and improvements, upon cancellation,
- proposals for the vesting or other disposition of the assets of the strata corporation, other than the common property, upon cancellation,
- proposals for the winding up of the affairs of the strata corporation, including the discharge of all debts and liabilities, and
- the name, occupation and post office address of each owner and the description of the land owned by each owner.¹³⁰

The application must be accompanied by the following documents:

- a certified copy of an unanimous resolution of the strata corporation that the plan be cancelled,
- . . . a written consent to the cancellation from each owner of a charge or encumbrance against the land in the plan,
- all documents that are required to carry out the proposals for vesting or other disposition of the land in the plan, and
- an affidavit of an owner of land in the plan, verifying the contents of the application.¹³¹

If the application complies with “the requirements of [the] regulation and the *Land Title Act*,” then the registrar will:

- cancel the bare land strata plan,
- register the documents [for the vesting or disposition of the land], issue a new certificate of title and amend his records accordingly, and

130. *Ibid.*, s. 2 (2).

131. *Ibid.*, s. 2 (3). The requirement to submit creditors’ consents is subject to the registrar’s authority noted *supra* note 127.

- declare the strata corporation dissolved.¹³²

H. Termination in Court: Common-Law Condominiums

There is not much jurisprudence on terminating a strata in British Columbia. But two recent cases have received a good deal of attention.¹³³ These cases aren't strictly on point, because they both involve so-called common-law condominiums. These are shared-property developments that were organized outside strata-property legislation but that mimic many of the aspects of stratas. Common-law condominiums experience of the termination process in court may give a sense of how stratas would fare in dealing with termination disputes in the civil-litigation system.¹³⁴

*McRae v. Seymour Village Management Inc.*¹³⁵ involved a development consisting of eight buildings, which dated to the early 1970s.¹³⁶ In *McRae*, the petitioners sounded some of the themes that have been emphasized in academic research on why stratas may be motivated to seek termination.¹³⁷ They sought an order for sale of the development because its buildings were "nearing the end of their useful lives"¹³⁸ and they were concerned that "over time the buildings will fall into further and further disrepair, markedly affecting their resale value."¹³⁹ In addition, recent zoning changes made redevelopment of the development's land an option for the owners.¹⁴⁰

132. *Ibid.*, s. 4 (1). The regulation also allows for an application that combines the cancellation of a bare-land strata plan with approval of a subdivision plan for the land. *See ibid.*, s. 4 (2).

133. *Mowat v. Dudas*, 2012 BCSC 454, 35 BCLR (5th) 164 [*Mowat*]; *McRae v. Seymour Village Management Inc.*, 2014 BCSC 714, [2014] BCJ No. 766 (QL) [*McRae*]. *See also* Bula, "Should You Sell Your Vancouver Condo Today?," *supra* note 12 (discussing *Mowat*); Frances Bula, "Shared Property Owners in North Vancouver Can Force Sale, B.C. Supreme Court Rules" *The Globe and Mail* (21 January 2014), online: The Globe and Mail <<http://www.theglobeandmail.com/>> (discussing *McRae*).

134. *See British Columbia Strata Law Practice Manual*, *supra* note 11 at § 19.30 ("Although this case did not involve the winding up of a strata corporation, a court considering such an application might well approach the issue in the same way.").

135. *Supra* note 133.

136. *Ibid.* at para. 2, Fenlon J. ("[t]he complex was built about 40 years ago. . .").

137. *See supra* note 10 and accompanying text.

138. *McRae*, *supra* note 133 at para. 21.

139. *Ibid.* at para. 24.

140. *See ibid.* at para. 9

The court decided the case by exercising its discretion under the *Partition of Property Act*.¹⁴¹ After carefully reviewing the respondents' arguments that termination would cause them serious hardship,¹⁴² the court noted that the vast majority of the developments owners favoured the order for sale.¹⁴³ The court was reluctant to characterize this majority's actions as unfair, so it granted the petitioners their order.¹⁴⁴

An earlier case with some similar facts to *McRae* was called *Mowat v. Dudas*.¹⁴⁵ The condominium complex in *Mowat* was aging, and a group of owners felt that it made economic sense to transfer the entire site to a developer.¹⁴⁶ They sought an order for sale under the *Partition of Property Act*.¹⁴⁷ This group was opposed by another group of owners, who argued that the court should "exercise its discretion [under that act] to refuse [to order] a sale."¹⁴⁸ The court's extensive review of the evidence given by various owners in the complex provides some indication of what a court is likely to consider in exercising its discretion under section 52 of the *Strata Property Act*. This discretion allows a strata to proceed with termination if it falls short of the unanimous vote threshold, so long as the termination is "in the best interests of the strata corporation."¹⁴⁹ In dismissing the application for partition, the court focussed on the

141. RSBC 1996, c. 347.

142. See *McRae*, *supra* note 133 at paras. 29–42.

143. See *ibid.* at para. 43 ("more than 90% of the owners have concluded that a sale of the property will not only permit them to maximize their current investment but will also give them an opportunity to move into a new, modern unit which will not carry with it the risk of significant capital expenditures and which will be easier to both manage and sell in the future").

144. See *ibid.* at para. 44 ("The respondents' view is, understandably, that it is not fair for them to be forced from their homes. I acknowledge how difficult that prospect is, but forced sale of co-owned property has been part of our law for a very long time. Shared ownership has advantages. It permits those who might not otherwise be able to own a home to do so, but it also has significant disadvantages — a forced sale by the other co-owners is one of them.").

145. *Supra* note 133.

146. See *British Columbia Strata Law Practice Manual*, *supra* note 11 at § 19.30 ("... [*Mowat*] was a prime example of what occurs when condominiums age and either have not been well maintained and the cost to upgrade (or, in many instances, replace) is prohibitive, or for some other reason are no longer the best use of a property.").

147. *Supra* note 141.

148. *Mowat*, *supra* note 145 at para. 105.

149. *Supra* note 1, s. 52 (3).

hardship that this form of termination would cause to many of the development's residents.¹⁵⁰

Mowat is noteworthy because it shows some of the underside of extensive court involvement in strata termination. The lengthy judgment reflects the time and expense involved in taking and considering evidence from a large group of owners. Since much of this evidence is highly personal, and since the act gives little guidance to the court on how to apply its broad-based discretion, this time and expense is compounded. Further, the outcome of such complex litigation is unpredictable. The uncertainty that is inherent in the civil-litigation process, along with its delays and costs, could discourage some stratas from pursuing termination.

150. See *British Columbia Strata Law Practice Manual*, *supra* note 11 at § 19.30 ("Considering all the circumstances of the case, including but not limited to the hardship deposed by many owners, the court dismissed the application.").

CHAPTER III. THE LAW ON TERMINATING A STRATA IN OTHER JURISDICTIONS

A. Introduction

British Columbia is not the only jurisdiction to have grappled with how to craft legislation governing the termination of a strata. Provisions on this topic are a feature of strata legislation in force elsewhere in Canada, and in jurisdictions further afield. This chapter provides a summary of some of that legislation. Its focus is on how the Canadian provinces and territories outside British Columbia address termination. It also touches more briefly on some approaches found in the United States, Australia, and selected Asian countries. The goal of this chapter is to use this information to shed light on the issues for reform facing British Columbia and to point to some provisions and policies that may help in formulating options for reform of the law in this province.

B. The Law Elsewhere in Canada

1. INTRODUCTION

There is a wide variety of legislative approaches to terminating a strata in the rest of Canada.¹⁵¹ The legislation of the provinces and territories differs considerably in detail, but the basic organization of the statutes follows a few broad trends. Most provinces and territories distinguish between the following types of termination:

- termination by consent of owners and registered chargeholders;
- termination by sale of the condominium;¹⁵²
- termination by court order;
- termination upon substantial damage to the condominium.

These categories do not fit particularly well with the termination provisions of the *Strata Property Act*, but some broad comparisons and contrasts can be made. Termination by consent is roughly similar to voluntary winding up without a liquidator under the *Strata Property Act*. There is no real equivalent to termination by sale in

151. See, below, appendix C at 105 (comparative chart of termination provisions in force across Canada).

152. *Condominium*, not *strata property*, is the favoured term in every Canadian province and territory apart from British Columbia.

the *Strata Property Act*. Termination by court order is similar to a court-ordered winding up under the *Strata Property Act*, but in most provinces and territories it's much closer to the older mechanism of just-and-equitable winding up. Similarly, termination upon substantial damage is related to the old destruction and deemed-destruction provisions of British Columbia's legislation, but it tends to be better developed in these other provinces and territories.

2. COMPARISON WITH BRITISH COLUMBIA

A comparison of British Columbia's provisions on termination with those found in the rest of Canada shows how out of step many of this province's requirements are.

Only four provinces—Saskatchewan,¹⁵³ New Brunswick,¹⁵⁴ Nova Scotia,¹⁵⁵ and Newfoundland and Labrador¹⁵⁶—require the unanimous consent of voters¹⁵⁷ to terminate a condominium by consent under their schemes. But Nova Scotia and Newfoundland and Labrador allow termination by sale with the consent of at least 80 percent of voters,¹⁵⁸ so only Saskatchewan and New Brunswick are similar to British Columbia in having an across-the-board unanimity requirement. The other provinces and territories all set their voting thresholds at a lower percentage. The range is as low as at least 66 2/3 percent of voters in Yukon¹⁵⁹ to not less than 80 percent in a number of jurisdictions.¹⁶⁰ All of these jurisdictions in fact set the

153. See *The Condominium Property Act, 1993*, SS 1993, c. C-26.1, s. 83 ("The condominium status of a building or land may be terminated by a unanimous resolution.").

154. See *Condominium Property Act*, SNB 2009, c. C-16.05, s. 54 (1) (a) ("by a vote of the owners of 100% of the common elements").

155. See *Condominium Act*, RSNS 1989, c. 85, s. 41 (1) (a) ("by a vote of owners who own one hundred per cent of the common elements").

156. See *Condominium Act, 2009*, SNL 2009, c. C-29.1, s. 63 (1) (a) ("by the consent of all the owners of the common elements").

157. The neutral term *voters* is used in place of *owners* to better track variations in how voting power is determined under the various provinces' and territories' legislation.

158. See Nova Scotia: *Condominium Act*, *supra* note 155, s. 40 (1) ("a vote of owners who own at least eighty per cent of the common elements"); Newfoundland and Labrador: *Condominium Act, 2009*, *supra* note 156, s. 61 (1) (a) ("authorized by the consent of 80% of the owners of the common elements"). See also *Rodgers*, *supra* note 16 (judicial consideration of Nova Scotia's two provisions).

159. See *Condominium Act*, RSY 2002, c. 36, s. 22 (1) ("a vote of owners who own 66 2/3 per cent ... of the common elements").

160. See *The Condominium Act*, RSM 1987, c. C170, CCSM c. C170, s. 22 (1) (a) ("by a vote of the owners who own 80% ... of the common elements"); *Condominium Act, 1998*, SO 1998, c. 19, s. 122 (1) (a) ("the owners of at least 80 per cent of the units, at the date of the vote, vote in fa-

consent of at least 66 2/3 percent or 80 percent of voters as a floor for termination by consent and allow condominiums to vary the threshold upward by placing a specific rule in their declarations.¹⁶¹ Finally, Alberta allows termination to be authorized by a special resolution.¹⁶²

British Columbia is closer to the national consensus on court-ordered termination. The legislation on this topic typically allows as little as one owner, one registered chargeholder, or one interested party to bring the application.¹⁶³ It also tends to call for an order to be made only if it is just and equitable to do so—but the legislation also sets out a series of criteria that courts must consider in determining what is just and equitable in the circumstances. Typically, the court is required to consider:

- the scheme and intent of the act;
- the probability of unfairness to the owners if the court does not order termination;
- the probability of confusion and uncertainty in the affairs of the [condominium] corporation or of the owners if the court does not order termination; and

pour of termination”); *Condominium Act*, RSPEI 1988, c. C-16, s. 25 (1) (a) (“by a vote of owners who own eighty per cent . . . of the common elements”); *Condominium Act*, RSNWT 1988, c. C-15, s. 28 (1) (a) (“a vote of the persons owning 80% of the common elements”). Manitoba has passed a new act that will require either unanimous consent of unit owners to termination or consent at a general meeting “by unit owners who hold the specified percentage of the voting rights in the corporation.” The regulations that will specify this percentage were not yet in effect when this consultation paper was being prepared. See *The Condominium Act*, SM 2011, c. 30, s. 259 (not in force).

161. A “declaration” is one of the governing documents commonly required under legislation in force outside British Columbia. The *Strata Property Act* does not require or refer to declarations. A declaration would be roughly analogous to a strata plan, in some respects, and to strata bylaws in others.

162. See *Condominium Property Act*, RSA 2000, c. C-22, s. 60. See also *ibid.*, s. 1 (1) (x) (“‘special resolution’ means a resolution (i) passed at a properly convened meeting of a corporation by a majority of not less than 75% of all the persons entitled to exercise the powers of voting conferred by this Act or the bylaws and representing not less than 75% of the total unit factors for all the units, or (ii) agreed to in writing by not less than 75% of all the persons who, at a properly convened meeting of a corporation, would be entitled to exercise the powers of voting conferred by this Act or the bylaws and representing not less than 75% of the total unit factors for all the units”).

163. See Alberta: *Condominium Property Act*, *ibid.*, s. 64; Saskatchewan: *The Condominium Property Act*, 1993, *supra* note 153, s. 90; Manitoba: *The Condominium Act*, *supra* note 160, s. 23; Ontario: *Condominium Act*, 1998, *supra* note 160, s. 128; New Brunswick: *Condominium Property Act*, *supra* note 154, s. 56; Prince Edward Island: *Condominium Act*, *supra* note 160, s. 26; Nova Scotia: *Condominium Act*, *supra* note 155, s. 43; Yukon: *Condominium Act*, *supra* note 159, s. 23; Northwest Territories and Nunavut: *Condominium Act*, *supra* note 160, s. 29.

- the best interests of the owners.¹⁶⁴

Termination on substantial damage is also worth briefly noting. Most provinces and territories define substantial damage by reference to what it would cost to repair physical damage to a strata building. In most cases, the legislation sets the threshold at 25 percent of the value of the condominium's building—or buildings. Once this threshold is surpassed, the dynamic that plays out in many termination disputes is reversed. The default position becomes termination. It will occur if the owners who favour repairing the damage aren't able to muster the votes required to authorize the repairs—or if the condominium fails to hold a vote at all in a specified time.

In contrast to British Columbia, many of the other jurisdictions in Canada have legislative provisions referring termination disputes to alternative dispute resolution. Ontario, for example, provides that dissenting owners are entitled, on a termination by sale of the strata, to “submit to mediation a dispute over the fair market value of the property or the part of the common elements that has been sold, determined as of the time of the sale.”¹⁶⁵ Other jurisdictions have similar provisions, which provide for the rather more formal process of arbitration to apply to financial disputes.¹⁶⁶

C. International Examples of Reform

1. INTRODUCTION

Several international jurisdictions have wrestled with issues related to terminating stratas that are similar to those that British Columbia may soon find itself facing. This section briefly looks at the law in and reform proposals from selected international jurisdictions. It begins by discussing Australia and the United States, then considers developments in a few Asian nations.

2. NEW SOUTH WALES

British Columbia's first-generation strata-property legislation—the 1966 *Strata Titles Act*¹⁶⁷—was based very closely on a New South Wales statute. Notably, New

164. Ontario: *Condominium Act, 1998*, *supra* note 160, s. 128 (2). The other provinces and territories listed at *supra* note 163 have similar—though not exactly the same—criteria in their legislation.

165. *Condominium Act, 1998*, *supra* note 160, s. 125 (1).

166. See Prince Edward Island: *Condominium Act*, *supra* note 158, s. 24 (5); Nova Scotia: *Condominium Act*, *supra* note 155, s. 40 (5); Yukon: *Condominium Act*, *supra* note 159, s. 21 (8); Northwest Territories and Nunavut: *Condominium Act*, *supra* note 160, s. 27.

167. *Supra* note 13.

South Wales continues to deal with termination in a manner similar to British Columbia.

New South Wales's legislation¹⁶⁸ provides two methods for termination of a strata. Similar to British Columbia's *Strata Property Act* system, the New South Wales methods require either unanimous consent or an application to court.

Termination by consent under the New South Wales act is effected by an application to the state registrar-general of land titles. The registrar is given the discretion under the act to make an order terminating a strata or to refuse to terminate a strata.¹⁶⁹ An application to the registrar for termination must be signed by:

- each strata-lot owner;
- each registered lessee of a strata lot; and
- each registered mortgagee, chargee, and covenant chargee of a strata lot, registered lease of a strata lot, or common property.¹⁷⁰

The legislation also contains advertising requirements¹⁷¹ and a list of documents (including certificates of title) that must be filed with the registrar.¹⁷² The effect of termination under the New South Wales act is similar also to the effect under the *Strata Property Act*. The land comprising the strata “vest[s] in the former proprietors as tenants in common in shares proportional to the unit entitlements of their former lots. . . .”¹⁷³

If the owners can't obtain unanimous consent to the termination—or if the registrar rejects the application¹⁷⁴—the strata may still be terminated by order of the New South Wales Supreme Court.¹⁷⁵ An application for such an order may be made by:

168. *Strata Schemes (Freehold Development) Act 1973* (NSW).

169. *See ibid.*, s. 51A (1).

170. *See ibid.*, s. 51A (3). The legislation says that this unanimity requirement applies “except where the Registrar-General agrees otherwise” (*ibid.*), but commentary on the section indicates that this does not occur very often.

171. *Ibid.*, s. 51A (5).

172. *Ibid.*, s. 51A (6).

173. *Ibid.*, s. 51A (8) (b).

174. *See ibid.*, s. 51A (1) (“A refusal by the Registrar-General to terminate a strata scheme does not preclude an application to the Supreme Court under section 51 for termination of the scheme.”).

175. *See ibid.*, s. 51.

- an owner of a strata lot;
- a mortgagee or covenant chargee; or
- the strata corporation.¹⁷⁶

Notice of the application must be given to:

- all strata-lot owners, mortgagees, covenant chargees, and the strata corporation;
- the local council;
- the registrar-general; and
- anyone else (including creditors) as the court may direct.¹⁷⁷

Anyone who receives notice has standing to appear in the application. Granting of the order appears to be within the court's discretion, and the statute sets out no guidelines on the exercise of that discretion.¹⁷⁸

New South Wales's termination scheme has been the subject of extensive study in recent years.¹⁷⁹ This study has culminated in a 2012 state-government discussion paper that proposed a number of options for reforming the legislation.¹⁸⁰ Among the options considered were lowering the threshold of votes required for termination by consent in a manner generally consistent with Singapore's legislation,¹⁸¹ institut-

176. See *ibid.*, s. 51 (1).

177. See *ibid.*, s. 51 (2).

178. See *ibid.*, s. 51 (4) ("The Supreme Court may, on an application made under subsection (1), make an order terminating the strata scheme concerned.").

179. See New South Wales, *Making NSW No. 1 Again: Shaping Future Communities: Strata & Community Title Law Reform Discussion Paper* (Parramatta: NSW Fair Trading, 2012) at 22–27; *Governing the Compact City: The Role and Effectiveness of Strata Management*, *supra* note 10 at 26–27; Hazel Easthope & Bill Randolph, *Governing the Compact City: The Challenges of Apartment Living in Sydney* (Sydney: City Futures Research Centre, University of New South Wales, 2008) at 12–13; Cathy Sherry, "Termination of Strata Schemes in New South Wales—Proposals for Reform," (2006) 13 Austl. Prop. LJ 227, online: LexisNexis Academic (Canada). Queensland has also recently examined this issue. See Queensland, Department of Tourism, Fair Trading, and Wine Industry Development, *Body Corporate and Community Management: Into the 21st Century: A Discussion Paper on Community Living Issues in Queensland* (July 2004) at 25–27.

180. See *Making NSW No. 1 Again*, *supra* note 179.

181. See, below, Part One, III.C.4 at 43.

ing a cooperative approach to redevelopment after termination, and adopting Ontario's concept of termination after substantial damage.¹⁸² To date, New South Wales has not moved on reforming its termination provisions, but it will be worthwhile to consider the debate in that jurisdiction in assessing British Columbia's options for reform.

3. UNITED STATES OF AMERICA

Like Canada and Australia, the United States regulates strata properties at the sub-national (state) level of government. All fifty American states have strata-property legislation. Tracking termination provisions in all this legislation would overwhelm this consultation paper in detail. So this section will just note recent reform proposals by the Uniform Law Commission.¹⁸³

The most recent version of the ULC's Uniform Common Interest Ownership Act dates from 2008. The uniform act is only in force in a handful of states,¹⁸⁴ but its termination provisions are of interest as a model for reform.

The foundation for termination under the uniform act is consent of owners. The threshold for this consent is set at "80 percent of the votes in the association."¹⁸⁵ But the legislation builds in some flexibility on this threshold. Common-interest communities¹⁸⁶ (CICs) may provide for a higher threshold in their declarations.¹⁸⁷ And "if all the units are restricted exclusively to nonresidential uses," then the CIC's declaration

182. See *Marking NSW No. 1 Again*, *supra* note 179 at 24–26.

183. The Uniform Law Commission is an American law-reform organization dedicated to the harmonization of the laws of American states. See "About the ULC," online: Uniform Law Commission <<http://www.uniformlaws.org>> ("The Uniform Law Commission has worked for the uniformity of state laws since 1892. It is a non-profit unincorporated association, comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. . . . The state uniform law commissioners come together as the Uniform Law Commission for one purpose—to study and review the law of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable. It must be emphasized that the ULC can only propose—no uniform law is effective until a state legislature adopts it.").

184. The ULC lists Connecticut, Delaware, and Vermont as having enacted the uniform act. See, online: Uniform Law Commission <<http://www.uniformlaws.org>>.

185. Uniform Common Interest Ownership Act, s. 2-118 (a).

186. This is the uniform act's umbrella term for condominiums (British Columbia stratas), cooperatives, and planned developments.

187. See Uniform Common Interest Ownership Act, s. 2-118 (a).

may also “specify a smaller percentage.”¹⁸⁸ In addition to the consent of owners, “any other approvals required by the declaration” must also be obtained to effect termination.¹⁸⁹

Unlike British Columbia’s *Strata Property Act*, which calls on owners to express their consent to termination through a resolution at a meeting, the uniform act requires owners to indicate their consent to termination “by the execution of a termination agreement.”¹⁹⁰

The uniform act does not contain a separate procedure for termination by sale, but owners may provide in the termination agreement for a sale upon termination. The uniform act’s approach to this issue varies with the type of CIC concerned. If the CIC is “a condominium or planned community containing only units having horizontal boundaries described in the declaration,” then the termination agreement may provide that all units and common elements “must be sold following termination.”¹⁹¹ But, “[i]n the case of a condominium or planned community containing any units not having horizontal boundaries described in the declaration,” the termination agreement may only provide for the sale of common elements, and it can’t require the sale of any unit, unless the declaration “as originally recorded” provided otherwise or all owners consent to the sale.¹⁹² If the termination agreement does not provide for sale, then the association is authorized to negotiate a sale, but any contract “is not binding on unit holders until approved” in the same manner as the termination agreement.¹⁹³

The uniform act does not provide any special protection for the rights of dissenting unit owners. If the threshold for consent is reached, then they become bound by the termination agreement. Unlike Canadian or Australian legislation, the uniform act does not establish a court procedure for termination for cases that fall short of the threshold.

The uniform act also does not directly provide for creditor consent to termination. But creditor approval usually ends up being part of the process by virtue of the ref-

188. *Ibid.*, s. 2-118 (a).

189. *Ibid.*, s. 2-118 (a).

190. *Ibid.*, s. 2-118 (b).

191. *Ibid.*, s. 2-118 (c). This provision would apply to “a typical high rise building” (*ibid.*, comment 6).

192. *Ibid.*, s. 2-118 (d).

193. *Ibid.*, s. 2-118 (e).

erence in the legislation to “other approvals required by the declaration.”¹⁹⁴ Typically, lenders exercise rights granted under another section of the uniform act to require that the declaration specify that a percentage of lenders must also consent to termination if it is to go ahead.¹⁹⁵

Finally, the uniform act also has a substantial-damage provision, which it calls “termination following catastrophe.”¹⁹⁶ The section has a relatively narrow scope, as the threshold for invoking it is set quite high. It applies if “substantially all the units in a common interest community have been destroyed or are uninhabitable” and giving notice of a meeting to consider termination is “not likely [to] result in receipt of the notice.”¹⁹⁷ If this threshold is met, then the CIC’s executive board or “any other interested person” may apply to court for an order terminating the CIC.¹⁹⁸

4. SINGAPORE

Singapore’s legislation¹⁹⁹ provides for termination of a strata by court order²⁰⁰ or by its management corporation,²⁰¹ but reformers have shown the most interest in Singapore’s version of termination by sale.²⁰² These provisions have been on the books since 1999, and they are detailed and extensive.

Singapore has an interesting staged quality to its threshold for initiating the process.²⁰³ The two levels are as follows:

- if the strata is 10 years or older, at least 80 percent of the owners, holding 80 percent of the total area of the lots, must consent to the sale;

194. *Ibid.*, s. 2-118 (a).

195. *See ibid.*, s. 2-118, comment 3. *See also ibid.*, s. 2-119 (rights of secured lenders).

196. *Ibid.*, s. 2-124.

197. *Ibid.*, s. 2-124.

198. *Ibid.*, s. 2-124.

199. *Land Titles (Strata) Act* (Cap. 158, 2009 Rev. Ed. Sing.).

200. *See ibid.*, s. 78.

201. *See ibid.*, s. 81. *See also Building Maintenance and Strata Management Act* (Cap. 30C, 2008 Rev. Ed. Sing.), s. 84. A “management corporation” is Singapore’s equivalent of a British Columbia strata corporation. These provisions create an elaborate form of termination by consent.

202. *See Land Titles (Strata) Act*, *supra* note 199, ss. 84A–84G.

203. *See ibid.*, s. 84A.

- if the strata is less than 10 years old, at least 90 percent of the owners, holding 90 percent of the total area of the lots, must consent to the sale.²⁰⁴

Once the applicable threshold is reached, the owners must enter into a collective sale agreement with a purchaser. The legislation contemplates that the agreement will be negotiated by a collective sale committee, elected from the ranks of the owners.²⁰⁵ The agreement must specify how the sale proceeds are to be distributed among lot owners.²⁰⁶ There is no default scheme of distribution specified in the legislation.

The legislation contains a number of provisions designed to protect the interests of owners, particularly dissenting owners:

- the owners must apply to the Strata Titles Board of Singapore—an administrative agency—for an order approving the sale;²⁰⁷
- the board has a number of powers on the application—including mediating any issues arising from the application, summoning persons to give testimony before the board, compelling the production of records, and ordering the creation of a valuation report for the property;²⁰⁸
- an owner who has not given consent to the sale—or the mortgagee of such an owner—is entitled to make an objection to the sale before the board;²⁰⁹
- if an objection is filed, the board attempts to mediate the dispute—if the mediation does not resolve the dispute within 60 days, then the board issues a stop order, which results in “discontinuance of all proceedings before it in connection with that application”;²¹⁰
- in the face of a stop order, the parties may seek to have the dispute resolved by the High Court of Singapore, which “shall” approve the termination and sale unless (a) it will result in an objector “incur[ring] a financial loss” or

204. See *ibid.*, s. 84A (1) (a)–(b).

205. See *ibid.*, s. 84A (1A).

206. See *ibid.*, s. 84A (1).

207. See *ibid.*, s. 84A (2A) (a).

208. See *ibid.*, s. 84A (5).

209. See *ibid.*, s. 84A (4).

210. *Ibid.*, s. 84A (6A).

(b) the sale proceeds to be received by an objector “are insufficient to redeem any mortgage or charge in respect of the [objector’s] lot”;²¹¹

- whether or not an objection is made, the board or the court must not make an order approving the termination and sale if it is satisfied that (1) “the transaction is not in good faith after taking into account only the following factors”: (a) the sale price; (b) the method of distributing the sale proceeds; and (c) the relationship between the purchaser and any owner, or (2) “the sale and purchase agreement would require any subsidiary proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the lots and the common property in the strata title plan.”²¹²

5. JAPAN

Two other Asian countries have grappled with similar issues to those facing Singapore. It’s worthwhile briefly noting their experiences, even though they come from within the civil-law legal tradition and therefore may not be fully adaptable to British Columbia law.

Motivated by land shortages and deteriorating conditions in many of its stratas, Japan moved in 2002 from requiring unanimous consent of owners to termination to a threshold of 80 percent of owners’ consenting.²¹³ Japan’s new law appears to have much in common with a corporate-law approach to these issues. If the dissenting minority does not muster the votes to prevent termination, they are essentially bought out by the majority.²¹⁴ Termination in Japan seems to be tied into redevelopment, and developers often agree to give existing owners preferential access to strata lots in the new development.²¹⁵

211. *Ibid.*, s. 84A (7).

212. *Ibid.*, s. 84A (9) (a).

213. See Philip Brator & Masako Tusbuku, “Japan’s ‘new towns’ are finally getting too old” *The Japan Times* (1 November 2011), online: *The Japan Times* <<http://www.japantimes.co.jp>> (“In 2002, Japan’s Shared Property Law was revised so that condominium boards could proceed with rebuilding projects if at least four-fifths of the owners in a building agreed. Previously, such matters were governed by the Civil Code, which said 100 percent agreement was needed in any decision involving shared properties.”).

214. *Ibid.* (“If 80 percent of the owners agree to rebuild, theoretically they buy the ‘rights’ to these dissidents’ units.”).

215. See *ibid.*

6. ISRAEL

Faced with pressures similar to those confronting Japan and Singapore, Israel also recently amended its legislation, moving away from a unanimous-consent requirement to a threshold of consent from 75 percent of owners.²¹⁶ Israel's law contemplates that owners will take up residence in the new development, as explained by a local commentator:

apartment owners are temporarily evacuated from their apartments, so that the buildings may be demolished and rebuilt. The owners then return to new apartments in the new building. The contractor pays all costs for demolition, construction, relocating apartment owners and renting their temporary homes during construction. In exchange, the contractor adds new apartments in the building which he can sell in order to make his profit.²¹⁷

The prospect of ultimately regaining residency in a redeveloped strata appears to be one of the main protections of dissenting owners' rights under this scheme.

216. See Stephen Smith, "En bloc condo redevelopment in Japan and Israel" (2 July 2012), online: Market Urbanism " <<http://marketurbanism.com>>.

217. Nicole Levin, "Urban Renewal the Israeli Way," online Nicole Levin Law Offices <<http://levinlawoffices.co.il/>>.

PART TWO—ISSUES FOR REFORM

CHAPTER I. GENERAL REFORM AND VOTING THRESHOLD

A. Introduction

This chapter is primarily concerned with the threshold of support that must be reached to authorize termination of a strata. As discussed earlier, the *Strata Property Act* currently requires a resolution passed by a unanimous vote to authorize either of its two consensual procedures for terminating a strata—a voluntary winding up without a liquidator²¹⁸ or a voluntary winding up with a liquidator.²¹⁹ The main issues considered in this chapter involve whether to continue with this voting threshold and, if it were to be changed, at what level should the new threshold be set.

But before getting to those issues, the chapter begins by asking the basic question of whether reform of the act's termination regime is needed at all right now.

B. Should the Strata Property Act's Provisions on Terminating a Strata be Reformed?

The case for reforming the *Strata Property Act*'s termination provisions is somewhat hypothetical. The provisions have only been in force since 2000. And they haven't been used very much since then. It isn't possible to say that they are currently causing problems. But it can be argued that they carry within them the seeds of serious future problems.

The main concerns rest on the unanimity requirement. It is widely conceded that it's very difficult, if not impossible, to obtain unanimous consent in all but the smallest stratas. This means that majorities may often find their wishes thwarted. As a result, many strata owners will suffer significant financial losses. And the broader society may also find its plans for urban renewal and redevelopment to be frustrated. For

218. See *supra* note 1, s. 272 (1).

219. See *ibid.*, s. 277 (1).

these reasons, most jurisdictions avoid making unanimous consent the lynchpin of their termination regimes.²²⁰

The legislative safety valve that British Columbia relies on when these concerns become overwhelming is an application to court for an order terminating the strata. But this procedure also contains its own problems. Court applications can be expensive and time consuming. These qualities are likely to come to the fore in disputes involving termination of a strata, which can very easily become fraught and complex.²²¹ And, even if the necessary time and money are committed to a court proceeding, the outcome of that proceeding is often uncertain.

Finally, it should be noted that British Columbia's approach to terminating a strata is largely out of step with the approaches taken in most other Canadian provinces and territories. To the extent that harmonization of laws concerning real estate is valuable, British Columbia's legislation is an outlier that may frustrate this goal.

On the other side, a case could be made for the current termination regime. The *Strata Property Act's* provisions have not really been given much of a chance to work in practice. It's too early to say whether they would bring about all the problems that have been attributed to their unanimous-consent model. The time may not be ripe for reform. As one commentator described a New South Wales proposal to reform a similar termination regime, reform now may be "a solution in search of a problem."²²²

Even if there do prove to be difficult disputes and problems under the current system, the courts may be able to manage them. There are early indications that the courts may take a somewhat more flexible view to termination than the legislation would seem to demand on paper.²²³ They may be able to soften the hard edges of the act's termination regime. This would mean that legislative approach to reform does not necessarily have to be pursued.

Finally, it could be argued that whatever practical problems the current provisions may bring, they do have the best theoretical approach to the issues. The combination of a requirement for unanimous consent with detailed rules governing corporate

220. See *Making NSW No. 1 Again*, *supra* note 179 at 22; Sherry, *supra* note 179.

221. See, e.g., *Mowat*, *supra* note 145 (highly charged dispute over partition and sale of so-called common-law condominium).

222. Chris Vedelago, "It's not your home—it belongs to the developer now" *Propertyland Blog* (27 September 2012), online: Domain <<http://news.domain.com.au/>>.

223. See *Buchanan*, *supra* note 118.

winding up could be seen as the best way to balance the demands of both real-property and corporate law.

In the committee's view, the time is ripe for reform. The confluence of several factors could lead to a testing of the act's termination provisions in the near future. These factors include the age of first-generation stratas and the state of repair of some strata buildings. It is not certain that the current system, which rests firmly on unanimous consent and extensive court oversight, is ready to meet the demands that will be made on it.

The committee tentatively recommends:

1. *The Strata Property Act's provisions on termination should be reformed.*

C. Should the Strata Property Act Require the Unanimous Consent of Owners to the Voluntary Winding Up of a Strata Without Liquidator or the Voluntary Winding Up of a Strata with Liquidator?

The arguments in favour of reforming the unanimous-consent requirement focus on the increased flexibility of a lower threshold. It can be very difficult in practice to get even a small group of owners to agree on something as vexed as whether to terminate a strata. The possibility of obtaining unanimous consent becomes harder and harder as the size of a strata increases.²²⁴

A unanimous-consent requirement can also act as an obstacle to responding to changing circumstances. Strata owners may underestimate the need to make difficult decisions as the strata ages. This can result in a deteriorating strata imposing negative effects on the majority of its owners and the surrounding community. Among the reasons for bringing in new termination rules in *Strata Property Act* was to respond to a concern that the old system did not provide enough flexibility for stratas facing difficult questions about redevelopment and that it failed to recognize the variety of occasions when termination and redevelopment could be appropriate and the diversity of ways in which termination and redevelopment could be carried out.²²⁵ Interestingly, the same point could be made against the unanimous-consent requirement in the *Strata Property Act*.

224. See Uniform Common Interest Ownership Act, s. 2-118, comment 3 ("unanimous consent from all unit owners would be impossible to secure as a practical matter in a project of any size...").

225. See, above, Part One, II.C.3 at 13.

The unanimous-consent requirement is also out of step with trends in strata legislation across Canada and elsewhere. Most of the jurisdictions in this country allow termination in one form or another with the approval of 80 percent of voters. Some jurisdictions have an even more liberal rule, allowing termination by a special resolution. British Columbia was even in this camp for most of the time that this province has had strata legislation. All versions of the act before the *Strata Property Act* came into force allowed termination by special resolution.

Finally, on a more abstract level, it is possible to question the fairness of requiring unanimous consent of the owners to termination of a strata. Maintaining a unanimous-consent requirement holds out the possibility—maybe even the likelihood—that an overwhelming majority of owners will be thwarted by a minority, which may be as small as one owner. The statute allows these owners to apply to court for a remedy, but this might not be a practical answer to all concerns, given the costs, delays, and and uncertainty which are an inevitable part of civil litigation. This can result in what one law professor has called a “tragedy of the anticommons”—that is, a situation in which widely dispersed vetoes over any fundamental change to a strata leaves the strata “locked into low-value uses.”²²⁶

There are also a number of arguments against moving away from the current unanimous-consent system. The current system provides the strongest protection for the interests of dissenting owners in a strata. Allowing termination by less than unanimous consent could result in owners feeling compelled to move. Since vulnerable people—by virtue of economic circumstances or age—tend to be represented among the minority in termination disputes, a system that allows the termination to proceed over their objections can cause real hardship.²²⁷

Unanimous consent is also more closely aligned with the property-law roots of stratas. Investment in real estate is often predicated on property law’s stable, predictable rules, which value permanence and certainty. Changing those rules can feel like an imposition to people who have bought into stratas relying on the previous rules. In particular, moving from a termination scheme based on unanimous consent to a scheme with a lower threshold can seem like an expropriation of some of the value of the strata to many people. It is perhaps for this reason that such proposals have

226. Michael A. Heller, “The Boundaries of Private Property” (1999) 108 Yale LJ 1163 at 1185.

227. See Sherry, *supra* note 179 (“Redevelopment of rundown housing inevitably leads to the displacement of residents, who are often low income, elderly or vulnerable and who will not be able to afford to buy or rent in the new scheme.”).

often been greeted with public outcry. Both New South Wales²²⁸ and Singapore²²⁹ have seen emotional public opposition to their proposed and enacted reforms.

As was the case for arguments against a unanimous-consent standard, arguments against a lower threshold of consent can have a broader public dimension. People displaced from an aging strata may require government assistance to find new housing. A termination scheme that seems to undermine property rights could temper public enthusiasm for strata living. This could run counter to local policies encouraging redevelopment and densification.

The committee noted that there are valid arguments on both sides of this issue. On balance, it favours reform of the unanimous-consent requirement. Unanimous consent sets too high a threshold for invoking the act's termination procedures. This high threshold raises practical concerns that should be dealt with now, rather than waiting for these concerns to develop into fully fledged problems for stratas.

The committee tentatively recommends:

2. The Strata Property Act should not continue to require the unanimous consent of strata-lot owners to the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator.

D. What Percentage of Voters Should Be Entitled to Authorize the Voluntary Winding Up of a Strata Without Liquidator or the Voluntary Winding Up of a Strata with Liquidator?

To a large extent, the policy considerations canvassed in the discussion of unanimous consent apply to this discussion as well. A unanimous-consent requirement provides the highest level of protection for minority interests and is consistent with the stable, predictable approach to rules found in property law. The higher the threshold is set for owners to authorize the termination of a strata, the more these policies will be advanced. On the other hand, a lower threshold would do a better job of allowing for flexibility in the face of changing circumstances and ensuring that the majority's wishes are not thwarted by a small, intransigent minority.

228. See Vedelago, *supra* note 222 ("Buying into an apartment block means becoming part of a community—a body corporate or owners corporation—that shares financial responsibility for the health of the complex. But the exercise of those powers stop [*sic*] at the edge of common property. In other words, stay the hell out of our homes.").

229. See Stephen Smith, "Why do condos even exist?" (1 July 2012), online: Market Urbanism <<http://marketurbanism.com>> (noting that Singapore's en bloc sales are "very controversial" and have even supplied plots for a local television program).

Distinctions between these policy goals are sharpest at the ends of the spectrum of potential thresholds. It can be harder to distinguish substantive differences between numbers that are close together on that spectrum. It is worthwhile to bear this in mind in considering the following range of potential legislative thresholds:

- **At least 90 percent of voters.** This threshold would essentially be one step down from unanimous consent. It would still require the voters to assemble a very high majority to authorize the voluntary winding up of a strata without a liquidator. This would ensure considerable protection of minority interests, but in larger stratas it would also ensure that a single voter could not block the will of the majority. (In stratas with 10 or fewer strata lots, though, a single owner would have this ability.) Interestingly, there are no Canadian jurisdictions that employ this figure as their legislative threshold.²³⁰
- **At least 80 percent of voters.** This threshold is the one most commonly found in legislation in force in other Canadian jurisdictions.²³¹ It would set a relatively high threshold, but would also make it less likely that a single voter could block the will of the majority. (This could only occur if the strata had five or fewer strata lots.)
- **At least 75 percent of voters.** This threshold would be analytically similar to the threshold for a 3/4-vote resolution under the *Strata Property Act*, so it would have some familiarity. (The thresholds would be functionally different because termination would require authorization of some percentage of *all* voters, rather than a percentage of voters present at a meeting.)
- **At least 66 2/3 percent of voters.** Yukon allows the termination of a strata at this threshold.²³² This is the lowest threshold found in Canadian legislation.

230. Québec comes closest to this standard, requiring authorization by “a majority of 3/4 of the co-owners representing 90% of the voting rights of all the co-owners.” See art. 1108 CCQ.

231. See Manitoba: *The Condominium Act*, *supra* note 160, ss. 21 (termination by sale), 22 (termination by consent); Ontario: *Condominium Act, 1998*, *supra* note 160, ss. 122 (termination by consent), 124 (termination by sale); Prince Edward Island: *Condominium Act*, *supra* note 160, ss. 24 (termination by sale), 25 (termination by consent); Nova Scotia: *Condominium Act*, *supra* note 158, s. 40 (termination by sale); Northwest Territories and Nunavut: *Condominium Act*, *supra* note 160, ss. 26 (termination by sale), 28 (termination by consent).

232. See *Condominium Act*, *supra* note 159, ss. 21 (termination by sale), 22 (termination by consent).

In the committee's view, a threshold set at 80 percent of voters would strike the best balance between ensuring that a strong majority supports termination and avoiding the potential for voting deadlock inherent in higher thresholds. The committee also takes some reassurance in the fact that this threshold is found in the largest number of other Canadian jurisdictions.

The committee tentatively recommends:

3. *The Strata Property Act should allow at least 80 percent of the eligible votes to authorize the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator.*

The committee addresses how the term *eligible vote* should be defined in the next chapter.²³³

E. Should a Strata Be Able to Vary the Percentage of Eligible Votes Needed to Authorize the Voluntary Winding Up of a Strata Without Liquidator or the Voluntary Winding Up of a Strata with Liquidator?

The preceding issues for reform were concerned with setting a precise statutory threshold that must be met if voters wish to authorize terminating a strata. The next two issues ask, in different ways, whether that threshold should apply to all stratas in all cases.

The first way to allow for varying thresholds is for the legislation to give stratas themselves the power to vary the statutory threshold. This type of legislative provision is actually quite common in strata legislation across Canada.²³⁴ For an example of how this approach operates, Manitoba permits termination by sale "by a vote of owners who own 80%, or such greater percentage as is specified in the declaration, of the common elements."²³⁵

A *declaration* is one of the governing documents that is commonly required under legislation in force outside British Columbia. The *Strata Property Act* does not re-

233. See, below, Part Two, II.C at 68.

234. See Manitoba: *The Condominium Act*, *supra* note 160, ss. 21 (termination by sale), 22 (termination by consent); Prince Edward Island: *Condominium Act*, *supra* note 160, ss. 24 (termination by sale), 25 (termination by consent); Yukon: *Condominium Act*, *supra* note 159, ss. 21 (termination by sale), 22 (termination by consent); Northwest Territories and Nunavut: *Condominium Act*, *supra* note 160, ss. 26 (termination by sale), 28 (termination by consent).

235. *The Condominium Act*, *supra* note 160, s. 21 (1) [emphasis added].

quire or refer to declarations. A declaration would be roughly analogous to a strata plan, in some respects, and to strata bylaws, in others.

It should also be noted that the legislation only allows stratas to vary the threshold upward. A strata is permitted to take a baseline threshold requiring the consent of at least 80 percent of voters and change it to, for example, 85 percent or 90 percent. A strata is not able to lower the threshold to, say, 70 percent or 60 percent. The rationale for this limitation on the scope of the provision appears to be protective. It ensures that voters can't be pressured or manipulated into a low threshold that would allow for termination without the support of a solid majority of owners. It also ensures that developers can't saddle stratas with a low threshold that may not end up being in their best interests.

There are several advantages to this approach. It gives the legislation greater flexibility. Stratas that feel, for whatever reason, that their circumstances call for a higher threshold than is set out in the legislation would be able to set a higher threshold. This approach might lead to greater acceptance of a reformed threshold, as groups that may be opposed to changing the unanimous-consent requirement could take comfort in the ability of individual stratas to re-impose a higher threshold, all the way up to unanimity.

The main disadvantage to this approach is that it adds complexity to the legislation. Not all stratas will have to adhere to the same threshold in approving termination. The approach may also not be a good fit with the *Strata Property Act*. As noted, British Columbia's legislation does not provide for a declaration. A logical place for provisions varying the statutory threshold for authorizing termination of a strata would be the strata's bylaws. Bylaws, of course, can typically be amended by a resolution passed by a 3/4 vote.²³⁶ This means that it could be possible to lower the threshold by means of a vote that attracts a lower number of owners than those required to authorize termination. (Although, there may be ways to address this, for example, by only allowing changes that vary the threshold upward. And, of course, a strata couldn't lower the threshold below the statutory baseline.)

236. See *Strata Property Act*, *supra* note 1, s. 128. If the strata is composed wholly of nonresidential strata lots, then the bylaws may vary this requirement (*ibid.*, s.128 (1) (b)). If the strata has residential and nonresidential sections, then the amendment requires resolutions passed by a 3/4 vote for both sections, or "as otherwise provided in the bylaws for the nonresidential strata lots" (*ibid.*, s. 128 (1) (c)). A higher threshold is generally required to amend a declaration. See, e.g., Manitoba: *The Condominium Act*, *supra* note 160, s. 5 (6) ("All matters contained in a declaration, except the address for service, may be amended only with the written consent of the persons holding 80%, or such greater percentage as may be specified in the declaration, of the voting rights in the corporation.").

In the committee's view, allowing for this type of flexibility would introduce an undesirable level of complexity in to the act's termination provisions. Practically, the approach taken in other Canadian provinces would also be difficult to implement in British Columbia, as this province lacks a precise equivalent to the declarations that make up a key component of strata legislation elsewhere.

The committee tentatively recommends:

4. The Strata Property Act should not allow stratas to specify in their bylaws that a greater percentage of eligible votes than is required under the act is needed to authorize the voluntary winding up of the strata without liquidator or the voluntary winding up of a strata with liquidator.

F. Should the Percentage of Eligible Votes Required to Authorize the Voluntary Winding Up of a Strata Without Liquidator or the Voluntary Winding Up of a Strata with Liquidator Vary with the Kind of Strata?

This issue deals with the second way in which the general threshold for terminating a strata could be varied. In this issue, the focus is not on whether to allow any given strata to decide for itself whether it wants a higher threshold, but on whether the legislation should build in different thresholds for different kinds of stratas. This issue calls for a rather more diffuse inquiry than the previous one, as there is probably a limitless number of ways to distinguish between different kinds of stratas. The discussion in this section focusses on three ways in which to draw such distinctions: by age, by size, or by use.

Singapore's legislation²³⁷ provides a clear example of setting two thresholds. The Singapore act uses the age of the strata as the criterion for distinguishing between kinds of stratas for the purposes of authorizing termination. Under Singapore's legislation:

- if the strata is 10 years or older, at least 80 percent of the owners, holding 80 percent of the total area of the lots, must consent to termination and sale;
- if the strata is less than 10 years old, at least 90 percent of the owners, holding 90 percent of the total area of the lots, must consent to termination and sale.

237. See *Land Titles (Strata) Act*, *supra* note 199.

The rationale for using this type of staged threshold appears to turn on the insight that termination of a strata and redevelopment of the land it occupies are often closely linked together. Older buildings, which may be facing expensive repairs or renovations, are more likely to be candidates for redevelopment than newer buildings. The legislation supports this policy of renewal by setting a lower threshold for termination of an older strata.

Another way to distinguish between kinds of stratas is to focus on their size. There is no legislative example of using size as a way to set differing thresholds for authorizing termination, but size is frequently a concern in other issues involving stratas. For example, small stratas are exempted from certain requirements under the *Strata Property Act*.²³⁸ Case law has also recognized that some concepts from corporate law, such as majority-rule decision-making, may be a poor fit with the realities of very small stratas.²³⁹ A higher threshold may be needed in these cases, something approximating a more consensus-based approach.²⁴⁰

Another approach would be to distinguish between stratas based on their use. Different standards could apply to stratas that are wholly residential and wholly commercial in use. For example, the American Uniform Common Interest Ownership Act generally requires “agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated” to terminate a common-interest community (which the equivalent of a British Columbia strata).²⁴¹ The uniform act allows any common-interest community to vary this figure upward. But “if all of the units [of a common-interest community] are restricted exclusively to nonresidential uses,” then that common-interest community “may specify” in its declaration that “a smaller percentage” of owners is entitled to authorize termination.²⁴²

238. See, e.g., *supra* note 1, s. 94 (3) (b); *Strata Property Regulation*, BC Reg. 43/2000, s. 6.2 (8) (strata with “fewer than 5 strata lots in the strata plan” not required to have depreciation report).

239. See *Ranftl v. The Owners, Strata Plan VR 672*, 2007 BCSC 482 at para. 30, 71 BCLR (4th) 318, McEwan J. (“The small scale of this strata corporation renders the abstractions of ‘democracy’ and majority rule, to which one might ordinarily resort, rather strained. The dysfunctions of this strata corporation can only be appreciated in inter-personal terms. There simply are not the numbers to make notions like ‘75% of the owners’ meaningful. In practi[c]e, such small corporations must operate more or less by consensus, or the sort of unhappy situation that has come about here would be inevitable. On the scale of this strata corporation, democracy equals either paralysis or oppression.”).

240. See *ibid.* at para. 33 (“On the scale of this strata corporation there is no ‘common good’ which can be ascertained by a majority vote. There are, rather, competing interest[s] that will be *de facto* oppressive to the extent that one prevails over the other.”).

241. Uniform Common Interest Ownership Act, § 2-118 (a).

242. Uniform Common Interest Ownership Act, § 2-118 (a).

The advantages of these approaches are greater legislative flexibility and the ability to tailor specific rules to specific groups of stratas. The main disadvantage is greater complexity to the legislation. This complexity increases the chances that the legislation could draw arbitrary and confusing boundaries between groups of stratas.

The committee was of the view that many of these proposals were interesting in principle, but had a strong potential to cause problems in practice.

The committee tentatively recommends:

5. The Strata Property Act should not specify different thresholds for owners to authorize the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator.

CHAPTER II. VOTING AND PROCEDURAL ISSUES

A. Introduction

One of the implications of the tentative recommendations set out in the last chapter is the introduction of a new type of resolution into the *Strata Property Act*. The act already has a well-developed system of collective decision-making, which is focussed on three distinct types of resolutions. It is imperative that any new elements introduced into this system mesh seamlessly with it. One of the purposes of this chapter is to discuss proposals designed to ensure that result. The chapter is also concerned with considering procedural protections for owners and others connected with a strata that is facing termination.

B. Background on Voting and Resolutions

1. INTRODUCTION

Some background information on the act's rules on voting and resolutions is necessary to set the scene for the committee's tentative recommendations in this chapter. This background information is not a comprehensive review of how the act handles procedural matters for collective decision-making.²⁴³ Instead, it is meant simply to ensure that all readers are familiar with the act's terminology and the procedural issues that figure into the termination process.

2. RESOLUTIONS

The *Strata Property Act* essentially²⁴⁴ allows for three types of resolutions, which the act defines by reference to the voting threshold that must be met in order to secure passage of the resolution. These three types of resolutions are:

- majority vote, which is defined as “a vote in favour of a resolution by more than 1/2 of the votes cast by eligible voters who are present in person or by

243. See, e.g., *British Columbia Strata Law Practice Manual*, *supra* note 11 at c. 6; Mike Mangan, *The Condominium Manual: A Comprehensive Guide to Strata Law in British Columbia*, 3d ed. (Vancouver: Strata Publishing, 2010) at cc. 12, 14.

244. The qualifier *essentially* is necessary here to acknowledge some rare cases in which a certain kind of strata may be able to pass a resolution that does not conform to any of the three voting thresholds defined in the act. For example, if a strata has “a strata plan composed entirely of nonresidential strata lots,” then it is allowed to amend its bylaws by any means “provided in the bylaws.” See *Strata Property Act*, *supra* note 1, s. 128 (1) (b). On its face, this provision would allow such a strata to provide for amendment of its bylaws by a resolution that passed by some margin other than a majority vote, 3/4 vote, or unanimous vote.

proxy at the time the vote is taken and who have not abstained from voting”;²⁴⁵

- 3/4 vote, which is defined as “a vote in favour of a resolution by at least 3/4 of the votes cast by eligible voters who are present in person or by proxy at the time the vote is taken and who have not abstained from voting”;²⁴⁶ and
- unanimous vote, which is defined as “a vote in favour of a resolution by all the votes of all the eligible voters.”²⁴⁷

The act has an intricate system of procedural requirements and other rules that tie into these three types of resolutions.

3. NOTICE

A strata corporation is required to “give at least 2 weeks’ written notice of an annual or special general meeting” to every strata-lot owner.²⁴⁸ This notice “must include a description of the matters that will be voted on at the meeting, including the proposed wording of any resolution requiring a 3/4 vote or unanimous vote.”²⁴⁹

4. WHO MAY VOTE

(a) Owners

The starting place when considering voters under the act is the general proposition that a strata-lot owner²⁵⁰ has the right to vote at a general meeting.²⁵¹ But the act

245. *Strata Property Act*, *ibid.*, s. 1 (1) “majority vote.”

246. *Ibid.*, s. 1 (1) “3/4 vote.”

247. *Ibid.*, s. 1 (1) “unanimous vote.”

248. *Ibid.*, s. 45 (1). Notice must also be given to tenants and mortgagees who have obtained voting rights. On this point, *see*, below, Part Two, II.B.4 (b) and (c) at 61.

249. *Ibid.*, s. 45 (3).

250. *See ibid.*, s. 1 (1) “owner” (“means a person, including an owner developer, who is (a) a person shown in the register of a land title office as the owner of a freehold estate in a strata lot, whether entitled to it in the person’s own right or in a representative capacity, or (b) if the strata lot is in a leasehold strata plan, as defined in section 199, a leasehold tenant as defined in that section, unless there is (c) a registered agreement for sale, in which case it means the registered holder of the last registered agreement for sale, or (d) a registered life estate, in which case it means the tenant for life”).

251. *See ibid.*, s. 54 (a).

has a range of rules that qualify that general proposition and can result in someone other than the owner holding the right to vote in some circumstances.²⁵²

(b) Tenants

An owner who rents out a strata lot may assign the right to vote attached to that strata lot to the tenant.²⁵³ The act has two sets of rules governing assignments of an owner's powers and duties to a tenant.²⁵⁴ Determining which set applies depends on whether the lease in question is a *long-term lease*, which the act defines as "a lease to the same person for a set term of 3 years or more."²⁵⁵

If there is a long-term lease for "a residential strata lot," then, by operation of law, "the tenant is assigned the powers and duties of the landlord under [the *Strata Property Act*], the bylaws and the rules for the term of the lease."²⁵⁶ Before exercising any of the landlord's powers, the tenant must give written notice of the assignment to the strata corporation.²⁵⁷ The tenant is not permitted (unless the tenant has the owner's consent) to exercise any assigned powers or rights with respect to certain fundamental changes, including cancellation of the strata plan.²⁵⁸

If there isn't a long-term lease, then the landlord may agree to "assign to a tenant some or all of the powers and duties of the landlord that arise under [the *Strata Property Act*], the bylaws or the rules."²⁵⁹ The assignment only becomes effective upon the fulfillment of a requirement to give written notice to the strata corporation.²⁶⁰

(c) Mortgagees

An owner's right to vote may pass to a mortgagee of the strata lot if

- the mortgage gives the mortgagee the right to vote, and

252. See *ibid.*, ss. 54, 55, 57, 58.

253. See *ibid.*, s. 54 (b).

254. See *ibid.*, ss. 147–48.

255. *Ibid.*, s. 148 (1).

256. *Ibid.*, s. 148 (2).

257. See *ibid.*, s. 148 (3).

258. See *ibid.*, s. 148 (6).

259. *Ibid.*, s. 147 (1).

260. See *ibid.*, s. 127 (2).

- at least 3 days before the meeting the mortgagee has given to the strata corporation, the owner and [a] tenant [who has taken an assignment of the owner-landlord's right to vote], if any, written notice of the mortgagee's intention to vote.²⁶¹

Even if these conditions are met, a mortgagee's right to vote only extends to "insurance, maintenance, finance or other matters affecting the security for the mortgage."²⁶²

It's an open question whether one of these "matters affecting the security for the mortgage" is a resolution to authorize termination of the strata. On the one hand, it's not difficult to imagine how the termination of a strata could affect the security for a mortgage. Termination would result in, for example, a mortgagee's mortgage on a strata lot being converted into one of a group of "claims against the interest of each owner in the land and interests appurtenant to the land in the strata plan, [with each claim having] the same priority they had before the registrar's order [terminating the strata]."²⁶³ But this interpretation rests on a focussed reading of the words "matters affecting the security." It's also possible to read the section as referring to a limited class of more specific items—limiting mortgagees' voting rights to "insurance, maintenance, finance," and other "matters" like these three.²⁶⁴ A court in British Columbia has yet to rule on which interpretation should prevail.

(d) Eligibility to Vote

The act allows a strata to "provide that the vote for a strata lot may not be exercised" if the strata corporation "is entitled to register a lien against that strata lot" for the owner's failure to make a payment with respect to any of the following:

- strata fees;
- a special levy;
- a reimbursement of the cost of work [required to remedy an owner's failure to comply with a work order];

261. *Ibid.*, s. 54 (c).

262. *Ibid.*, s. 54 (c).

263. *Ibid.*, s. 275 (4) (c).

264. See *National Bank of Greece (Canada) v. Katsikonouris*, [1990] 2 SCR 1029 at 1040, 74 DLR (4th) 197, La Forest J. (Cory and McLachlin JJ concurring) ("Whatever the particular document one is construing, when one finds a clause that sets out a list of specific words followed by a general term, it will normally be appropriate to limit the general term to the genus of the narrow enumeration that precedes it."). See generally Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham, ON: LexisNexis Canada, 2008) at 231–43.

- the strata lot's share of a judgment against the strata corporation.²⁶⁵

This provision must be specifically addressed by the strata's bylaws: it can only be relied upon if the strata has a bylaw enabling it.²⁶⁶ But even if the strata does have such a bylaw, the provision still does not apply to "matters requiring a unanimous vote."²⁶⁷

(e) *Special Voters*

The *Strata Property Act* also provides for what it calls *special voters* to act in certain cases in which a voter lacks the legal capacity to cast a vote.²⁶⁸ There are two classes of special voters:

- if the person who is entitled to vote (be it an owner, a tenant, or a mortgagee) lacks legal capacity due to age (the threshold for which the act sets at "16 years"), then "the person's right to vote may be exercised only by the person's parent or guardian."²⁶⁹
- if the person who is entitled to vote lacks the legal capacity "to make a decision for a reason other than being under 16 years of age," then "the person's right to vote may be exercised only by someone who is legally authorized to act for the person with respect to the strata lot."²⁷⁰ Such legal authorization may flow from being the committee of the person's estate²⁷¹ or the person's attorney appointed under an enduring power of attorney.²⁷²

The act also contains a fall-back provision that applies "[i]f there is no person to vote in respect of a strata lot."²⁷³ The provision allows for an application to be made to the supreme court, which may order that the public guardian and trustee "or any other person" is entitled to vote "in respect of the strata lot."²⁷⁴

265. *Ibid.*, ss. 53 (2), 116 (1).

266. *See ibid.*, s. 53 (2).

267. *Ibid.*, s. 53 (2).

268. *See ibid.*, s. 55.

269. *Ibid.*, s. 55 (1).

270. *Ibid.*, s. 55 (2).

271. *See Patients Property Act*, RSBC 1996, c. 349, s. 15 (b) (i), (iii).

272. *See Power of Attorney Act*, RSBC 1996, c. 370, s. 13 (1).

273. *Supra* note 1, s. 58 (1).

274. *Ibid.*, s. 58 (2). If the "application concerns a matter that requires a unanimous vote," then the

(f) Shared Votes

The act contains a rule governing cases in which “2 or more persons share one vote with respect to a strata lot.”²⁷⁵ In these cases, “only one of them may vote on any given matter.”²⁷⁶ If there is a “disagreement” between the persons entitled to vote and the chair of the meeting is advised of the disagreement before the vote, then the act instructs the chair “not [to] count their vote in respect of that matter.”²⁷⁷

The effect of “not counting” a vote on a matter is considered in the next section.

5. CALCULATING VOTES

(a) Introduction

The act contains two bases for calculating votes on resolutions. Which basis is used in a given instance depends on the type of resolution at issue.

(b) Votes Cast

Votes on resolutions that must be passed either by a majority vote or by a 3/4 vote are calculated on the basis of “votes cast by eligible voters who are present in person or by proxy at the time the vote is taken” at a general meeting.²⁷⁸

(c) Total Eligible Voters

Resolutions that must be passed by a unanimous vote, in contrast, require the assent of “all the votes of all the eligible voters.”²⁷⁹

(d) Effect of Abstentions and Votes Not Counted

An abstention or a vote not counted is fatal to a resolution that must be passed by a unanimous vote, because by virtue of the abstention or vote not counted the resolution has failed to attract the support of all eligible voters. Abstentions have a different effect for resolutions that must be passed by either a majority vote or a 3/4 vote.

court “must” make an order under this provision (*ibid.*, s. 58 (3)).

275. *Ibid.*, s. 57 (1).

276. *Ibid.*, s. 57 (1).

277. *Ibid.*, s. 57 (2).

278. *Ibid.*, s. 1 (1) “majority vote,” “3/4 vote.”

279. *Ibid.*, s. 1 (1) “unanimous vote.”

The definitions of those terms expressly carve out abstentions from the basis on which votes are calculated.²⁸⁰ So an abstaining voter effectively “drops the threshold for passage of a resolution.”²⁸¹ And a vote not counted would have the same effect: by reducing the pool of votes cast on the resolution, it makes it marginally easier for that resolution to achieve the required voting majority.

6. NUMBER OF VOTES PER STRATA LOT

(a) *The Basic Rule*

For voting rights, the act’s basic rule is one vote per strata lot.²⁸² But the basic rule doesn’t cover every aspect of the act’s approach to voting rights. The act allows stratas to qualify the basic rule. This means that, in some stratas, one strata lot may have the right to cast multiple votes on a resolution, while another strata lot’s voting power may come in at some fraction of one.

(b) *Qualifications of the Basic Rule*

Stratas are allowed to craft a voting scheme that differs from the basic one-vote-per-strata-lot rule, but they don’t have a completely free hand in devising voting rights.²⁸³ The act’s rules are very complex. This section only provides a superficial summary of them.

One way in which a strata may depart from the basic rule is if it amends its strata plan. Intuitively, this idea makes perfect sense. If a strata decides to divide one strata lot into two or more strata lots,²⁸⁴ consolidate two or more strata lots,²⁸⁵ add part of a strata lot to another strata lot,²⁸⁶ or otherwise add to or take away from a strata lot,²⁸⁷ then it is natural to expect that these actions will have an impact on the af-

280. See *ibid.*, s. 1 (1) “majority vote,” “3/4 vote.”

281. *British Columbia Strata Law Practice Manual*, *supra* note 11 at § 6.60.

282. See *supra* note 1, s. 53 (1).

283. See *ibid.*, ss. 53 (1), 247, 248, 264.

284. See *ibid.*, s. 259 (3).

285. See *ibid.*, s. 259 (3).

286. See *ibid.*, s. 259 (3).

287. See *ibid.*, ss. 262 (making land held by strata corporation into new strata lot), 263 (adding strata lot or part of strata lot to common property).

affected strata lots' voting rights. And the act does allow for stratas to depart from the basic rule in these circumstances.²⁸⁸

But the act also allows stratas to depart from the basic rule by design—that is, not as a consequence of amending the strata plan. The act gives stratas two routes to achieve a non-standard scheme of voting rights.

One route runs through the Office of the Superintendent of Real Estate for British Columbia.²⁸⁹ So long as a strata “has at least one nonresidential strata lot,” it may submit a scheme of voting rights that departs from the basic rule to the superintendent for approval.²⁹⁰ The act directs the superintendent to approve any such scheme, if the superintendent is “satisfied that it establishes a fair distribution of votes among owners.”²⁹¹

The other route allows a strata to establish its scheme without seeking the superintendent's approval.²⁹² As might be expected, the act's requirements in these cases are more detailed and stringent than in cases involving an application to the superintendent. The act distinguishes between residential and nonresidential strata lots in the following way:

- if the strata has both residential and nonresidential strata lots (*i.e.*, if it's a mixed-use strata), then its scheme must provide that
 - all residential strata lots have one vote each, and
 - all nonresidential strata lots have their voting rights determined in accordance with the following formula:

$$\frac{\text{unit entitlement of nonresidential strata lot}}{\text{average unit entitlement of residential strata lots.}^{293}}$$

288. See *ibid.*, s. 264 (2)–(4), (6) (b) (requiring superintendent of real estate's approval of amended voting rights).

289. See *ibid.*, s. 248 (the superintendent's office actually falls under the British Columbia Financial Institutions Commission).

290. *Ibid.*, s. 248 (1).

291. *Ibid.*, s. 248 (2).

292. See *ibid.*, s. 247.

293. *Ibid.*, s. 247 (2) (a) (the provision goes on to spell out how to calculate the denominator in this formula: “the average unit entitlement of residential strata lots equals the total unit entitlement of all residential strata lots divided by the total number of residential strata lots”).

- if the strata only has nonresidential strata lots, then its scheme must provide that “the number of votes for each strata lot must be calculated” in accordance with the following formula:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots.}^{294}}$$

(c) Schedule of Voting Rights

What the text has referred to as a voting-rights “scheme” must in practice be set out in a Schedule of Voting Rights.²⁹⁵ This schedule is a prescribed form under the act.²⁹⁶ Similar schedules existed for the 1974 *Strata Titles Act*²⁹⁷ (later renamed the *Condominium Act*)²⁹⁸ and the 1966 *Strata Titles Act*.²⁹⁹

The act introduces its requirement to file a Schedule of Voting Rights with the strata plan with a conditional phrase.³⁰⁰ Whether or not this condition is met turns on the expected uses of the strata lots. A strata that is exclusively residential will not have the schedule (except in rare cases in which it has amended its strata plan as described earlier).³⁰¹ A mixed-use or wholly nonresidential strata will have one.³⁰²

294. *Ibid.*, s. 247 (2) (b).

295. *See ibid.*, ss. 245 (b), 264 (2).

296. *See Strata Property Regulation*, *supra* note 238, Form W.

297. *See supra* note 38.

298. *See supra* note 40; *Condominium Act Regulations*, BC Reg. 534/74, Form 3 (schedule of voting rights).

299. *See supra* note 13, s. 4 (1) (f) (i) (schedule of unit entitlement).

300. *See supra* note 1, s. 245 (b) (“if voting rights are set out in a schedule”).

301. *See* Scott S. Smythe & E. M. (Lisa) Vogt, eds., *McCarthy Tétrault’s Annotated British Columbia Strata Property Act*, looseleaf (consulted on 9 May 2014) (Toronto: Thomson Reuters Canada, 2013) at SPA-74–SPA-74.1 (“A strata plan that is wholly residential will have one vote per strata lot and will not have a Schedule of Voting Rights unless a strata plan amendment results in a residential strata lot having either less or more than one vote.” [citation omitted]); *British Columbia Strata Law Practice Manual*, *supra* note 11 at § 1.21 (“The Act and previous legislation assigned one vote to each residential strata lot. Residential strata lots have one vote per strata lot regardless of their size or value. Because residential strata lots are assigned one vote by statute, it is not necessary for an owner developer to prepare and file a Schedule of Voting Rights (Form W of the Regulation).”).

302. *See British Columbia Strata Law Practice Manual, ibid.* at § 1.22 (“Strata plans that contain at

Once a Schedule of Voting Rights has been established for a strata it is virtually impossible to amend.

(d) Conclusion

The practical effect of these provisions is that the “vast majority” of purely residential stratas adhere to the basic rule of one vote per strata lot.³⁰³ But it is “not uncommon” for purely nonresidential or mixed-use stratas to depart from the basic rule.³⁰⁴

C. How Should “Eligible Vote” Be Defined for the Purposes of Voting on a Resolution to Authorize the Voluntary Winding Up of a Strata Without Liquidator or the Voluntary Winding Up of a Strata with Liquidator?

In the previous chapter, the committee tentatively recommended that the voting threshold to approve a resolution to terminate a strata should be set at 80 percent of the strata’s eligible votes.³⁰⁵ This tentative recommendation left open the question of what an *eligible vote* is. This issue tackles how to define this term with reference to a strata’s voting power.

In the committee’s view, it is important that voting on a resolution to authorize termination be carried out in accordance with existing rules and procedures on voting in stratas. When it comes to defining a strata’s voting power, the vast majority of stratas with only residential strata lots adhere to a basic one-vote-per-strata-lot rule. But stratas with only commercial strata lots and mixed-use stratas often see fit to vary the basic rule. Their voting power is defined in accordance with their Schedule of Voting Rights. The definition of *eligible vote* must track both approaches to voting within stratas if it is to work in practice.

The committee tentatively recommends:

6. An “eligible vote” for the purposes of a vote on a resolution to authorize the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata

least one non-residential strata must file a Schedule of Voting Rights at the land title office when the strata plan is filed.”).

303. Gerry Fanaken, *Understanding the Condominium Concept: An Insightful Guide to the Strata Property Act* (Coquitlam, BC: Paige Condominium Services, 2013) at 45.

304. *Ibid.*

305. *See, above, Part Two, I.D at 51.*

with liquidator should be defined as a vote as shown on the strata's Schedule of Voting Rights. If the strata does not have a Schedule of Voting Rights, then an "eligible vote" is defined as one vote per strata lot.

D. What Notice Requirements Should Apply to a Resolution to Authorize the Voluntary Winding Up of a Strata Without Liquidator or the Voluntary Winding Up of a Strata with Liquidator?

There are two considerations bound up in this issue: the length of the notice period and the contents of the notice provided to voters.

The *Strata Property Act* provides for "at least 2 weeks' written notice of an annual or special general meeting. . . ."³⁰⁶ In the committee's view, a longer notice period is advisable if the annual or special general meeting is considering a resolution to terminate a strata. The rationale for the longer notice period is the importance of the matter to be considered. Terminating a strata is a fundamental change, ending the strata's existence under the act. In view of these considerations, a longer notice period should provide some additional protection for voters. In the committee's opinion, 30 days is an appropriate notice period. This period for notice to voters of the general meeting will also parallel the proposed notice period for registered chargeholders, which is discussed later in this consultation paper.³⁰⁷

The committee tentatively recommends:

7. The Strata Property Act should require that a strata corporation must give at least 30 days' written notice of an annual general meeting or a special general meeting, if that meeting will consider a resolution to authorize the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator, to the following:

- (a) every owner, whether or not a notice must also be sent to the owner's mortgagee or tenant;*
- (b) every mortgagee who has given the strata corporation a Mortgagee's Request for Notification;*
- (c) every tenant who has been assigned a landlord's right to vote, if the strata corporation has received notice of the assignment.*

306. *Strata Property Act*, *supra* note 1, s. 45 (1).

307. *See*, below, Part Two, III.E at 81.

The language of this tentative recommendation tracks the notice provision for general meetings in the *Strata Property Act*, which calls for notification of mortgagees in certain circumstances.³⁰⁸ The committee is also proposing a new provision calling for notice of a general meeting considering a resolution authorizing termination of a strata to be given to registered chargeholders (a class that would include strata-lot mortgagees).³⁰⁹ There is a slight potential for overlap between these two proposals.

Regarding the contents of the notice, the *Strata Property Act* requires that every notice of an annual general meeting or a special general meeting must include “the proposed wording of any resolution requiring a 3/4 vote or unanimous vote.”³¹⁰ In the committee’s view, this rule should be extended to resolutions authorizing the termination of a strata. It will adequately address the need for the legislation to define the contents of the notice.

The committee tentatively recommends:

8. The Strata Property Act should require that notice of an annual general meeting or a special general meeting must include the proposed wording of any resolution to authorize the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator.

E. Should a Voter in Arrears Be Eligible to Vote on a Resolution to Authorize the Voluntary Winding Up of a Strata Without Liquidator or the Voluntary Winding Up of a Strata with Liquidator?

As noted earlier, a voter who is in arrears of strata fees, a special levy, reimbursement of the cost of work to remedy a failure to comply with a work order, or the voter’s share of a judgment against the strata, may be deprived of the right to vote on a resolution if

- the strata is entitled to register a lien against the owner’s strata lot, and
- the strata has a bylaw that provides that a voter may not be permitted to exercise the right to vote in these circumstances.³¹¹

308. *See supra* note 1, s. 45 (1).

309. *See, below*, Part Two, III.E at 81 (tentative recommendation (16)).

310. *Supra* note 1, s. 45 (3).

311. *See, above*, Part Two, II.A.4 (d) at 62; *Strata Property Act, supra* note 1, ss. 53 (2), 116 (1).

This rule only applies to resolutions that must be passed with either a majority vote or a 3/4 vote. It does not apply to resolutions that must be passed with a unanimous vote. The issue here is whether or not it should apply to the new resolution proposed to authorize termination of a strata.

The rationale for carving out the new resolution from the scope of this rule would be similar to the rationale for carving out unanimous-vote resolutions. The resolution deals with a fundamental change to the strata. The subject matter of the resolution is of such importance that a voter should not be disenfranchised for financial reasons.

Another consideration to bear in mind is the relation of this issue to the next issue, which deals with the basis for calculating votes. Under a total-votes basis for calculating votes, voters who lose the right to vote under this provision will, in effect, be casting the equivalent of a vote against the resolution.

The rationale for extending this provision to the new resolution would be to support the provision's policy of encouraging the prompt payment of the fees and charges noted earlier.

The committee notes the importance of the policy in favour of prompt payment, but is of the view that it would be taking that policy to an extreme if it were used to disenfranchise voters on a matter of such fundamental importance as termination of a strata.

The committee tentatively recommends:

9. The Strata Property Act should provide that a strata corporation's bylaw that provides that a vote for a strata lot may not be exercised if the strata corporation is entitled to register a lien against the strata lot under section 116 (1) of the Strata Property Act should not apply to a vote on a resolution to authorize the voluntary winding up of the strata without liquidator or the voluntary winding up of the strata with liquidator.

F. On What Basis Should the Strata Property Act Calculate Votes on a Resolution to Authorize the Voluntary Winding Up of a Strata Without Liquidator or the Voluntary Winding Up of a Strata with Liquidator?

As discussed earlier, the *Strata Property Act* adopts two bases for calculating votes on resolutions, one applicable to majority-vote and 3/4-vote resolutions and the

other applicable to unanimous-vote resolutions.³¹² The first basis may be labelled a vote-cast basis and the second a total-votes basis. The issue here is which of these two bases should be adopted for the new resolution to authorize termination of a strata.

The total-votes basis is better able to ensure that a large majority of voters is in favour of termination. If votes are calculated on the basis of votes cast at a meeting, then this basis opens up the possibility that a comparatively small number of voters becomes able to authorize termination. Likely for this reason, legislative termination provisions invariably adopt a total-votes basis to calculating votes.

The advantage of employing a votes-cast basis comes in its comparative ease of administration. It may be difficult, particularly in larger stratas, to bring every voter together to cast a vote on the resolution.

In the committee's view, the total-votes basis is more appropriate for a resolution that authorizes a fundamental change such as the termination of a strata.

The committee tentatively recommends:

10. The Strata Property Act should provide that votes on a resolution to authorize the voluntary winding up of the strata without liquidator or the voluntary winding up of the strata with liquidator should be calculated on the basis of the total number of votes set out in the Schedule of Voting Rights or as prescribed by the act.

G. Should a Mortgagee of a Strata Lot Be Entitled to Cast a Strata Lot's Vote on a Resolution to Authorize the Voluntary Winding Up of a Strata Without Liquidator or the Voluntary Winding Up of a Strata with Liquidator?

A mortgagee of a strata lot may be entitled to cast a strata lot's vote on a resolution at an annual general or a special general meeting, so long as the mortgagee has met a series of conditions.³¹³ Even if these conditions are met, a mortgagee's voting rights are limited. They may "only [be exercised] in respect of insurance, maintenance, finance or other matters affecting the security for the mortgage."³¹⁴ The scope of this limitation is somewhat ambiguous.³¹⁵

312. See, above, Part Two, II.B.5 at 64.

313. See *Strata Property Act*, *supra* note 1, s. 54 (c). See also, above, Part Two, II.B.4 (c) at 61.

314. *Strata Property Act*, *supra* note 1, s. 54 (c).

315. See, above, Part Two, II.B.4 (c) at 61.

In the committee's view, the law should not rest on this ambiguous position. The legislation should spell out a clear position on the underlying policy issue. What should the mortgagee's voting rights be when the strata is considering a resolution authorizing its termination?

One view would be that the legislation should make it clear that a mortgagee of a strata lot may cast the strata lot's vote on a resolution authorizing termination, so long as all the other legislative conditions applying to a mortgagee's voting rights are met. This rule would be consistent with a policy of allowing a mortgagee to protect its interests through the exercise of voting rights attached to a strata lot.

But this position effectively deprives a strata-lot owner of a voice in the decision to terminate. In the committee's view this result is undesirable. An owner should have a say in as fundamental a change as termination. Mortgagees' interests can be effectively protected through the proposals relating to registered chargeholders, which are the subject of the next chapter.

The committee tentatively recommends:

11. The Strata Property Act should provide that a mortgagee may not exercise its right to vote in respect of a resolution to authorize the voluntary winding up of the strata without liquidator or the voluntary winding up of the strata with liquidator.

CHAPTER III. PROTECTING THE INTERESTS OF DISSENTING OWNERS AND REGISTERED CHARGE-HOLDERS

A. Introduction

Because the *Strata Property Act* requires the unanimous consent of owners to terminate a strata it does not have to deal with protection of the interests of dissenting owners. The act similarly provides a mechanism for requiring the consent of all owners of registered charges on land shown in the strata plan (or land held by or on behalf of the strata corporation but not shown in the strata plan), when the strata is pursuing a voluntary winding up without a liquidator. If these rules are changed, then the act will have to grapple with how to protect any owners or registered chargeholders who disagree with a supermajority decision to terminate a strata. This chapter examines a range of options to provide that protection.

B. Should the Strata Property Act Contain a Special Procedure for Owners Who Dissent from a Resolution to Authorize the Voluntary Winding Up of a Strata Without Liquidator or the Voluntary Winding Up of a Strata with Liquidator?

The first point to note in considering this issue is that if the *Strata Property Act* were amended to allow owners to authorize terminating a strata with less than unanimous consent and nothing else were changed this reform would not effectively bar dissenting owners from pursuing a dispute over termination in the courts. This point follows from the fact that the *Strata Property Act* gives the supreme court a broad jurisdiction for “preventing or remedying unfair acts.”³¹⁶

There is a large amount of case law interpreting the key expression in this section of the *Strata Property Act*, which directs its application to acts, resolutions, or the exercise of voting rights that are *significantly unfair*. For the purposes of this consultation paper, it’s not necessary to summarize that jurisprudence. It is enough to observe that the courts have said that a remedy is not available under this provision for actions that amount to “mere prejudice or trifling unfairness.”³¹⁷ Instead, the courts

316. *Supra* note 1, s. 164.

317. *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 at para. 27, 12 BCLR (4th) 67, Ryan JA (Levine JA concurring) [*Reid*].

are concerned here with actions that can be described as “ ‘burdensome, harsh, wrongful, lacking in probity or fair dealing or ha[ving] been done in bad faith,’ ‘unjust or inequitable’ or ‘unreasonable.’ ”³¹⁸

It can’t be known at this time how a future court might apply this standard to a dispute involving dissenting owners under a reformed procedure for terminating a strata. But what can be said now with certainty is that some disputes will fail to meet this standard. So a key question in considering this issue for reform is whether this result would be acceptable. Or is it not acceptable, which effectively would mean that every dissenting owner—or a larger subset of dissenting owners—should be allowed a chance to obtain a remedy from the courts.

So one option would be simply not to create a special court process for termination disputes. This option would rely on existing court procedures to guard against pursuing termination in bad faith. The main advantage of this approach is that it ties into a relatively well-developed body of case law, which the courts have used as an effective mechanism to police bad behaviour in the strata field. This option also would not require the implementation of a new procedure, something that would have to be carefully grafted on to the existing provisions of the act and the court’s current procedures.

But it is possible to question whether the court process for preventing or remedying unfair acts is the best fit with disputes that may arise between majority and minority owners during a proposed voluntary winding up of a strata without a liquidator. It could be argued that a special process, crafted with only these disputes in mind, might have procedural and remedial advantages over existing *Strata Property Act* processes.

Singapore provides an example of a jurisdiction that has created a special legislative process to deal with termination disputes. Singapore’s procedure is very detailed and complex, but its outlines can be briefly summarized.³¹⁹

Under Singapore’s legislation, termination of a strata must be approved by an administrative body called the Strata Titles Board.³²⁰ After being given notice of the intention to terminate the strata, a dissenting owner or registered chargeholder (other

318. *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44 at para. 31, [sub nom. 459381 B.C. Ltd. v. Strata Plan BCS 1589] 27 BCLR (5th) 68, Garson JA (quoting *Reid*, supra note 317 at para. 26).

319. See, above, Part One, III.C.4 at 43 (further discussion of Singapore’s legislation).

320. See supra note 199, s. 84A (2A) (b).

than a lessee) has 21 days in which to file an objection with the board.³²¹ The board is given the authority to mediate the dispute, but if mediation fails to resolve the dispute within 60 days, then the board issues a stop order with respect to the proposed termination of the strata.³²² This stop order has the effect of moving the dispute to the High Court of Singapore.³²³

When the dispute is before the high court, the legislation directs the court to approve the application to terminate the strata, unless the court “is satisfied that”:

- any objector, being a subsidiary proprietor [*i.e.*, an owner], will incur a financial loss; or
- the proceeds of sale for any lot to be received by any objector, being a subsidiary proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the lot.³²⁴

This direction is subject to an overriding legislative direction not to approve any application to terminate a strata that is not made in good faith.³²⁵

Singapore’s legislation is one concrete example of how the courts may be used in a wider oversight role for the termination process. The focus is on bad faith (which, as noted earlier, British Columbia’s legislation already covers off), but the definition of *bad faith* is augmented to include certain types of financial losses. In this way, dissenting owners may feel that their concerns are given heightened protection.

In the committee’s view, existing provisions in the *Strata Property Act* give adequate protection to dissenting owners. It is not necessary to build an expanded role for the courts into the process.

It’s important to bear in mind the existing protections for owners. First, the committee is proposing that terminating a strata may only take place if it is authorized by a supermajority of voters. This requirement will ensure that termination will meet with the approval of the vast majority of a strata’s owners. Second, existing proce-

321. *See ibid.*, s. 84A (4).

322. *See ibid.*, s. 84A (6A).

323. *See ibid.*, s. 84A (2A) (b).

324. *Ibid.*, s. 84A (7).

325. *See ibid.*, s. 84A (9). The legislation effectively defines what “is not in good faith” by directing the court to take “into account only the following factors: (a) the sale price for the lots and the common property in the strata title plan; (b) the method of distributing the proceeds of sale; and (c) the relationship of any purchaser to any of the subsidiary proprietors” (*ibid.*).

dural and voting protections will apply to the new resolution regarding termination. Third, court proceedings aimed at remedying unfair actions or exercises of voting power will, in all likelihood, be a sufficient means to guard against unfair misuse of the termination process. The provision should apply to blatant examples of bad faith, and, if past cases are a guide, may be available in instances when the effect of a decision to terminate a strata may be characterized as “harsh,” “wrongful,” “inequitable,” or “unreasonable.”

The committee tentatively recommends:

12. The Strata Property Act should not contain a special court process available to an owner who dissents from a resolution authorizing the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator.

13. The absence of a special court process applicable to an owner who dissents from resolution authorizing the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator should not, in and of itself, bar a dissenting owner from seeking a remedy under any other process that exists in the Strata Property Act.

C. Should the Strata Property Act Contain a Special Alternative Dispute Resolution Procedure for Owners Who Dissent from a Resolution to Authorize the Voluntary Winding Up of a Strata Without Liquidator or the Voluntary Winding Up of a Strata with Liquidator?

Another approach that could be taken to disputes involving owners who dissent from a proposed termination of a strata would be to require that those disputes be addressed by alternative dispute resolution. The leading examples of alternative dispute resolution being used to address disputes arising from a proposed termination of a strata involve arbitration or mediation.

Arbitration or mediation could be used in the legislation in a number of ways. One, or both, could be integrated with a court process. This is the approach used in Singapore, where the legislation calls for mediation of disputes before going to court.³²⁶ Another approach can be seen in legislation in other Canadian jurisdictions. Ontario, for example, provides that dissenting owners are entitled, on a termination by sale of the strata, to “submit to mediation a dispute over the fair market value of the property or the part of the common elements that has been sold, determined as of

326. See *ibid.*, s. 84A (6A).

the time of the sale.”³²⁷ Other jurisdictions have similar provisions, which provide for the rather more formal process of arbitration to apply to financial disputes.³²⁸

Alternative dispute resolution is seen to have a number of advantages. It can be less adversarial in nature, and lead to a speedier, less expensive resolution of disputes. For financial and valuation disputes, alternative dispute resolution may offer specialized expertise. Finally, it may be possible to integrate alternative dispute resolution with the proposed Civil Resolution Tribunal process for strata disputes.

There are some downsides to legislative alternative dispute resolution. Arbitration and mediation developed as consensual processes. They may be less effective when one party can compel another party’s participation in them. Arbitration and mediation can lack the procedural protections and transparency that are the hallmarks of court proceedings.

The committee does not favour a legislative requirement for alternative dispute resolution in these circumstances. The committee views the Supreme Court of British Columbia as the appropriate venue for disputes over termination. These disputes are largely disputes over property rights. It is noteworthy that “application[s] to wind up [a] strata corporation” were expressly carved out of the jurisdiction of the Civil Resolution Tribunal.³²⁹

The committee tentatively recommends:

14. The Strata Property Act should not require that an owner who dissents from the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator must arbitrate or mediate the dispute before applying to court.

D. Should Stratas Be Required to Obtain the Consent of Registered Chargeholders to the Voluntary Winding up of a Strata Without Liquidator?

The *Strata Property Act* currently protects registered chargeholders in the same way that it protects owners: with a unanimous-consent requirement. When a strata applies to wind itself up without a liquidator, that application must include “the writ-

327. *Condominium Act, 1998*, *supra* note 160, s. 125 (1).

328. See Prince Edward Island: *Condominium Act*, *supra* note 160, s. 24 (5); Nova Scotia: *Condominium Act*, *supra* note 155, s. 40 (5); Yukon: *Condominium Act*, *supra* note 159, s. 21 (8); Northwest Territories and Nunavut: *Condominium Act*, *supra* note 160, s. 27.

329. See *Civil Resolution Tribunal Act*, SBC 2012, c. 25, schedule, s. 8 (1) (j) (not in force).

ten consent to the winding up signed by all holders of registered charges against land shown on the strata plan and land held in the name of or on behalf of the strata corporation, but not shown on the strata plan.”³³⁰ (This requirement effectively means that all creditors must consent, because the strata is also required to certify that it has no outstanding debts, other than those held by these registered chargeholders.)³³¹ This approach essentially gives registered chargeholders a veto over the process, which is a very effective way of insuring that their interests will be protected. Most jurisdictions in Canada rely on a similar unanimous-consent requirement for registered chargeholders in their legislation.³³²

But if unanimous consent is no longer going to be the rule for owners should unanimous consent continue to be the standard for registered chargeholders? The same considerations in favour of moving away from unanimous consent for owners could also apply to registered chargeholders. The standard allows for a single intransigent registered chargeholder to thwart the wishes of the vast majority of owners and chargeholders. A stalemate may occur if a registered chargeholder insists on satisfying its self-interested goals to the utmost.

There are examples of legislation that creates a parallel between the threshold applicable to owners and registered chargeholders. Ontario’s legislation sets the consent of “the owners of at least 80 percent of the units” and at least 80 percent of “persons who, at the date of the vote, have registered claims against the property” as its standards.³³³ Further afield, corporate-reorganization legislation often allows fundamental changes to be authorized with less than the unanimous consent of creditors.³³⁴

330. *Supra* note 1, s. 274 (b). Notice that this requirement only comes into play when a strata is proceeding without the appointment of a liquidator. There is no equivalent provision for cases involving a voluntary winding up of a strata with a liquidator (*see ibid.*, s. 277–78, 280).

331. *See ibid.*, s. 274 (c) (ii).

332. *See* Manitoba: *The Condominium Act*, *supra* note 160, ss. 21 (1) (b) (termination by sale), 22 (1) (b) (termination by consent); Québec: art. 1108 CCQ; New Brunswick: *Condominium Property Act*, *supra* note 154, s. 54 (1) (b); Prince Edward Island: *Condominium Act*, *supra* note 160, ss. 24 (1) (b) (termination by sale), 25 (1) (b) (termination by consent); Nova Scotia: *Condominium Act*, *supra* note 155, s. 41 (1) (b); Newfoundland and Labrador: *Condominium Act, 2009*, *supra* note 156, s. 63 (1) (a); Yukon: *Condominium Act*, *supra* note 159, ss. 21 (1) (b) (termination by sale), 22 (1) (b) (termination by consent); Northwest Territories and Nunavut: *Condominium Act*, *supra* note 160, ss. 26 (1) (b) (termination by sale), 28 (1) (b) (termination by consent).

333. *Condominium Act, 1998*, *supra* note 160, ss. 122 (1) (b) (termination by consent), 124 (2) (b) (termination by sale).

334. *See, e.g., Business Corporations Act*, *supra* note 66, s. 289 (1) (d) (adoption of corporate arrangement with creditors requiring “a majority in number and 3/4 in value of the creditors or class of

In the committee's view, it is desirable to question whether registered chargeholders should even be asked to consent to termination of a strata. Such a consent requirement adds another layer of complexity to the process. This additional complexity is not needed in view of other means to ensure that registered chargeholders' interests are safeguarded.

The committee tentatively recommends:

15. The Strata Property Act should not require that a strata must obtain the consent to the voluntary winding up of a strata without liquidator from any holder of a registered charge against land shown on the strata plan and land held in the name of or on behalf of the strata corporation, but not shown on the strata plan.

E. What Notice Requirements for Registered Chargeholders Should Apply to a Resolution to Authorize the Voluntary Winding Up of a Strata Without Liquidator?

In the committee's opinion, requiring notice of a general meeting that is considering a resolution authorizing the winding up of a strata without a liquidator should form the first level of legislative protection for registered chargeholders. The notice period in this case should run parallel to the notice period for eligible voters.³³⁵

The committee tentatively recommends:

16. The Strata Property Act should require that a strata corporation must give all holders of registered charges against land shown on the strata plan and land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, at least 30 days' notice of an annual general meeting or a special general meeting that will consider a resolution to authorize the voluntary winding up of the strata without liquidator.

In the committee's view, there would be considerable benefit to the legislation giving strata corporations guidance on how to fulfill this new notice requirement. The legislation should set out some basic minimum standards that must be met in crafting the contents of the notice. But it should stop short of requiring that the notice be in one specific form. This approach has the potential to create uncertainty over the effect of small deviations from the standard form. Do such small deviations result in the notice being invalid? Or is substantial compliance with the standard form

creditors").

335. See, above, Part Two, II.D at 69.

enough to ensure that notice is validly given? It would be preferable to avoid these questions by setting out minimum standards for the form of notice, which would also allow parties to enhance the information given in the notice, if circumstances were to call for it. These standards could call for including, at a minimum, the date and time of the meeting and the text of the resolution to be considered.

The committee tentatively recommends:

17. The Strata Property Act should provide for the minimum requirements for the form of notice of an annual general meeting or a special general meeting that will consider a resolution to authorize the voluntary winding up of the strata without liquidator that must be given to all holders of registered charges against land shown on the strata plan and land held in the name of or on behalf of the strata corporation, but not shown on the strata plan.

Notice of a general meeting should not entitle a registered chargeholder to participate in the meeting. The decision on a resolution to authorize termination of a strata is a matter for voters on the resolution. But this point does set up a dilemma for any registered chargeholder who disagrees with termination of a strata. Such a chargeholder may want to await the outcome of a vote on the resolution before deciding how to proceed.

In the committee's view, this dilemma can be adequately addressed by creating a mechanism that allows for interested registered chargeholders to be informed of the outcome of a vote on a resolution to authorize terminating a strata.

The committee tentatively recommends:

18. The form of notice of an annual general meeting or a special general meeting that will consider a resolution to authorize the voluntary winding up of the strata without liquidator that must be given to all holders of registered charges against land shown on the strata plan and land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, should allow for the recipient of notice to register with the strata corporation to receive the results of the vote on the resolution to authorize the voluntary winding up of the strata without liquidator.

F. Should a Registered Chargeholder Who Disagrees with a Decision to Terminate a Strata Be Entitled to Apply to Court?

In the committee's opinion, the ultimate safeguard for the interest of registered chargeholders who dissent from a strata's decision to termination should be to seek a remedy from the supreme court. But this safeguard should be set in balance with the overall need to ensure that the termination process has certainty and finality.

This balance can be achieved by attaching a clear time limit to applications to court by registered chargeholders. Thirty days is a fair period to allow dissenting chargeholders to decide whether to exercise their right to apply to court for a remedy.

As the *Strata Property Act* does not currently contemplate a court application from a dissenting registered chargeholder, the committee's tentative recommendations will require the adoption of a provision in the act to enable such an application. The committee has some views on the nature of the application. Procedurally, the application should proceed by way of petition to the supreme court. Although the court application would be available when a registered chargeholder objects to termination of a strata, a mere objection should not be enough to entitle the registered chargeholder to a remedy. A registered chargeholder should have to demonstrate that it would be significantly prejudiced by terminating the strata. In this sense, the application would be analogous to an application by an owner or tenant to prevent or remedy an unfair act.³³⁶ The committee invites comments on these and other potential elements of a court application for dissenting registered chargeholders.

The committee tentatively recommends:

19. The Strata Property Act should provide that a holder of a registered charge against land shown on the strata plan and land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, who has registered to receive notice of the results of the vote on the resolution to authorize the voluntary winding up of the strata without liquidator may apply by petition to the supreme court to object to the voluntary winding up of the strata without liquidator within 30 days of the strata corporation giving the notice of results.

336. See *Strata Property Act*, *supra* note 1, s. 164.

CHAPTER IV. TRANSITIONAL AND OTHER ISSUES

A. Introduction

This brief chapter examines two issues concerning the application of the committee's tentative recommendations for reform set out in the preceding chapters. First, it considers the transitional rule that, in the committee's view, should apply to these tentative recommendations. Then it confirms that the committee's tentative recommendations should apply to bare-land stratas.

B. What Transitional Rule Should Apply to this Consultation Paper's Proposals?

Legislation is sometimes crafted in a way that its provisions do not apply to litigation, contractual relationships, or other arrangements that are already in existence when the legislation comes into force. The reasons for doing this vary from case to case.

One way to apply this approach to the committee's proposals would be to limit the reach of those proposals to stratas that are created after the legislation implementing those proposals is brought into force. Taking this approach would leave the current rules in the *Strata Property Act* in place for all stratas that are in existence now, and for those stratas that will be created right up until the time new legislation is brought into force.

There are several reasons for limiting the committee's proposals to future stratas. Existing strata-lot owners may have a legitimate expectation that the termination regime in place when they purchased their stratas will continue to apply throughout the stratas' lifetimes. This expectation may be tied into an emotional sense that strata lots should be, for ownership and redevelopment purposes, the same as detached houses. These feelings may breed a sense that the rules are being unfairly changed in the middle of the game. Changes in property and contract law, in particular, are often implemented with restraint, so as not to affect existing arrangements or relationships.

But there may be disadvantages to adopting such a transitional rule in this case. First, it will mean that the committee's proposals will not have any real impact until far into the future. These proposals were motivated by a sense that the current regime may cause problems, which the committee's tentative recommendations are meant to remedy. It would be almost perverse if these remedial proposals did not begin to have any widespread effect for another 50 or 60 years. Second, once the

proposals do begin to apply to stratas under such a lengthy transitional rule, there will be a period of relative uncertainty. Depending on their date of creation, some stratas will be subject to the old rules, while others that are substantially similar will be subject to the new. This uncertainty has the potential to cause confusion in the marketplace.

The committee tentatively recommends:

20. The committee's tentative recommendations for reform should, upon the coming into force of legislation implementing those tentative recommendations, apply to all stratas.

C. Should this Consultation Paper's Proposals Apply to Bare-Land Stratas?

A bare-land strata plan is one in which "boundaries" between strata lots "are defined on a horizontal plane by reference to survey markers and not by reference to the floors, walls or ceilings of a building."³³⁷ This definition does not mean that a bare-land strata plan can't contain a building. But any buildings depicted in a bare-land strata plan must be located within the strata's common property.³³⁸ Bare-land strata plans are more akin to subdivision plans under the *Land Title Act* than to other kinds of stratas.³³⁹

There are some special procedural rules that apply to the termination of a bare-land strata, which are set out in the *Bare Land Strata Plan Cancellation Regulation*.³⁴⁰ But the substantive provisions on termination found in the *Strata Property Act* apply with equal force to bare-land stratas, as to any other kind of strata. In the committee's opinion, its proposals to reform aspects of those substantive provisions in the act should also apply to bare-land stratas.

The committee tentatively recommends:

21. The committee's tentative recommendations for reform should apply to bare-land strata plans.

337. *Strata Property Act*, *ibid.*, s. 1 (1) "bare land strata plan."

338. *See General Survey Instruction Rules*, *supra* note 126, s. 209.

339. *See British Columbia Strata Law Practice Manual*, *supra* note 11 at § 2.5. *See also*, above, Part One, II.G at 29 (further background information on bare-land stratas).

340. *See supra* note 127.

CHAPTER V. CONCLUSION

Terminating a strata looks to be a topic that will generate some important emerging issues in strata-property law. This consultation paper contains proposals intended to head off problems that may develop in a number of areas of concern and to ensure that British Columbia has a legal framework for terminating stratas that meets the needs of strata owners and others.

The committee hopes to hear from a wide range of people on its proposals. Comments on this consultation paper are a vital part of the process of developing recommendations for law reform and will be taken into account as the committee refines its proposals for its final report on terminating a strata.

APPENDIX A

List of Tentative Recommendations

1. *The Strata Property Act's provisions on termination should be reformed. (47–49)*
2. *The Strata Property Act should not continue to require the unanimous consent of strata-lot owners to the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator. (49–51)*
3. *The Strata Property Act should allow at least 80 percent of the eligible votes to authorize the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator. (51–53)*
4. *The Strata Property Act should not allow stratas to specify in their bylaws that a greater percentage of eligible votes than is required under the act is needed to authorize the voluntary winding up of the strata without liquidator or the voluntary winding up of a strata with liquidator. (53–55)*
5. *The Strata Property Act should not specify different thresholds for owners to authorize the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator. (55–57)*
6. *An “eligible vote” for the purposes of a vote on a resolution to authorize the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator should be defined as a vote as shown on the strata’s Schedule of Voting Rights. If the strata does not have a Schedule of Voting Rights, then an “eligible vote” is defined as one vote per strata lot. (68–69)*
7. *The Strata Property Act should require that a strata corporation must give at least 30 days’ written notice of an annual general meeting or a special general meeting, if that meeting will consider a resolution to authorize the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator, to the following:*
 - (a) *every owner, whether or not a notice must also be sent to the owner’s mortgagee or tenant;*

- (b) every mortgagee who has given the strata corporation a Mortgagee's Request for Notification;*
- (c) every tenant who has been assigned a landlord's right to vote, if the strata corporation has received notice of the assignment. (69)*

8. The Strata Property Act should require that notice of an annual general meeting or a special general meeting must include the proposed wording of any resolution to authorize the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator. (69-70)

9. The Strata Property Act should provide that a strata corporation's bylaw that provides that a vote for a strata lot may not be exercised if the strata corporation is entitled to register a lien against the strata lot under section 116 (1) of the Strata Property Act should not apply to a vote on a resolution to authorize the voluntary winding up of the strata without liquidator or the voluntary winding up of the strata with liquidator. (70-71)

10. The Strata Property Act should provide that votes on a resolution to authorize the voluntary winding up of the strata without liquidator or the voluntary winding up of the strata with liquidator should be calculated on the basis of the total number of votes set out in the Schedule of Voting Rights or as prescribed by the act. (71-72)

11. The Strata Property Act should provide that a mortgagee may not exercise its right to vote in respect of a resolution to authorize the voluntary winding up of the strata without liquidator or the voluntary winding up of the strata with liquidator. (72-73)

12. The Strata Property Act should not contain a special court process available to an owner who dissents from a resolution authorizing the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator. (75-78)

13. The absence of a special court process applicable to an owner who dissents from resolution authorizing the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator should not, in and of itself, bar a dissenting owner from seeking a remedy under any other process that exists in the Strata Property Act. (75-78)

14. The Strata Property Act should not require that an owner who dissents from the voluntary winding up of a strata without liquidator or the voluntary winding up of a strata with liquidator must arbitrate or mediate the dispute before applying to court. (78-79)

15. *The Strata Property Act should not require that a strata must obtain the consent to the voluntary winding up of a strata without liquidator from any holder of a registered charge against land shown on the strata plan and land held in the name of or on behalf of the strata corporation, but not shown on the strata plan. (79–81)*

16. *The Strata Property Act should require that a strata corporation must give all holders of registered charges against land shown on the strata plan and land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, at least 30 days' notice of an annual general meeting or a special general meeting that will consider a resolution to authorize the voluntary winding up of the strata without liquidator. (81)*

17. *The Strata Property Act should provide for the minimum requirements for the form of notice of an annual general meeting or a special general meeting that will consider a resolution to authorize the voluntary winding up of the strata without liquidator that must be given to all holders of registered charges against land shown on the strata plan and land held in the name of or on behalf of the strata corporation, but not shown on the strata plan. (81–82)*

18. *The form of notice of an annual general meeting or a special general meeting that will consider a resolution to authorize the voluntary winding up of the strata without liquidator that must be given to all holders of registered charges against land shown on the strata plan and land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, should allow for the recipient of notice to register with the strata corporation to receive the results of the vote on the resolution to authorize the voluntary winding up of the strata without liquidator. (81–82)*

19. *The Strata Property Act should provide that a holder of a registered charge against land shown on the strata plan and land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, who has registered to receive notice of the results of the vote on the resolution to authorize the voluntary winding up of the strata without liquidator may apply by petition to the supreme court to object to the voluntary winding up of the strata without liquidator within 30 days of the strata corporation giving the notice of results. (82–83)*

20. *The committee's tentative recommendations for reform should, upon the coming into force of legislation implementing those tentative recommendations, apply to all stratas. (85–86)*

21. *The committee's tentative recommendations for reform should apply to bare-land strata plans. (86)*

APPENDIX B

Summary Consultation

INTRODUCTION

The purpose of this summary consultation is to highlight three proposals from the British Columbia Law Institute's *Consultation Paper on Terminating a Strata*. In the interest of brevity, background information and discussion of these proposals has been kept to a bare minimum. Citations and footnotes for the text have not been provided. If you wish to read about the issues raised in this summary consultation in depth, or if you want to comment on all of this consultation's 21 tentative recommendations (or a greater range of those tentative recommendations than is offered in this summary consultation), then you are encouraged to obtain a copy of the full *Consultation Paper on Terminating a Strata* by downloading it for free from www.bcli.org or by contacting BCLI and asking for a hard copy to be sent to you.

HOW TO RESPOND TO THIS SUMMARY CONSULTATION

You may respond to this summary consultation by email sent to strata@bcli.org. Alternatively, you may send your response by mail to 1882 East Mall, University of British Columbia, Vancouver, BC V6T 1Z1, by fax to (604) 822-0144, or by linking to an online survey through our website www.bcli.org.

If you want your comments to be considered in the preparation of the final report for this project then we must receive them by **30 September 2014**. BCLI expects to publish the final report on terminating a strata in autumn 2014.

ABOUT THE BRITISH COLUMBIA LAW INSTITUTE

The British Columbia Law Institute is British Columbia's independent law-reform agency. Incorporated as a not-for-profit society in 1997, BCLI's strategic 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. After public consultations, BCLI makes recommendations for legislative changes to the provincial government. These recommendations may only be implemented by the passage of legislation by British Columbia's legislative assembly.

ABOUT THE STRATA PROPERTY LAW (PHASE TWO) PROJECT

This consultation forms part of a broader BCLI project on strata-property law. The Strata Property Law Project—Phase Two builds on the research and consultation carried out in the phase-one project. Phase two is concerned with making legislative recommendations to reform the *Strata Property Act* in the following seven major areas: (1) fundamental changes to a strata; (2) complex stratas; (3) leasehold stratas; (4) common property; (5) selected governance issues; (6) selected insurance issues; (7) selected land-title issues. Work on phase two began in summer 2013 and will carry on until the final report for the project is published in December 2016.

BCLI is carrying out the phase-two project with the assistance of an all-volunteer project committee. The members of the committee are:

Patrick Williams—chair
(Partner, Clark Wilson LLP)

Larry Buttress
(Deputy Executive Officer, Real Estate Council of British Columbia)

Garth Cambrey
(President, Cambrey Consulting Ltd.)

Tony Gioventu
(Executive Director, Condominium Home Owners Association)

Tim Jowett
(Deputy Registrar of Land Titles, Land Title and Survey Authority)

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Doug Page
(Manager, Housing Policy, Office of Housing and Construction Standards, Ministry of Natural Gas Development and Responsible for Housing)

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Allen Regan
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Stanley Rule
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(Partner, Lawson Lundell LLP)

OUR SUPPORTERS

The Strata Property Law Project—Phase Two has been made possible by project funding from the Real Estate Foundation of British Columbia, the Notary Foundation of British Columbia, the Ministry of Natural Gas Development and Responsible for Housing for British Columbia, the Real Estate Council of British Columbia, the Real Estate Institute of British Columbia, Strata Property Agents of British Columbia, the Association of British Columbia Land Surveyors, and the Vancouver Island Strata Owners Association.

ABOUT STRATA-PROPERTY LAW

Stratas are created when a strata plan is deposited in the land title office. This act gives rise to three defining characteristics of a strata:

- (1) The units in a strata property—in British Columbia these units are called *strata lots*—are owned outright by individual owners. Each gets a separate title in the land title office. For strata lots, think of apartments in a multi-unit residential building—though they could also be offices in an office tower, commercial spaces in a business park, or even rooms in a hotel.
- (2) This individual ownership of strata lots is combined with collective ownership of the strata's common property and assets. These common elements can include things like lobbies, hallways, pipes and other building components installed between strata lots, and elevators. All the strata-lot owners own these common elements through a form of shared ownership called tenancy in common. In addition to shared ownership of property and assets, strata-lot owners also share liability for the strata's debts.
- (3) Finally, depositing a strata plan results in the creation of a strata corporation, which is given the responsibility to manage and maintain the strata's common property and assets for the benefit of all strata-lot owners. Each strata-lot owner is a member of the strata corporation.

In British Columbia legislation called the *Strata Property Act* provides for these distinctive characteristics and provides the rules for governance of stratas. The *Strata Property Act* is largely made up of ideas, concepts, and rules drawn from older bodies of law, such as property law, contract law, and corporate law.

ABOUT TERMINATING A STRATA

This consultation is concerned with one set of issues that arise from the first area considered in the phase-two project, fundamental changes to a strata. It examines

what the *Strata Property Act* formally calls cancellation of a strata plan and winding up of a strata corporation. This consultation uses the informal expression *termination* to describe the process.

Terminating a strata is a process that takes the three characteristics that legally define a strata and unwinds them. So termination eliminates individual ownership of strata lots, dissolves the strata corporation, and leaves the former strata-lot owners as tenants in common—that is, as shared owners of the former strata’s land and assets. (Or, in some cases, a liquidator, rather than the owners, ends up holding title to the strata’s lands and assets for the purposes of liquidating them and distributing the proceeds, first to the strata’s creditors, and, if anything is left over, to the owners.)

Why would anyone want to terminate a strata? There are many situations in which a strata might be motivated to terminate itself. Two examples crop up often in commentary on this legal issue. One example is when the strata’s buildings have deteriorated to the point where it is so expensive for the owners to repair them that terminating the strata becomes a financially viable option. The other is when zoning changes make it attractive to consider replacing a small or low-density strata with a higher-density development.

DEVELOPMENT OF THE LAW IN BRITISH COLUMBIA

Terminating a real-estate holding is an unusual concept for property law, which tends to value permanence, stability, and certainty, as opposed to flexibility in the face of changing circumstances or managing obsolescence. So it took some time for British Columbia’s strata-property legislation to really get a handle on this topic.

British Columbia has had strata-property legislation since 1966. Each version of the act from that original 1966 act up to the *Condominium Act* (which was the immediate predecessor of the *Strata Property Act*) dealt with termination in an awkward and unsatisfying way. The legislation allowed strata-lot owners to pass a special resolution (this required, depending on the version of the act in force, owners holding at least 75 percent of the voting power in the strata or owners casting at least 75 percent of the total votes cast at a general meeting to agree to the resolution) that would “deem” the strata to be destroyed. This was a legal fiction: the strata didn’t have to be destroyed in fact, or even to have suffered any physical damage. It was simply the way that the owners could demonstrate that they wanted to terminate the strata. Once the resolution was passed, the owners were required to make filings with the land title office, but the legislation was not clear on the exact procedural

steps that needed to be taken. If problems were encountered, the solution was to take matters to court.

The *Strata Property Act* was developed throughout the 1990s as a comprehensive reworking of strata-property law in British Columbia. It's been in force since 2000, and one of the areas of the law that it changed significantly was termination. In place of a vague procedure based on a legal fiction the *Strata Property Act* directly addresses termination with three detailed procedures.

The act's three procedures are called: (1) voluntary winding up without a liquidator; (2) voluntary winding up with a liquidator; and (3) court-ordered winding up. These three procedures are closely modelled on existing procedures for winding up for-profit companies. The first two procedures are administrative in nature, which means that they can be pursued without engaging the civil-litigation system. They are voluntary in the sense that widespread agreement is needed for a strata to pursue them. If that agreement can't be obtained, then a strata-lot owner or a creditor can go to court under the third procedure and argue that there is a case for terminating the strata.

A strata is much more likely to employ the first voluntary procedure than the second. This is because appointing a liquidator is expensive and can be time consuming. A strata would typically only take this step if it had creditors that were difficult to locate or if it were engaged in ongoing litigation or a dispute that could develop into litigation.

Procedurally, terminating a strata in British Columbia follows very closely the model set down in corporate legislation. But it does depart from that model in a couple of ways to accommodate the property-law aspects of stratas. So, for example, the detailed filings required under two administrative procedures are made with the land title office, rather than the corporate registry.

A more significant departure from corporate law comes in the requirements for initiating the administrative procedures. The decision to start the voluntary winding up process with or without a liquidator must be evidenced by a resolution of the strata corporation passed by a unanimous vote. This means that all the strata-lot owners must consent to terminating the strata. And, if the strata is proceeding without the appointment of a liquidator, it must also receive the consent of all holders of registered charges on title to land in the strata plan (or any land that the strata corporation happens to own, but which is not in the strata plan).

This high threshold for authorizing termination is out of step with corporate legislation. And it was a departure from the older British Columbia strata-property rule, which allowed owners to authorize termination by a special resolution. The threshold appears to have been ratcheted up out of a concern that someone's property rights could be taken away in an administrative process. So there was a conscious effort to strike a balance between corporate-law procedure and property-law substance.

Of course, requiring a group of people of any size to all agree to something can be a tall order. In theory, one intransigent person can stand in the way of an overwhelming majority. The *Strata Property Act's* answer to this dilemma is a special court process, which allows the majority to proceed over the wishes of a small minority (five percent of owners, for stratas with ten or more strata lots). And if the minority group is larger, or if it contains a registered chargeholder, then there is always the option to apply for a court-ordered winding up.

It's easy to see that the *Strata Property Act's* approach to terminating a strata is a considerable advance over what earlier legislation had to offer. The *Strata Property Act* provides much more certainty, by having three clearly defined and suitably detailed procedures, and more efficiency, by giving stratas the option of an administrative termination. But, as will be explained in the next section, now is a good time to ask whether the legislation we currently have strikes the best balance for strata-lot owners and others in the strata sector in British Columbia.

WHY CONSULT ON TERMINATING A STRATA NOW?

The committee believes for several reasons that the time is right to examine terminating a strata. Although the current rules have been used only sparingly, there are reasons to believe that this may change in the near future.

First and foremost, it is important to bear in mind that British Columbia has only had stratas since the first act on this topic was passed in 1966. This means that all those stratas built in the wake of that act—in the late 1960s and early 1970s—are about to enter the sixth decade of their existence. (And some stratas may be even older than the original act. This apparent oddity can occur in cases in which an apartment building was converted to strata title. These converted stratas may contain buildings that are 80 or 90 years old.) At this time, major building components can start to fail. Such failures can lead to the prospect of expensive repair bills for stratas. It's at this point when terminating the strata and selling the underlying land for redevelopment can become a viable prospect.

Second, broader social and economic trends could also begin to encourage some stratas to consider termination. Land for housing has become increasingly scarce in many British Columbia municipalities. As a result, land values have increased. In addition, many municipalities have embraced policies encouraging infill residential development at higher densities. This combination of economic and social changes may militate in favour of terminating some stratas as a prelude to redevelopment.

Third, if the goals of the legislation are to create a certain and efficient termination process, then, as commentators have pointed out, it is possible to question some of the choices made in the *Strata Property Act*. The unanimous-consent requirements in the act have the effect of expanding the number of people with a veto over the termination process. There may be reasons for this, but it does make collective decision-making more fraught and difficult. And if those difficulties turn into conflicts, then the act's remedy often requires an application to the supreme court. This raises concerns because once these types of property disputes hit the civil-litigation system and its adversarial process they have a disturbing tendency to take on a life of their own. The committee's proposals, which are highlighted in the sections that follow, focus on these two aspects of the law on terminating a strata: requirements for unanimous consent and the appropriate degree of court oversight.

WHAT VOTING THRESHOLD SHOULD STRATAS HAVE TO MEET TO AUTHORIZE TERMINATION?

The *Strata Property Act* currently calls for all strata-lot owners to consent to termination as a condition to using either of the act's two voluntary termination procedures (that is, without appointing a liquidator and with appointing a liquidator). There appear to be a number of reasons for adopting this approach. It notably provides the most protection for the interests of any owners who may dissent from a majority's decision to terminate the strata. Such dissenting owners may have to justify their position before a judge, but in many cases their objection may be enough to stop the process (because the majority will balk at the time and expense involved in a court proceeding). Because termination involves the ending of property rights, a unanimous-consent requirement can be seen as protecting important principles on property rights.

But there is more than one side to consider in crafting rules on terminating stratas. If everyone is going to have a veto over the process, then there's a good chance that in some cases a majority of owners are going to find their wishes thwarted. This can also have an effect on those owners' interests. If the strata building's condition is deteriorating, these owners can be placed in a difficult position. Obtaining financing to fund the necessary repairs may not be possible. But if the building continues to de-

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cline, the strata lots in it will also decline in value. Since a strata lot is a major investment for many people, this decline can be experienced as a form of impoverishment.

In the committee's view, a supermajority requirement would strike a better balance than the one set by unanimous consent. It would guard against the prospect of a small minority group being able to impose its will on the majority, but would still ensure that the decision to terminate commands widespread support.

Most of the other Canadian provinces and territories use a supermajority requirement instead of unanimous consent. Their experiences can help in selecting the precise number for the requirement. The numbers vary from a high of 90 percent to a low of 66 2/3 percent. But the majority has settled on 80 percent.

In the committee's view, 80 percent is also an appropriate figure for British Columbia. It is high enough to provide a good level of protection, without being so high as to be all but unreachable in practice. It is important to note here that the threshold of 80 percent that the committee is proposing would be set at 80 percent of all voters in the strata. In other words, although it would amount to a significant reduction of the current requirement of unanimous consent of all owners, it would not be applied in a manner similar to the rules on resolutions passed by a 3/4 vote. Such a resolution may be adopted by at least 3/4 of the votes cast at the general meeting considering it—and therefore could, in some cases, just have the support a small group of owners. This approach would not be appropriate for a resolution that authorizes termination of a strata.

Proposal (1) *The Strata Property Act should allow at least 80 percent of the eligible votes to authorize terminating the strata.*

☐ agree

☐ disagree

comments: _____

Readers may have noticed that this proposal uses the words *eligible votes* and wondered what is meant by the phrase. It is a nod toward the *Strata Property Act's* flexibility in allowing stratas to craft voting rights. For the vast majority of residential stratas, the rule of one vote per strata lot prevails. But this isn't necessarily the case for commercial and mixed-use stratas. These kinds of stratas often allocate voting

power according to a different formula. So they can end up with some strata lots enjoying multiple votes while others have votes that only count as a fraction of one. Eligible votes is employed as a neutral term that can capture this range, and the other specific rules on procedure and voting in the act.

WHAT RANGE OF TERMINATION DISPUTES SHOULD BE WITHIN THE OVERSIGHT OF THE COURT?

If the *Strata Property Act* moves to an 80-percent threshold for authorizing termination, then the question of how to deal with the objections of any dissenting owners arises. Even though the supermajority requirement will provide some level of protection, its implementation still raises the prospect of a strata proceeding to termination over the objections of up to 20 percent of its owners.

It should be noted that even if nothing else is changed in the *Strata Property Act* there are still mechanisms in place to deal with situations in which the majority abuses its power. There is a general provision in the act that allows the supreme court to prevent or remedy significantly unfair acts. Courts interpreting the words *significantly unfair* have said that it means conduct that is “burdensome, harsh, wrongful, lacking in probity or fair dealing or ha[ving] been done in bad faith, unjust or inequitable or unreasonable.”

So the question here really is whether the law should provide remedies in cases in which the majority’s actions can’t be characterized as significantly unfair. Financial disputes likely form the major source of such cases. Since termination is often linked with redevelopment, the amounts that will be paid to strata-lot owners on termination may come under question. An owner may feel that the amount offered is too low, particularly if it is not enough for the owner to pay out any mortgages on the strata lot. Should that owner be able to apply to court for a remedy?

Some jurisdictions have crafted court procedures to respond to financial disputes that contain none of the hallmarks of unfairness. But these provisions may be responding to local conditions, which make financial disputes more of a factor in termination than they would be in British Columbia.

In the committee’s view, the existing provisions of the *Strata Property Act* and the case law that has grown up around them provide an acceptable level of protection for dissenting owners. They set a clear standard of good behaviour that a majority must comply with in pursuing termination.

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Proposal (2) *The Strata Property Act should not create a special court procedure for an owner who dissents from a decision of a strata to terminate. But this proposal does not mean, in and of itself, that a dissenting owner should be blocked from using any existing remedies in the Strata Property Act.*

☐ agree

☐ disagree

comments: _____

HOW SHOULD THE INTERESTS OF REGISTERED CHARGEHOLDERS BE PROTECTED DURING TERMINATION?

The other major group that has a veto over decisions on terminating a strata are what the *Strata Property Act* calls “holders of registered charges against land shown on the strata plan and land held in the name of or on behalf of the strata corporation, but not shown on the strata plan.” For simplicity’s sake, this group will be referred to as *registered chargeholders*.

A *registered charge* is an interest in land that is less than the ownership interest and is registered on the owner’s title to land. For a concrete example of a registered charge, readers may think of a mortgage registered on title to a strata lot. But it should be borne in mind that the registered charge is much broader in meaning. Other types of creditors may be entitled to register charges on title to land. And registered charges may also derive from non-financial relationships. For example, a utility company that registers a right of way on title to land in a strata plan is a registered chargeholder. A registered charge does not include a charge that is not registered on title.

When a strata applies to the land title office to terminate itself without appointing a liquidator it must certify that it has the written consent to termination of all registered chargeholders. (If the strata takes on the added expense of appointing a liquidator to carry out the process, then this requirement does not apply—presumably because the liquidator will ensure that all registered chargeholders’, and other creditors’, interests are protected.)

Registered chargeholders are given a veto over the termination process apparently to protect their charges on title. This is especially the case for charges that take the form of security for loans. Because termination is often paired with redevelopment,

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there is an economic incentive to ensure that creditors are paid out and their charges discharged from titles.

The concern over this approach is similar to the concern over requiring the unanimous consent of owners. It allows a single registered chargeholder to call a halt to the process and thwart the will of the majority.

In the committee's view, this consent requirement puts too much power in registered chargeholders' hands. The committee favours moving to a system in which registered chargeholders are notified that strata-lot owners are considering termination and kept informed of developments in the process. Dissenting registered chargeholders would have a 30-day window, from the date on which the strata corporation gives them the outcome of the vote on the resolution, to apply to the supreme court. Enabling language would have to be inserted into the *Strata Property Act*, to allow for this new court application.

Proposal (3) *The Strata Property Act should require that a strata corporation must give all registered chargeholders not less than 30 days' notice of a resolution to authorize the voluntary winding up of the strata without liquidator and must give all registered chargeholders who request it notice of the outcome of the vote on the resolution. A dissenting registered chargeholder should have 30 days from the date on which the strata corporation gives notice of the outcome of the vote on the resolution to apply to the supreme court.*

☐ agree

☐ disagree

comments: _____

CONCLUSION

The committee is interested in your thoughts on these proposals. And if you wish to pursue any of the ideas raised in this summary consultation in greater detail or depth, the committee encourages you to read and respond to the full consultation. Responses to the full and summary consultations received before **30 September 2014** will be taken into account in preparing the final report on terminating a strata, which BCLI plans to publish in autumn 2014.

APPENDIX C

Comparative Chart: Canadian Legislation on Termination of a Strata

prov./ terr.	termination by consent	termination by sale	termination by court order	termination upon substantial damage
BC	<p>resolution passed by a unanimous vote at AGM or SGM</p> <p>written consent of all holders of registered charges</p>	n/a	<p>application by owner, mortgagee, or other person court considers appropriate</p> <p>court may order winding up if in best interests of owners, registered charge holders, or other creditors; in determining “best interests” court must consider (a) scheme and intent of act, (b) probability of unfairness to owner, registered charge holders, or creditors if winding up not ordered, (c) probability of confusion or uncertainty in affairs of strata if winding up not ordered</p> <p>-or-</p> <p>resolution required to be passed by a unanimous vote under the act is supported by all of the strata corporation’s votes except for (a) the vote in respect of</p>	n/a

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prov./ terr.	termination by consent	termination by sale	termination by court order	termination upon substantial damage
			<p>one strata lot, in a strata corporation comprised of at least 10 strata lots, or</p> <p>(b) the votes in respect of more than one strata lot, if those votes together represent less than 5% of the strata corporation's votes</p> <p>3/4 vote resolution to authorize application to court</p> <p>order in best interests of the strata corporation and would not unfairly prejudice the dissenting voter or voters</p>	
AB	special resolution (75% of all persons entitled to vote under act or bylaws, representing not less than 75% of "total unit factors")	special resolution written consent by (a) persons having registered interests or (b) persons having interests, other than statutory interests, who have notified strata corporation, to release their interests	<p>application by corporation, owner, registered mortgagee, or vendor under agreement for sale</p> <p>court may order termination of strata if just and equitable to do so</p>	n/a
SK	unanimous resolution	unanimous resolution written consents from all persons holding registered interests to release of those interests	<p>application by corporation, owner, or registered mortgagee</p> <p>court may order termination of strata if just and equitable to do so</p>	n/a
MB	vote of owners who own 80% of common elements—or any greater percentage specified in declaration	vote of owners who own 80% of common elements—or any greater percentage specified in declaration	application by interested party if (a) damage to units or common property, (b) expropriation, or (c) corporation,	<p>owners reject repairs after notice of substantial damage or</p> <p>owners fail to hold vote within 60 days of notice</p>

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prov./ terr.	termination by consent	termination by sale	termination by court order	termination upon substantial damage
	consent of all persons having registered claims	consent of all persons having registered claims	owner, or holder of encumbrance deems advisable court must consider (a) scheme and intent of act, (b) rights and interests of owners individually and collectively, (c) what course of action would be most just and equitable, and (d) probability of confusion and uncertainty in affairs of corporation if order not made	
ON	vote of owners of 80% of units consent in writing to termination of 80% of persons with registered claims	vote of owners of 80% of units consent in writing to termination of 80% of persons with registered claims	application by owner or person having encumbrance court must consider (a) scheme and intent of act, (b) probability of unfairness to owners if court order not made, (c) probability of confusion and uncertainty in affairs of corporation if order not made, and (d) best interests of owners	“substantial damage” defined as “damage for which the cost of repair is estimated to equal or exceed 25% of the replacement cost of all buildings and structures located on the property” vote in favour of termination by owners of 80% of units
QC	decision of majority of 3/4 of owners representing 90% of voting rights	n/a	n/a	n/a
NB	vote of 100% of owners consent of holders of registered encumbrances	n/a	application by corporation, owner, or person having registered encumbrance court must consider (a) scheme and intent of act, (b) probability of unfairness to one or more owners if	“substantial damage” defined as “damage to a building for which the cost of repairs would equal at least 25% of the value of the building immediately prior to the damage occurring, or

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prov./ terr.	termination by consent	termination by sale	termination by court order	termination upon substantial damage
			court order not made, and (c) probability of confusion and uncer- tainty in affairs of corporation if order not made	a greater percentage if specified in the decla- ration" vote for repair re- jected or not held within 60 days after determination of sub- stantial damage
PE	vote of 80% of own- ers, or greater per- centage specified in declaration consent of holders of registered claims	vote of 80% of own- ers, or greater per- centage specified in declaration consent of holders of registered claims	application by corpo- ration, owner, or per- son having encum- brance court must consider (a) scheme and intent of act, (b) probability of unfairness to one or more owners if court order not made, and (c) probability of confusion and uncer- tainty in affairs of corporation if order not made	"substantial damage" defined as substantial damage to 25% of buildings, or greater percentage specified in declaration vote to repair requires 80% of owners, or greater percentage specified in declara- tion if owners reject repair, or fail to vote within 60 days of substantial damage, corporation is terminated
NS	vote of 100% of owners consent of holders of registered claims	vote of 80% of owners	application by corpo- ration, owner, or per- son having encum- brance court must consider (a) scheme and intent of act, (b) probability of unfairness to one or more owners if court order not made, and (c) probability of confusion and uncer- tainty in affairs of corporation if order not made	n/a
NL	consent of all owners consent of all per- sons having regis- tered claims	consent of 80% of owners consent of all persons having registered	n/a	"substantial damage" defined as damage that cost to repair would be 25% of value

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prov./ terr.	termination by consent	termination by sale	termination by court order	termination upon substantial damage
		claims		<p>of buildings, or greater percentage in declaration</p> <p>vote to repair requires 80% of owners, or greater percentage specified in declaration</p> <p>if owners reject repair, or fail to vote within 60 days of substantial damage, corporation is terminated</p>
YK	<p>vote of 66 2/3% of owners, or greater percentage specified in declaration</p> <p>consent of all persons having registered claims</p>	<p>vote of 66 2/3% of owners, or greater percentage specified in declaration</p> <p>consent of all persons having registered claims</p>	<p>application by interested party if</p> <p>(a) damage to units or common property,</p> <p>(b) expropriation, or</p> <p>(c) corporation, owner, or holder of encumbrance deems advisable</p> <p>court must consider</p> <p>(a) scheme and intent of act, (b) rights and interests of owners individually and collectively, (c) what course of action would be most just and equitable, and (d) probability of confusion and uncertainty in affairs of corporation if order not made</p>	<p>substantial damage occurs when cost to repair would be 25% of value of units and common elements, or greater percentage specified in declaration</p> <p>vote to repair requires 66 2/3% of owners, or greater percentage specified in declaration</p> <p>if owners reject repair, or fail to vote within 60 days of substantial damage, corporation is terminated</p>
NW/NU	<p>vote of 80% of owners, or greater percentage specified in declaration</p> <p>consent of holders of registered claims</p>	<p>vote of 80% of owners, or greater percentage specified in declaration</p> <p>consent of holders of registered claims</p>	<p>application by interested party if</p> <p>(a) damage to units or common property,</p> <p>(b) expropriation, or</p> <p>(c) corporation, owner, or holder of encumbrance deems</p>	<p>substantial damage occurs when cost to repair would be 25% of value of units and common elements, or greater percentage specified in declaration</p>

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prov./ terr.	termination by consent	termination by sale	termination by court order	termination upon substantial damage
			<p>advisable</p> <p>court must consider (a) scheme and intent of act, (b) rights and interests of owners individually and col- lectively, (c) what course of action would be most just and equitable, and (d) probability of confu- sion and uncertainty in affairs of corpora- tion if order not made</p>	<p>vote to repair requires 66 2/3% of owners, or greater percentage specified in declara- tion</p> <p>if owners reject repair, or fail to vote within 60 days of substantial damage, corporation is terminated</p>

APPENDIX D

Biographies of Project-Committee Members

Patrick Williams is a partner of the Vancouver law firm Clark Wilson LLP and a member of the firm's Strata Property Group. He is also a member of the Alternative Dispute Resolution Practice Group. Patrick's practice focusses on assisting strata corporations, developers, and strata-lot owners with dispute resolution. He is an experienced and qualified arbitrator and mediator who has managed numerous strata-property, real-estate, and construction disputes.

Patrick has written and published many articles on issues impacting the strata-property industry, including construction-related problems experienced by owners, property managers, and developers. He is a regular contributor to industry periodicals and regularly delivers presentations and seminars to industry groups, strata corporations, and property managers. He has also published articles regarding the use and benefit of arbitration and mediation as an alternative to court and is a frequent guest instructor for the mediation component of the Professional Legal Training Course required to be taken by all articulated students in British Columbia.

Patrick received his dispute resolution training through the Continuing Legal Education Society of British Columbia and the British Columbia Arbitration and Mediation Institute. He obtained his Bachelor of Commerce degree in 1973 and his Bachelor of Laws degree in 1974, from the University of British Columbia.

Larry Buttress was first licensed under the *Real Estate Act* in British Columbia in 1980. Working for his family's small, independent real-estate company, he sold residential and multi-family real estate, assisted in the company's property-management portfolio, and achieved his agent's qualifications in 1982. That same year he began working with Real Estate Board of Greater Vancouver as the manager of its Multiple Listing Service. In 1986, he earned his Diploma in Urban Land Economics and became a member of the Real Estate Institute of British Columbia and the Real Estate Institute of Canada. In 1988, he was appointed as REBGV's executive officer, a position he held until 1995. In 1995, he joined JCI Technologies Inc. as director of real-estate services. He successfully negotiated that company's preferred supplier agreement with the Canadian Real Estate Association that led to the devel-

opment of mls.ca, now REALTOR.ca, the largest and most frequently visited real-estate website in Canada.

Larry joined staff at the Real Estate Council of British Columbia in 1998 as its manager, industry practice. He has been an active participant in the Canadian Regulators Group as chair of its Internet Advertising Guidelines Task Force, chair of its Electronic Transactions Task Force, and vice-chair of its Agency Task Force. In 2003–04, Larry also served as the district vice-president of the Canadian District of ARELLO, the Association of Real Estate Licence Law Officials. Larry now serves as the deputy executive officer of the Real Estate Council of British Columbia.

J. Garth Cambrey has over 28 years of experience in the property-management industry in British Columbia. Garth currently sits on the Real Estate Council of British Columbia, was the founding director and past vice-president of Strata Property Agents of BC and was a past director and vice-president of the Professional Association of Managing Agents (PAMA). He is an active member of the Real Estate Institute of British Columbia and is involved with various industry associations and committees. Garth has been appointed by the Supreme Court of British Columbia as an administrator under the *Strata Property Act* on 17 occasions and holds a Chartered Arbitrator designation with the ADR Institute of Canada, acting as an arbitrator in strata disputes. Garth is also involved in various advisory groups with the British Columbia government, providing support and advice with respect to provincial legislation, including the *Civil Resolutions Tribunal Act*.

Tony Gioventu is the executive director of the Condominium Home Owners' Association of British Columbia (CHOA). Tony brings 30 years of experience in management, real-estate development, construction, building operations, governance, and strata-property legislation to this position. In addition to acting as the editor of the CHOA Journal, a quarterly magazine published by CHOA with a province-wide distribution of 13 000 copies, Tony is also the weekly Condo Smarts columnist for *The Province*, *The Times Colonist*, *The Kelowna Daily Courier*, and *24 Hours Vancouver*. Tony is the co-host of the AM650 Talk About Strata show, and has served as a director/committee member for the Homeowner Protection Office, British Columbia Building Envelope Council, Canadian Standards Association, and the Real Estate Council of British Columbia. He continues to play an active role in research and development of building standards, legislation for strata corporations, and consumer protection. Since 2002, Tony has written over 600 columns and information bulletins that are exclusively dedicated to strata living.

CHOA is a non-profit association that has been assisting strata owners since 1976. With offices in New Westminster, Victoria, and Kelowna, CHOA provides service to

its 155 000 members throughout the province, promoting an understanding of strata living and the interests of strata-property owners. On average the association fields 250 calls a day from owners, strata-council members, managers, agents, plus general inquiries, and delivers over 100 seminars annually on a variety of strata-related topics, including operations and administration.

In 1988, **Tim Jowett** started with the Vancouver land title office and has progressed through the years from an examiner of title into his current position of deputy registrar with the New Westminster land title office in the Land Title and Survey Authority of British Columbia. Tim currently oversees staff that is responsible for the examination of documents and survey plans. His role also entails answering questions from a variety of stakeholders, primarily lawyers, notaries public, and land surveyors. Tim has presented and is a key participant at various meetings and conferences on land-title issues with these stakeholders.

Tim is currently involved with the implementation of the Land Title and Survey Authority's recent Business Modernization Initiative. This initiative involves various enhancements, changes, and updates to their systems and processes and is being done in an effort to support the needs of stakeholders and to ensure they maintain the value of its systems and processes.

Judith Matheson started her career in real estate in 1980. She is currently a real-estate agent with Coldwell Banker Premier Realty. Judith has sold thousands of strata properties as resales, as well as having worked for many of the top strata developers in British Columbia. She is ranked in the top seven percent of realtors worldwide with Coldwell Banker, and is a Coldwell Banker Premier Realty Top Producer.

Judith is a member of the Real Estate Board of Greater Vancouver and the Canadian Real Estate Association, and is licensed with the Real Estate Council of British Columbia. She is an MLS Medallion Club Member, Real Estate Board of Greater Vancouver Quarter Century Club Member, and an Affiliate Member of LuxuryHomes.com. Judith has been awarded the Coldwell Banker Ultimate Service Award, the Coldwell Banker Presidents Circle, the Coldwell Banker Diamond Society, the Coldwell Banker Sterling Society, and the Coldwell Banker Top 50 in Western Canada.

Elaine McCormack is associate counsel with the Vancouver law firm of Alexander Holburn Beaudin + Lang LLP. For over 20 years she has assisted strata corporations, individual owners, and management companies in the governance and dispute-resolution processes of strata life. She prepares bylaws and privacy policies, resolu-

tions, and contracts. She has also represented clients in court and in human-rights matters.

Elaine is actively involved in educating members of the strata community. She frequently designs and delivers seminars for the Professional Association of Managing Agents and presently serves on the education committee of PAMA. She has written and delivered the latest full-day course entitled “Real Estate E & O Insurance Legal Update for Strata Managers” used for the Relicensing Education Program for strata managers. She also frequently delivers seminars for the Condominium Home Owners’ Association of British Columbia and has written many articles for the CHOA News. She is a past director of the British Columbia Arbitration and Mediation Institute (BCAMI) and currently sits on the accreditation committee of BCAMI for the QArb designation.

As a Charter Arbitrator, Elaine frequently adjudicates disputes and uses this experience in turn when advocating for clients before fellow arbitrators. She is a member of the MediateBC Civil Roster and has received mediation training through the British Columbia Justice Institute, the Continuing Legal Education Society of British Columbia and MediateBC. Elaine has also been counsel in several seminal Supreme Court of British Columbia decisions involving such diverse strata issues as the enforcement and validity of age bylaws and rental bylaws, the transitional provisions between the *Condominium Act* and the *Strata Property Act* with respect to allocation of repair costs, and claiming damages for improperly calculated strata fees.

Elaine’s degrees and designations include a BA with a major in English, minor in Law and the Liberal Arts from the University of Calgary in 1988, an LLB from the University of British Columbia, and a CARb designation from the ADR Institute of Canada Inc. in 1998.

Doug Page is the manager of housing policy in the British Columbia government’s Office of Housing and Construction Standards and is a former condo owner. British Columbia’s strata legislation and regulations are now one of his main responsibilities. He has worked for 25 years in various aspects of the housing field, including stints with the Urban Institute in Washington, DC, the US Department of Housing and Urban Development, BC’s Treasury Board staff, and with a large private developer and manager of apartment buildings. Doug has a BA from Dartmouth College and an MA in urban geography and a diploma in urban land economics, both from the University of British Columbia. He is a member of the Real Estate Institute of British Columbia.

David Parkin is the assistant city surveyor for the City of Vancouver. He has been working in the land surveying profession for over 30 years in different capacities in Whistler and the Vancouver Lower Mainland. He obtained his Bachelor of Science in Surveying Engineering from the University of Calgary in 1992 and was commissioned as a British Columbia Land Surveyor in 1995. He is a practising member of the Association of British Columbia Land Surveyors.

David was employed by Underhill Geomatics Ltd. for 15 years and worked as a project land surveyor and was responsible for managing and supervising the day-to-day operations and projects of the Vancouver office. His preferred areas of practice while with Underhill's were larger development projects that included the preparation of air-space subdivisions and strata plans.

In his current capacity as the assistant city surveyor, David reviews conventional and air-space subdivision applications, subdivisions of existing strata plans and statutory right of way plans, and agreements related to commercial and residential developments.

Allen Regan is the vice president and managing broker for Bayside Property Services Ltd. He has been with Bayside since April 1999. Bayside provides management services to approximately 145 strata corporations throughout the lower mainland, as well as approximately 40 rental-apartment buildings. In total, Bayside manages about 12 000 strata and rental units. Prior to working at Bayside, Allen held positions in the commercial real-estate field with GWL Realty Advisors as regional director for British Columbia and with O & Y Enterprise as general manager for British Columbia. Allen has a B Comm from the University of British Columbia in urban land economics (1979) and is licensed in British Columbia for trading, rental, and strata management, all as a managing broker. Allen is also on the board of directors of the Strata Property Agents of British Columbia.

Stan Rule is a partner at the Kelowna law firm of Sabey Rule LLP. He has been practicing in Kelowna since shortly after he was called to the bar in 1989. His preferred areas of practice are wills, trusts, estates, and estate litigation.

Stan writes a legal blog entitled "Rule of Law." He has been a guest speaker at the Trial Lawyers Association of British Columbia, the Canadian Bar Association Okanagan Wills and Trusts and the Victoria Wills and Trusts Subsections, the Okanagan Family Law subsection, the Kelowna Estate Planning Society, the Vernon Estate Planning Society, and he has presented papers at eight continuing legal education courses.

Stan is a director of the British Columbia Law Institute. He is the treasurer of the National Wills and Estates subsection of the Canadian Bar Association. He is a member and former Chair of the Okanagan Wills and Trusts subsection, and a member and a former President of the Kelowna Estate Planning Society. He is also a member of the Society of Trust and Estate Practitioners. He recently participated as a member of the British Columbia Law Institute Project Committee on Recommended Practices for Wills Practitioners Relating to Potential Undue Influence.

Sandy Wagner represents strata owners in many areas of public concern as president of the board of directors of the Vancouver Island Strata Owners Association. VISOA's mandate is education, empowerment, and assistance for British Columbia strata owners, and has provided front-line service to them for over 40 years.

In addition to her busy schedule in the retail industry as district manager of several stores on Vancouver Island including the management of her own outlet, she has been a director of VISOA since 2007 and has led the association for the past four years, during which time it has grown significantly both in membership and in stature. Sandy currently edits the VISOA Bulletin, a quarterly newsmagazine distributed to nearly 10 000 VISOA members, and is part of the VISOA Helpline Team, which responds to a multitude of questions from strata councils and owners about strata governance.

As part of her involvement on behalf of strata owners, Sandy is currently a member of the Civil Resolution Tribunal Working Group (a committee working on procedural matters for the CRT), the Strata Resource Toolkit Committee (working on planning a self-help website for strata owners in conjunction with the CRT), and the Strata Management Advisory Group (working with the Real Estate Council of British Columbia to provide education and information for strata managers).

Ed Wilson is a partner with the Vancouver law firm Lawson Lundell LLP and has practiced in the real-estate and municipal-law fields, with a specialty in real-estate development, for over 30 years. Ed was a member of the Canadian Bar Association's strata property committee that worked with government in developing the current *Strata Property Act*. Ed has been actively involved with the Continuing Legal Education Society of British Columbia. He has taught more than 15 CLEBC courses, including courses on strata-property law, resort development, real-estate development, and depreciation reports for strata corporations. Ed is also a member of the Urban Development Institute's legal issues committee.

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- Vancouver Foundation;
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- Real Estate Council of British Columbia;
- Real Estate Institute of British Columbia;
- Strata Property Agents of British Columbia;
- Association of British Columbia Land Surveyors; and
- Vancouver Island Strata Owners Association.

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