



Report on Governance Issues for Stratas

A report published as part of the Strata Property Law Project—Phase Two

Report on Governance Issues for Stratas

**A Report Prepared for the British Columbia
Law Institute by the Members of the
Strata Property Law (Phase Two) Project
Committee**

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The British Columbia Law Institute was created in 1997 by incorporation under the provincial *Society Act*. Its strategic mission is to be a leader in law reform by carrying out:

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Introductory Note

Report on Governance Issues for Stratas

This report is the third report published in BCLI's Strata Property Law Project—Phase Two. BCLI's work on strata-property law reaches back to phase one of this project, which concluded in 2012 with recommendations to examine selected areas of strata-property law and to make recommendations for legislative reform that will support the next generation of the *Strata Property Act*.

Governance is the name given to a strata corporation's method or system of management. Strata-corporation governance is concerned with coordinating strata-lot owners so they can make effective decisions regarding pressing topics such as property, financial planning, and bylaws.

The report contains 81 recommendations for reform. These recommendations address a wide range of subjects, from relocating standard bylaws to the body of the act, enhancing meeting procedures, improving enforcement of bylaws, to introducing new statutory definitions for contested terms. The report contains draft legislation and regulations, which illustrate how the committee's recommendations could be implemented.

On behalf of the board of directors of the British Columbia Law Institute, I want to thank the members of the Strata Property Law (Phase Two) Committee for their hard work on this report and their ongoing commitment to the project. BCLI fully supports their recommendations and endorses this report.



Thomas L. Spraggs
Chair,
British Columbia Law Institute
January 2019

Strata Property Law (Phase Two)

Project Committee

The Strata Property Law (Phase Two) Project Committee was formed in fall 2013. This volunteer project committee is made up of 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 final reports for each area.

The members of the committee are:

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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:
<https://www.bcli.org/project/strata-property-law-phase-two>**

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BCLI also thanks all those individuals and organizations that participated in the public consultation that preceded this report. Their responses and comments helped the committee in shaping and evaluating the final recommendations contained in this report. For publicizing the consultation paper that preceded this report, BCLI thanks the *Advocate*, the Canadian Bar Association—BC Branch, Clicklaw, the Condominium Home Owners Association, the program “Legal Hotline” on AM 1320 radio, and the Vancouver Island Strata Owners Association.

The Strata Property Law (Phase Two) Project has been made possible by support from the Real Estate Foundation of British Columbia, the Notary Foundation of British Columbia, the Ministry of Municipal Affairs and 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, the Vancouver Island Strata Owners Association, and the Condominium Home Owners Association. BCLI thanks all these organizations for their generous contributions to the project. BCLI also thanks the Vancouver law firm Clark Wilson LLP for hosting committee meetings.

Finally, the staff of BCLI have played a key role in designing, managing, and executing the work leading up to this report. Jim Emmerton (executive director to June 2015) and Kathleen Cunningham (executive director June 2015 to present) have both provided executive planning and management for the project. Kevin Zakreski (staff lawyer) is the project manager, and was also responsible for drafting this report and the consultation paper that preceded it. He, Greg Blue, QC (senior staff lawyer), and Valerie Le Blanc (staff lawyer) have contributed to supporting project-committee meetings. And the following staff members have also contributed to the research and administration for this project: Emily Amirkhani (University of Victoria Law Coop student), Alexandre Blondin (research lawyer), Gurinder Cheema (summer law student), Allison Curley (summer law student), Raissa Dickinson (manager, community engagement), Eric Hou (summer law student), Rachel Kelly

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(research lawyer), Shauna Nicholson (legal assistant), Sergio Ortega (University of Victoria Law Coop student), Elizabeth Pinsent (office administrator), and Bénédicte Schoepflin (social media coordinator).

EXECUTIVE SUMMARY

Introduction

This is the third report published in BCLI's Strata Property Law Project—Phase Two. 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. Previous reports have considered terminating a strata and complex stratas.

This report examines selected governance issues. These are issues concerning the method or system of a strata corporation's management. The hallmark of governance is effective decision-making. Strata-corporation governance entails coordinating a diverse range of individual strata-lot owners to make effective decisions on matters of common concern. This report's focus is on how the *Strata Property Act* and the *Strata Property Regulation* enable that process through provisions on by-laws and rules, statutory definitions, general meetings and strata-council meetings, finances, and notices and communications.

The report contains 81 recommendations for reform of the *Strata Property Act* (including the Schedule of Standard Bylaws) and the *Strata Property Regulation*. These recommendations represent the policy positions that are proposed to guide development of strata-corporation governance. They show that the law needs some significant fine-tuning and improvement but not radical change. The report includes draft legislation and regulations as an illustration of how the recommendations could be implemented. But the report's recommendations, draft legislation, and draft regulations don't have the force of law. The passage of legislation by the Legislative Assembly of British Columbia or the adoption of regulations by the Lieutenant Governor in Council is needed to fully implement this report's recommendations.

Our supporters and the project committee

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 Municipal Affairs and 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, the Vancouver Island Strata Owners Association, and the Condominium Home Owners Association.

BCLI is carrying out the Strata Property Law Project—Phase Two with the assistance of a volunteer project committee. The committee is made up of a diverse range of experts in the strata-property field. Its 13 current members hail from the legal and notarial professions, owners' organizations, the strata-management and real-estate professions, and the public sector.

Consultation Paper on Governance Issues for Stratas

This report was preceded by the committee's *Consultation Paper on Governance Issues for Stratas*, which was published in March 2018. The consultation paper was made available via the BCLI website. It attracted one of the highest levels of response for a BCLI law-reform consultation. Both the volume of responses and the quality of the comments helped the project committee in refining its proposals and deciding on the final recommendations contained in this report.

Content of the report

Overview

The report contains nine chapters. The introductory chapter gives an overview of the project and the consultation process. The second chapter provides a summary of the building blocks of strata governance. The report ends with a chapter setting out draft legislation and draft regulations and a brief concluding chapter.

The central five chapters form the bulk of the report. They each tackle the broad areas of the law that have generated issues for reform. Since strata governance is a vast topic, one of the first decisions taken by the committee was to identify a range of areas that contained the issues most in need of consideration by a law-reform body. In the committee's view, these areas are:

- bylaws and rules;
- statutory definitions;
- general meetings and strata-council meetings;
- finances; and
- notices and communications.

Each of these areas forms the subject of a dedicated chapter.

Bylaws and rules

This is the report's longest chapter, containing 38 recommendations for reform. The chapter opens with a brief discussion of the current law on bylaws and rules. Then it moves into a consideration of each of the sections currently found in the Schedule of Standard Bylaws to the *Strata Property Act*. The goal of this review is to consider whether any of the bylaws should be relocated from the schedule to the main body of the act. The effect of such a move is that it would place the text of the (former) bylaw beyond the reach of amendment by the strata corporation. In the committee's view, 12 standard bylaws (or parts of a standard bylaw) should be given this treatment.

The remainder of this chapter examines the tools strata corporations have under the act to enforce their bylaws. The committee considers—but ultimately doesn't recommend—expanding the reach of the strata corporation's lien to encompass defaults in the payment of fines. The committee does recommend that the lien be expanded to embrace amounts owing with respect to a charge back for an insurance deductible or expenses incurred due to damage which are less than an insurance deductible, if the charge back has been found valid by a court, an arbitrator, or the Civil Resolution Tribunal. The committee also looks at and doesn't endorse the creation of a new statutory penalty or offence provision applicable to a contravention of a bylaw or rule. Finally, the committee does recommend a new statutory provision aimed at bylaws that adopt the rule in *Clayton's Case* to reassign money intended for the purposes of strata fees, special levies, reimbursement of the cost of work done under a failure to comply with a work order, or a strata lot's share of a judgment.

Statutory definitions

This short chapter examines the addition of specific statutory definitions to the *Strata Property Act*, as a way to clarify important concepts or to aid a strata corporation in the administration of its obligations under the act. In the committee's view, the terms *continuing contravention* and *rent* should be defined in the legislation. The committee also considered, but didn't recommend, proposed definitions of *strata manager*, *residential strata lot*, and *nonresidential strata lot*.

General meetings and strata-council meetings

The chapter on general meetings and strata-council meetings is another lengthy chapter, containing 20 recommendations. It focuses on the following subjects:

- proxies;
- conduct of meetings;

- quorum;
- voting;
- strata-council elections; and
- agenda and meeting minutes.

The committee invested a considerable amount of time on proxies, which have proved to be a fraught issue in strata-corporation governance. On this topic, the committee recommends that a mandatory, standard form of proxy appointment come into use in British Columbia. The committee also gives extended consideration to limiting the number of proxy appointments that one person may hold for a general meeting, ultimately deciding not to recommend a limit.

The chapter also contains recommendations clarifying that election to the strata council entails commanding a majority of the ballots cast, setting out that quorum for a general meeting must only be present at the start of the meeting, establishing statutory qualifications for council members modelled on the provisions of the new *Societies Act*, and clarifying the order of agenda items for annual and special general meetings.

Finances

While this chapter doesn't present a comprehensive survey of all the financial issues that affect a strata corporation, it does examine some fundamental issues and make 12 recommendations concerning them. The committee largely confirms that the existing framework for a strata corporation's operating fund, budgets, and financial statements should remain as is. The committee does recommend updating a number of regulatory provisions concerning the maximum amounts of fines and fees.

The chapter concludes with an examination of a pressing issue for collection of money owing to the strata corporation—the application of a two-year limitation period to strata-corporation claims. The committee recommends creating a special limitation period for claims that may be the subject of the strata corporation's lien under section 116 of the act, which would be set at four years.

Notices and communications

This brief chapter examines a handful of anomalous notice provisions and periods and recommends some updates in light of practice issues.

Conclusion

This report's final recommendations will be submitted to the provincial government. The province of British Columbia regularly updates strata legislation.

Chapter 1. Introduction

An Overview of this Report's Subject

Strata properties have been called “an experiment in group living.”¹ They’ve earned this title for two reasons: (1) a strata property “brings together a group of individuals with diverse personalities and attitudes and imposes upon them the task of living harmoniously in close proximity to one another”;² and (2) in a strata property “these individuals also assume the responsibility of collectively managing the common areas and facilities.”³

The legal basis for this experiment is the *Strata Property Act*.⁴ This act is itself experimental in nature. A judge has described it as being legislation that “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.”⁵ Since “such legislation would not be the product of a master-mind,” the *Strata Property Act* and its predecessor statutes⁶ have, over their 50-plus years of existence, placed continual demands on both strata-lot owners, who must govern their stratas with “a spirit of cooperation among members of the strata corporation,” and on legislators and policy-makers, who must heed the call “for constant statutory changes to deal with unforeseeable problems.”⁷

This report is a response to one aspect of that call. It contains recommendations to reform how the *Strata Property Act* and the *Strata Property Regulation*⁸ deal with the method or system of a strata’s management—that is, with its governance.⁹

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1. William Schwartz, “Condominium: A Hybrid Castle in the Sky” (1964) 44:2 BUL Rev 137 at 144.
 2. *Ibid.*
 3. *Ibid.*
 4. SBC 1998, c 43.
 5. *Shaw Cablesystems Ltd v Concord Pacific Group Inc*, 2007 BCSC 1711 at para 6 [*Shaw Cablesystems SC*, Leask J (quoting 2475813 *Nova Scotia Ltd v Rodgers*, 2001 NSCA 12 at para 5 [*Rogers*], Cromwell JA).
 6. See *Strata Titles Act*, SBC 1966, c 40 [1966 act]; *Strata Titles Act*, SBC 1974, c 89 [1974 act]; *Strata Titles Amendment Act, 1977 (No 2)*, SBC 1977, c 64; *Condominium Act*, RSBC 1996, c 64.
 7. *Shaw Cablesystems Ltd v Concord Pacific Group Inc*, 2008 BCCA 234 at para 22, Huddart JA.
 8. BC Reg 43/2000.
 9. See John Simpson & Edmund Weiner, eds, *The Oxford English Dictionary*, 2nd ed (Oxford: Clarendon Press, 1989) *sub verbo* “governance” (“The manner in which something is governed or regulated; method of management, system of regulations.”).
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Strata-property governance is all about fostering effective decision-making. The main point of contention can be traced back to the distinctive nature of a strata property. Stratas combine individual ownership of strata lots with collective responsibility for common property, common assets, and common expenses. There arises from this combination a need to strike a balance between individual autonomy and the decisions of the collective. As a leading case has put it, “[t]he old adage ‘a man’s home is his castle’ is subordinated by the exigencies of modern living”¹⁰ in a strata property, which “necessarily involves a surrender of some degree of proprietary independence.”¹¹

How are effective decisions made by the collective body of strata-lot owners? Are there ways to improve this decision-making process? In particular, can the provisions and procedures governing meetings of this group be made clearer and more efficacious? When can a decision be made by a simple majority and when is a greater majority called for? How are the people charged with implementing these decisions made accountable to the broader mass of owners? Are there ways to streamline and enhance this accountability? What happens when an owner defies the will of the group? Does the strata have the right tools to enforce its decisions?

These kinds of questions are at the heart of this report. The *Strata Property Act* has a highly developed and sophisticated set of responses to these questions. As will be revealed in the pages that follow, the theme of this report is that some significant work is needed to upgrade the act’s set of responses, which is its framework for strata governance. While this report isn’t calling for a fundamental reorientation of that framework, it does propose that the framework’s details should be enhanced and improved, as a way to ensure the continued success of stratas’ “experiment in group living.”

About the Strata Property Law Project—Phase Two

This *Report on Governance Issues for Stratas* is part of the British Columbia Law Institute’s ongoing Strata Property Law Project—Phase Two. 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* to address those issues.

10. *The Owners Strata Plan LMS 2768 v Jordison*, 2013 BCCA 484 at para 25, Donald JA.

11. *Ibid* (quoting Bruce Ziff, *Principles of Property Law*, 5th ed (Toronto: Carswell, 2010) at 366).

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 focused 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*,¹² which recommended that BCLI undertake a law-reform project to examine the following subjects: (1) fundamental changes to a strata; (2) complex stratas; (3) selected governance issues; (4) common property; (5) selected land-title issues; (6) selected insurance issues; (7) leasehold stratas.

A major component of the first subject in the phase-two project was addressed in the project's first two publications, the *Consultation Paper on Terminating a Strata*¹³ and the *Report on Terminating a Strata*.¹⁴ The Legislative Assembly of British Columbia implemented this report's recommendations in fall 2015.¹⁵

Complex stratas (that is, the review of sections, types, and phases that formed the project's second subject) were the focus of the *Consultation Paper on Complex Stratas*¹⁶ and the *Report on Complex Stratas*.¹⁷

BCLI has also published a *Consultation Paper on Insurance Issues for Stratas*¹⁸ and a *Consultation Paper on Common Property, Land Titles, and Fundamental Changes for Stratas*.¹⁹

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12. Report 70 (2012), online: <www.bcli.org/sites/default/files/2012-11-30_BCLI_Report_on_Strata_Property_Law--Phase_One.pdf> [perma.cc/FBV8-J9C7].
 13. (2014), online: <www.bcli.org/wordpress/wp-content/uploads/2014/05/2014-05-15_BCLI-Consultation-Paper-on-Terminating-a-Strata-FINAL.pdf> [perma.cc/XK58-9PLF].
 14. Report 79 (2015), online: <www.bcli.org/wordpress/wp-content/uploads/2015/02/2015-02-20_BCLI-SPL-Ph2-Report-on-Terminating-a-Strata-FINAL.pdf> [perma.cc/GW7W-VCBX].
 15. See *Natural Gas Development Statutes Amendment Act, 2015*, SBC 2015, c 40, ss 37–55 (in force 28 July 2016).
 16. (2016), online: <www.bcli.org/wordpress/wp-content/uploads/2016/09/2016-08-31_BCLI-Consultation-Paper-on-Complex-Stratas-FINAL.pdf> [perma.cc/A43A-3NN7].
 17. Report 81 (2017), online: <www.bcli.org/wordpress/wp-content/uploads/2017/06/2017-06-19_BCLI-SPL-Ph2-Report-on-Complex-Stratas-FINAL.pdf> [perma.cc/NZZ8-JQMP].
 18. (2018), online: <www.bcli.org/wordpress/wp-content/uploads/2018/09/2018-09-14_BCLI-Consultation-Paper-on-Insurance-Issues-For-Stratas-FINAL.pdf> [perma.cc/S84T-3JYK].
 19. (2018), online: <www.bcli.org/wordpress/wp-content/uploads/2018/11/2018-12-07_BCLI-CP-on-Common-Property-Land-Titles-and-Fundamental-Changes-for-Stratas-FINAL-reduced.pdf> [perma.cc/A2EQ-H5XB].
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Unfortunately, the time and resources available to the project have ruled out the planned review of its seventh subject, leasehold strata plans.

The Phase-Two Project's Supporters

The Strata Property Law Project—Phase Two has been made possible by project grants from the Real Estate Foundation of British Columbia, the Notary Foundation of British Columbia, the Ministry of Municipal Affairs and 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, the Vancouver Island Strata Owners Association, and the Condominium Home Owners Association.

The Strata Property Law (Phase Two) Project Committee

In carrying out the phase-two project, BCLI is grateful to have the assistance of an expert project committee. Brief biographies of committee members may be found at appendix B.²⁰

About the Public Consultation on Strata Governance

This report was preceded by a consultation paper, which was published in March 2018.²¹ The *Consultation Paper on Governance Issues for Stratas* set out 83 tentative recommendations for reform for public review and comment.

In addition to the full consultation paper, a summary consultation was also made available to readers. The summary consultation highlighted three proposals from the full consultation paper, which were selected as a means to focus readers' attention on big-picture issues. The summary consultation was sparing in providing background information and detail. Its goal was to facilitate participation in the consultation by those readers who didn't have the time or inclination to pursue the full consultation. Readers who were more interested in delving into the details of the

20. See, below, at 257–264.

21. See British Columbia Law Institute, *Consultation Paper on Governance Issues for Stratas* (2018), online: <www.bcli.org/wordpress/wp-content/uploads/2018/03/2018-03-13_BCLI-Consultation-Paper-on-Governance-Issues-For-Stratas-CONSULTATION-FINAL.pdf> [perma.cc/3A57-2889].

committee's tentative recommendations were encouraged to take up the full consultation.

The publication of the consultation paper opened a three-month consultation period. The consultation paper was distributed primarily via free download from BCLI's website. BCLI publicized the consultation with the assistance of the Canadian Bar Association—BC Branch, the Condominium Home Owners Association, the Vancouver Island Strata Owners Association, and Clicklaw.

A total of 290 responses were received in the public consultation. Among these responses, 138 were made to the full consultation and 152 to the summary consultation. This level of response is among the highest ever received in a BCLI law-reform consultation.

Consultation responses were fully considered at two project-committee meetings. While consultation respondents generally agreed with the committee's tentative recommendations (often by sizable margins), there were some areas that attracted significant disagreement. The committee gave special attention to these areas in its deliberations leading up to this report. While it didn't always decide to change a tentative recommendation in the face of disapproving consultation results, those results did give the committee some occasion to rethink its proposals. Further thought led to the refinement of some tentative recommendations that were supported by consultation respondents. In the end, the committee decided to revise nine tentative recommendations.

The committee also decided to delete two tentative recommendations. One was deleted as a consequence of other recommended changes.²² The other was a tentative recommendation regarding fines for contravention of a short-term accommodation bylaw. This tentative recommendation was effectively overtaken by events after the consultation period closed. In July 2018, the provincial government announced plans to amend the *Strata Property Regulation* to respond to concerns about short-term accommodation in strata properties.²³ The committee supports the amend-

22. This was tentative recommendation no. (49), which read *The Strata Property Act should not be amended to address who may act as chair of an annual general meeting or a special general meeting.*

23. The salient features of the amendment are to create a new category of bylaw, assigning a new maximum fine that may be applied to a breach of that category of bylaw, and reducing the period in which this fine may be imposed in cases of a continuing contravention. Using the language of the amendment, "the maximum amount that a strata corporation may set out in its bylaws as a fine for the contravention of a bylaw or rule is . . . in the case of a bylaw that prohibits or limits use of all or part of a residential strata lot for remuneration as vacation, travel or temporary ac-

ment, which came into force as this report was being prepared for publication. In view of these developments, the committee decided that it was no longer necessary to make its own recommendation on this subject.

Other Law-Reform Projects

Every province and territory in Canada has legislation that is the equivalent to British Columbia's *Strata Property Act*.²⁴ BCLI's Strata Property Law Project—Phase Two isn't the only reform project on strata-property law that has been taken on in recent years.²⁵ Beyond Canada, there also have been a number of major projects carried out in Australia (whose states have legislation that is similar to the *Strata Property Act*).²⁶

accommodation, \$1 000 for each contravention of the bylaw" and "the maximum frequency that a strata corporation may set out in its bylaws for the imposition of a fine for a continuing contravention of a bylaw or rule is . . . [in the case of a bylaw that prohibits or limits use of all or part of a residential strata lot for remuneration as vacation, travel, or temporary accommodation] daily." See OIC 418/2018, (2018) BC Gaz II, 448 (amending *Strata Property Regulation*, s 7.1—in force 30 November 2018).

24. See Alberta: *Condominium Property Act*, RSA 2000, c C-22; Saskatchewan: *The Condominium Property Act*, 1993, SS 1993, c C-26.1; Manitoba: *The Condominium Act*, SM 2011, c 30, CCSM c C170; Ontario: *Condominium Act*, 1998, SO 1998, c 19; Québec: arts 1038–1109 CCQ; New Brunswick: *Condominium Property Act*, SNB 2009, c C-16.05; Prince Edward Island: *Condominium Act*, RSPEI 1988, c C-16; Nova Scotia: *Condominium Act*, RSNS 1989, c 85; Newfoundland and Labrador: *Condominium Act*, 2009, SNL 2009, c C-29.1; Yukon: *Condominium Act*, RSY 2002, c 36; Northwest Territories and Nunavut: *Condominium Act*, RSNWT 1988, c C-15 (duplicated for Nunavut by s 29 of the *Nunavut Act*, SC 1993, c 28).
25. See Yukon, Department of Justice, *The Condominium Act Review: A Discussion Paper* (Fall 2012), online: <www.justice.gov.yk.ca/pdf/Condo_Discussion_Paper_Final.pdf> [perma.cc/H5UU-KWJE]; Newfoundland and Labrador, Government Services, *Condominium Act of Newfoundland and Labrador: Consultation Discussion Paper* (2008), online: <www.servicenl.gov.nl.ca/consultation/pdf/condominium_act_of_newfoundland_labrador.pdf> [perma.cc/K4JX-72KM].
26. See New South Wales, NSW Fair Trading, *Strata Title Law Reform: Strata & Community Title Law Reform Position Paper* (Parramatta: NSW Fair Trading, 2013), online: <www.fairtrading.nsw.gov.au> [perma.cc/8PZU-JK43]; Queensland University of Technology Law, Commercial and Property Law Research Centre, *Lot Entitlements under the Body Corporate and Community Management Act*, Queensland Government Property Law Review, Issues Paper 2 (February 2014), online: <www.justice.qld.gov.au/_data/assets/pdf_file/0010/224875/property-law-review-ip2-lot-entitlements-bccm.pdf> [perma.cc/4JUI-JPEN]; Queensland University of Technology Law, Commercial and Property Law Research Centre, *Body Corporate Governance Issues: By-laws, Debt Recovery, and Scheme Termination*, Queensland Government Property Law Review Options Paper (December 2014), online: <www.justice.qld.gov.au/_data/assets/pdf_file/0007/508714/qut-recommendations-by-laws-debt-recovery-and-scheme-termination.pdf> [perma.cc/2CZ8-WMA5]; Queensland University of

While it was considering governance issues for British Columbia stratas, the committee kept tabs on these reform projects, with particular attention paid to projects in Ontario²⁷ and Alberta,²⁸ both of which have led to major statutory reforms.²⁹ These other law-reform projects tended not to inspire identical proposals for British Columbia, as differences in legislative history and the strata-property market make it difficult to adopt a reform developed in one jurisdiction and apply it without significant changes in another. But projects in other jurisdictions did help the committee in grappling with broad themes that tend to emerge in considering strata governance. One theme, in particular, was the need to balance what the American Uniform Law Commission has called “the perception that individual unit owners were unfairly disadvantaged in their dealings with the elected directors and employee/managers of unit owner associations”³⁰ with the sense that some provisions

Technology Law, Commercial and Property Law Research Centre, *Final Recommendations: Procedural Issues under the Body Corporate and Community Management Act 1997* (2017), online: <www.justice.qld.gov.au/_data/assets/pdf_file/0008/529784/final-recommendations-procedural-issues-paper.pdf> [perma.cc/QJ2Y-ADKW]; Western Australia, Landgate, *Strata Titles Act Discussion Paper* (June 2014), online: <www0.landgate.wa.gov.au/titles-and-surveys/strata-reform> [perma.cc/ZG8R-24YN].

27. See Canada’s Public Policy Forum, *Growing Up: Ontario’s Condominium Communities Enter a New Era: Condominium Act Review Stage Two Solutions Report* (Ottawa: Canada’s Public Policy Forum, 2013), online: <www.ppforum.ca> [perma.cc/2N5D-7VXN]; Canada’s Public Policy Forum, *Ontario’s Condominium Act Review: Stage One Findings Report* (Ottawa: Canada’s Public Policy Forum, 2013), online: <www.ppforum.ca> [perma.cc/Q5NV-6MRL].
 28. See Service Alberta, *Condominium Property Act Review: Consultation Analysis Report* (June 2013), online: <open.alberta.ca> [perma.cc/874W-JPUE].
 29. See Alberta: *Condominium Property Amendment Act, 2014*, SA 2014, c 10; Ontario: *Protecting Condominium Owners Act, 2015*, SO 2015, c 28. As this report was being prepared for publication, Alberta announced plans to bring the bulk of the provisions of the *Condominium Property Amendment Act, 2014*, with associated regulations, into force variously on 1 July 2019 and 1 January 2020. See Alberta, News Release, “Making condos a better place to live: New rules will increase transparency and improve condominium governance in Alberta” (14 December 2018), online: <www.alberta.ca/release.cfm?xID=62241C77ECC2B-ED28-41CB-20BBFFBAB3B1DB03> [perma.cc/5ZG4-MEUX].
 30. Uniform Common Interest Ownership Act (2008), prefatory note. See also *Growing Up: Ontario’s Condominium Communities Enter a New Era: Condominium Act Review Stage Two Solutions Report*, *supra* note 27 at 15 (describing one of the “main themes” of the review as “the power imbalance between boards and owners”); *Condominium Property Act Review: Consultation Analysis Report*, *supra* note 27 at 60 (“A general theme that emerged from this section of the consultation survey is the importance of a responsive, transparent and accountable board in the overall governance of a condominium.”). Ontario pointedly named the legislation that implements their *Condominium Act Review* the *Protecting Condominium Owners Act, 2015*.
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could be streamlined or enhanced to allow for the better management and operation of the strata and the enforcement of the wishes of a majority of its owners.³¹

An Overview of this Report

Strata-property governance is a vast, potentially unending topic. This report doesn't purport to exhaust the topic. Instead, it's focused on the following subjects, which the committee decided early in its deliberations as forming the areas most in need of attention from a law-reform body:

- bylaws and rules;
- statutory definitions;
- general meetings and strata-council meetings;
- finances;
- notices and communications.

The committee was assisted in making this decision—and in selecting issues for reform for these subjects—by comments from consultation participants in phase one of this project and by correspondence received during phase two from professionals in the strata-property sector and members of the general public.

Each of the listed subjects gets its own chapter in the report. These substantive chapters are distinctive in some ways, but they do conform to a broad, general pattern. The chapter opens with an overview of the current law and a discussion of the chapter's scope—that is, the issues for reform that the committee has chosen to consider. After the overview, the issues themselves are set out and discussed. The goal of each discussion is a recommendation for reform, which is the committee's expression of the policy statement that it believes to be the best response to the issue.

The substantive chapters are detailed and diverse, but here are a few highlights drawn from each of them:

31. See *Body Corporate Governance Issues: By-laws, Debt Recovery, and Scheme Termination*, *supra* note 26 at 9 (“there is a widespread perception among strata industry groups, body corporate managers and lot owners that the body corporate is a ‘toothless tiger’ when it comes to enforcing its own rules”).

- **bylaws and rules:** the chapter opens with a review of each of the standard bylaws,³² considering whether the bylaw should be relocated to the act (and thereby placed beyond the reach of the strata corporation to amend); from there, it moves on to consider ways to enhance the strata corporation's enforcement tools;
- **statutory definitions:** this chapter examines the potential to assist strata corporations dealing with some vexing governance issues by clarifying key terms used in the act, recommending new legislative definitions of *continuing contravention* and *rent*;
- **general meetings and strata-council meetings:** proxies, conduct of meetings, quorum, voting, strata-council elections, and meeting agenda and minutes make up this chapter, which recommends a new defined proxy-appointment form, a quorum must only be present at the start of a meeting, clarification that those elected to a strata council must each command a majority of the votes cast, and a new order of business for the general-meeting agenda;
- **finances:** among this chapter's highlights are a review and updating of regulatory provisions governing the maximum fees and fines and a recommended new limitation period for money owing to a strata corporation that may be subject to the strata corporation's lien;³³
- **notices and communications:** this chapter contains a brief review of the little-used provision for notice by posting on bulletin board and recommends lengthening specific notice periods.

32. See *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws.

33. See *ibid*, s 116.

Chapter 2. The Building Blocks of Strata Governance

Introduction

The bulk of the committee’s research into the current law appears in the chapters that follow, each of which contains background information geared to the issues for reform considered in the chapter. This chapter fills in the picture with basic information about strata properties that may be seen as forming the backdrop for the chapters that follow.

This discussion of the basics of strata-property law in this chapter isn’t intended to be comprehensive.³⁴ Instead, it offers just enough information to allow readers who are new to the subject to find their way through the chapters that follow.

The Essential Elements of a Strata Property

Strata properties³⁵ are a legal device that accommodates individual ownership of an interest in land within a collective, multi-unit structure. The law contains many such devices. What sets a strata property apart from, say, a cooperative, a joint tenancy, a tenancy in common, or a long-term lease, are the following “two essential elements”:

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34. See Gerry Fanaken, *Understanding the Condominium Concept: An Insightful Guide to the Strata Property Act* (Coquitlam, BC: Paige Condominium Services, 2013); Mike Mangan, *The Condominium Manual: A Comprehensive Guide to Strata Law in British Columbia*, 3rd ed (Vancouver: Strata Publishing, 2010) (comprehensive general publications on strata-property law in British Columbia); Continuing Legal Education Society of British Columbia, ed, *British Columbia Strata Property Practice Manual* (Vancouver: Continuing Legal Education Society of British Columbia, 2008) (loose-leaf 2018 update) (leading legal-practice guide on strata properties in British Columbia). See also Adrienne M Murray, “The Basics of Strata Property Law,” in Continuing Legal Education Society of British Columbia, ed, *Strata Property—2006 Update: Materials prepared for the Continuing Legal Education seminar, Strata Property Fundamentals for Lawyers, held in Vancouver, B.C., on October 20, 2006* (Vancouver: Continuing Legal Education Society of British Columbia, 2006) 1.1 (article discussing many fundamental concepts in strata-property law).
35. For many people the name *strata property* itself is the first stumbling block that’s encountered in a discussion of this area of the law. British Columbia is the only jurisdiction in Canada that uses this name. Its significance is mainly historical: it reflects the origins of this province’s law in legislation that was enacted first in Australia. Other Canadian provinces and territories drew on American law to create their legislation. So they adopted the leading American word, *condominium*. The two terms actually describe the same concept. Nothing in law turns on the use of one or the other.
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- the division of property into units, to be individually owned, and common elements, to be owned in common by the owners of the units; and
- an administrative framework to enable the owners to manage the property.³⁶

In British Columbia, these essential elements are enabled by legislation. This legislation is called the *Strata Property Act*,³⁷ and it is constructed largely from provisions drawn from older, more established bodies of law—especially, real-estate law, easements, and corporate law.³⁸

Strata Property Act

Sometimes called the third generation of strata-property legislation,³⁹ the *Strata Property Act* was enacted in 1998.⁴⁰ The *Strata Property Act* was only brought into force after a transitional period, which lasted until 1 July 2000.

Although it preserves much of the framework in place in the first two generations of the legislation, the *Strata Property Act* is a far more comprehensive statute than its two predecessors.

Parts of the *Strata Property Act* have been significantly amended in 2009,⁴¹ 2012,⁴² and 2015.⁴³ These changes primarily relate to financial planning, dispute resolution, and termination; they don't have much bearing on this report's main subjects.

The *Strata Property Act* is probably the most detailed and sophisticated legislation of its kind in Canada. It contains an array of provisions on subjects that aren't addressed in equivalent statutes found in the other provinces or territories. But the act was also consciously drafted to provide enhanced flexibility to certain kinds of stratas. These qualities can make it difficult to discuss the act's provisions, as it's often

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

37. *Supra* note 4.

38. See *Shaw Cablesystems SC*, *supra* note 5 at para 6.

39. See 1966 act, *supra* note 6 (first-generation act) and 1974 act, *supra* note 6 (second-generation act). The second-generation act was renamed the *Condominium Act* in 1979 and is more commonly known by that name.

40. *Supra* note 4.

41. See *Strata Property Amendment Act, 2009*, SBC 2009, c 17.

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

43. See *Natural Gas Development Statutes Amendment Act, 2015*, *supra* note 15.

necessary to note both a general rule and a series of exceptions. For the sake of simplicity, the pages that follow will focus on the general rules and will touch on exceptions, where necessary, in footnotes.

The Owner-Developer

The individual who or (more typically) corporation or partnership that starts the stratification process is called an *owner-developer*.

Before someone becomes an owner-developer, that person is an owner of land⁴⁴ who wants to develop it as a strata property. That person is responsible for shepherding the project through the procedure for stratifying land. After this process is complete, the owner-developer holds all titles in the development, which are gradually sold off to purchasers.

The owner-developer can have a decisive influence over both the original conception and the ongoing operation of a strata property. Many of the key decisions that are made in setting up a strata originate with the owner-developer. These decisions can reverberate long after the owner-developer has left the scene.

Creation of a Strata Property by Deposit of a Strata Plan

The stratification process begins with the deposit in the land title office of a strata plan.

The strata plan has been described as “the fundamental document that divides property into strata lots and creates title in each of those strata lots.”⁴⁵ It is a document prepared by a qualified land surveyor, which is required to contain specific details and meet exacting technical standards.⁴⁶

44. And here’s the first exception to note: in some cases, it isn’t the landowner but rather a lessee under a long-term ground lease who acts as the owner-developer. The act calls these cases *leasehold strata plans*. For simplicity’s sake, this report will focus on the much more common case of a landowner developing a strata property and will downplay the rarer leasehold strata plan. That said, there is nothing in law that prevents the committee’s proposals from extending to leasehold strata plans.

45. *Chow v The Owners, Strata Plan NW 3243*, 2015 BCSC 1944 at para 5, Smith J.

46. See *Strata Property Act*, *supra* note 4, s 244.

There are essentially two kinds of strata plans under the *Strata Property Act*. One is called a *bare-land strata plan*. It concerns the subdivision of land.⁴⁷

The other kind of strata plan isn't named in the act, but it's commonly called a *building or conventional strata plan*.⁴⁸ This kind of strata plan deals with the subdivision of a building. This is the more common kind of strata plan.

Among the things that a strata plan does, one of the most important is to distinguish between the two basic building blocks of a strata property: strata lots and common property.

Strata Lots

A *strata lot* is the legislation's name for the unit in a strata property that is individually titled and owned. A common example of a strata lot is an apartment in a residential strata property. But it is important to bear in mind that nothing in strata-property law restricts strata lots to apartments or residential uses. Strata lots may be townhouses, shops used for commercial purposes, industrial plants, recreational cottages, or parking lots. So long as they are identified as such on a strata plan, strata lots may be almost anything within the ingenuity of an owner-developer.

But, that said, the act does, in many places, distinguish between strata lots based on their uses. This distinction turns on whether or not the strata lot is used for residential purposes. *Residential strata lot* is a defined term, meaning "a strata lot designed or intended to be used primarily as a residence."⁴⁹ Strata lots used for any other purpose are referred to as *nonresidential strata lots*. Whether a strata lot is a residential strata lot or a nonresidential strata lot can have a bearing on how certain rules relating to property, expenses, and governance are applied to it.

The combination of residential and nonresidential strata lots in a single strata property gives rise to what is colloquially called a *mixed-use strata*.

47. See *ibid*, s 1 (1) "bare land strata plan" ("means (a) 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, or (b) any other strata plan defined by regulation to be a bare land strata plan."). Regarding paragraph (b), note that to date no regulations on this point have been adopted.

48. See Murray, *supra* note 34 at 1.13; Mangan, *supra* note 34 at 17; *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 1.14.

49. *Supra* note 4, s 1 (1) "residential strata lot."

Common property, Limited Common Property, and Common Assets

Common property

The *Strata Property Act* contains a multi-layered definition of *common property*.

In the first layer, the act simply defines common property as “that part of the land and buildings shown on a strata plan that is not part of a strata lot.”⁵⁰ This is a broad, open-ended definition, which might not be simple to grasp on first reading. Some concrete examples of common property to think of are hallways, lobbies, elevators, courtyards, gardens, roads, and recreational facilities. Of course, common property isn’t limited to those things; that’s why it’s defined in such general terms.

The second layer of the act’s definition tackles cases in which it would be difficult to apply a simple and clear-cut distinction between being part of a strata lot or part of the common property. It is aimed at a long list of specific building components and systems for services (“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”).⁵¹ These things may be common property by definition, depending on the location of the thing or the usage of the thing.⁵² And it’s at this point that the second layer of the act’s definition of common property splits into two branches.

The first branch deals with location. It’s concerned with boundary cases. The definition focuses attention on whether the component or system listed earlier is located “within a floor, wall or ceiling” that itself forms a boundary

- between a strata lot and another strata lot,
- between a strata lot and the common property, or
- between a strata lot or common property and another parcel of land.⁵³

50. *Ibid*, s 1 (1) “common property.”

51. *Ibid*, s 1 (1) “common property.”

52. See *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 3.2 (“Whether a particular part of a system or service, such as a wire, pipe, or duct, constitutes part of the common property is determined by the location of the part or by the usage of the part.”).

53. *Supra* note 4, s 1 (1) “common property.”

The effect of this branch of the definition is to bring these boundary cases within the scope of common property.

The second branch deals with use. Even if any of the things listed above (pipes, wires, etc.) finds itself “wholly or partially within a strata lot,” it is still within the definition of common property if it is “capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property.” Court decisions considering this branch of the definition have concluded that if the component or system is “connected” to other components or systems that service other strata lots⁵⁴ or is otherwise part of an “integrated whole,”⁵⁵ then it should be considered common property. As a leading practice guide has noted, this approach “leave[s] very few such facilities within a condominium outside of the ‘common property’ of that complex.”⁵⁶

Limited common property

Within the scope of common property, the act embeds the concept of *limited common property*. This is common property that has been “designated for the exclusive use of the owners of one or more strata lots.”⁵⁷ Some typical examples of things that might be limited common property are a balcony for an apartment in a high-rise tower, a patio for a townhouse or ground-floor apartment, and a parking space in a parking lot.

But it should be borne in mind that these items are not necessarily limited common property and they don’t exhaust the category of limited common property. The definition of the term is general and open-ended. The key to knowing whether common property is limited common property is the designation. There are two ways to make this designation. It may be made on the original strata plan or an amendment to that strata plan.⁵⁸ Or it may be made by a resolution of the strata corporation, passed by a 3/4 vote, and filed in the land title office along with a sketch plan.⁵⁹

54. *Taychuk v Owners, Strata Plan LMS 744*, 2002 BCSC 1638 at para 28, Gray J.

55. *Fudge v Owners, Strata Plan NW2636*, 2012 BCPC 409 at para 48, Woods Prov Ct J.

56. *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 3.2.

57. *Supra* note 4, s (1) (1) “limited common property.”

58. *Ibid*, s 73 (a)–(b).

59. *Ibid*, ss 73 (c), 74. The sketch plan referred to in the text must be one that “(a) satisfies the registrar [of land titles], (b) defines the areas of limited common property, and (c) specifies each strata lot whose owners are entitled to the exclusive use of the limited common property” (*ibid*, s 73 (2)).

Common assets

Finally, the act also characterizes some property as *common assets*. The definition of common assets contains two categories. The first is “personal property held by or on behalf of a strata corporation.”⁶⁰ Examples of this category include items of property like furniture in a lobby or exercise equipment in a gym. The second category is “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.”⁶¹ An example of (i) is any offsite land owned or held on behalf of the strata. An example of (ii) is a caretaker’s suite in a residential building which is a strata lot.

The Strata Corporation

In addition to dividing land into strata lots and common property, depositing a strata plan in the land title office “establishes” a strata corporation.⁶² This strata corporation is the third important piece (along with the strata lots and common property) in the makeup of a strata property. It is the vehicle by which strata-lot owners are able to administer their strata property. As such, the strata corporation is the main focus of strata-property governance.

The act says that the purpose of a strata corporation is to take responsibility for “managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.”⁶³ Ownership of common property and common assets is in the hands of the strata-lot owners, collectively.⁶⁴ The membership of the strata corporation is made up of “the owners of the strata lots in the strata plan.”⁶⁵ The strata corporation is the means for coordinating these owners to make effective and timely collective decisions.

60. *Ibid*, s 1 (1) “common asset.”

61. *Ibid*, s 1 (1) “common asset.”

62. *Ibid*, s 2 (1) (a).

63. *Ibid*, s 3.

64. See *ibid*, s 66 (“An owner owns the common property and common assets of the strata corporation as a tenant in common in a share equal to the unit entitlement of the owner’s strata lot divided by the total unit entitlement of all the strata lots.”).

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

Common Expenses

Many of the decisions that a strata corporation has to make concern spending money to pay for expenses. The act makes the strata-lot owners collectively responsible for what it calls *common expenses*, which it defines as expenses

- relating to the common property and common assets of the strata corporation, or
- required to meet any other purpose or obligation of the strata corporation.⁶⁶

Common expenses often relate to the first bullet point and are, in effect, the flip side of owning property in common. The strata corporation has a legal obligation to “repair and maintain common property and common assets.”⁶⁷

Although the strata corporation is responsible for common expenses,⁶⁸ paying for repairs—as for all common expenses—ultimately comes from contributions from strata-lot owners. How these contributions are determined leads to consideration of one of the act’s foundational concepts, unit entitlement.

Unit Entitlement

What is unit entitlement and how is it used?

At bottom, unit entitlement is a number. Each strata lot in a strata property is assigned its own unit-entitlement number.

The act uses unit entitlement in a way that ties this concept into one of the defining characteristics of a strata. This defining characteristic is the unique strata property-ownership model, which combines individual ownership of strata lots with shared ownership, among strata-lot owners, of a strata’s common property and common assets, and shared responsibility for the debts and liabilities of the strata corporation.

66. *Supra* note 4, s 1 (1) “common expenses.”

67. *Ibid*, s 72 (1). This obligation is subject to two exceptions, which allow the strata corporation to adopt a bylaw to “make an owner responsible for the repair and maintenance of (a) limited common property that the owner has a right to use, or (b) common property other than limited common property only if identified in the regulations and subject to prescribed restrictions” (*ibid*, s 72 (2)). The second exception is currently a dead letter, as there are no regulations enabling its application. Strata-lot owners are generally responsible for the repair and maintenance of their strata lots, but the act does allow the strata corporation to adopt a bylaw to “take responsibility for the repair and maintenance of specified portions of a strata lot” (*ibid*, s 72 (3)).

68. See *ibid*, s 91.

Specifically, unit entitlement is used in “calculations” that “determine” each strata lot’s share of:

- common property;
- common assets;
- common expenses; and
- liabilities of the strata corporation.⁶⁹

How is unit entitlement determined?

The act has a detailed set of rules on how to determine the unit entitlement of a strata lot. Which rules apply in a given case depends on (1) the use of the strata lot and (2) the kind of strata plan at issue.

The act distinguishes between residential and nonresidential uses, and contains a special rule for mixed-use stratas. The methods for determining the unit entitlement of a strata lot are:

- **for residential strata lots:** one of (a) the habitable area of the strata lot, (b) a whole number that is the same for all residential strata lots, or (c) a number that “allocates a fair portion of the common expenses to the owner of the strata lot,” in the opinion of the superintendent of real estate, who must approve any use of option (c);⁷⁰
- **for nonresidential strata lots:** one of (a) the total area of the strata lot, (b) a whole number that is the same for all nonresidential strata lots, or (c) a number that “allocates a fair portion of the common expenses to the owner of the strata lot,” in the opinion of the superintendent of real estate, who must approve any use of option (c);⁷¹
- **for mixed-use stratas:** “[i]f the strata plan consists of both residential and nonresidential strata lots,” then unit entitlement “must be approved by the superintendent as fairly distributing the common expenses between the

69. *Ibid*, s 1 (1). Some jurisdictions go even further than British Columbia and use unit entitlement to determine a strata lot’s voting rights and its share of residual property after termination.

70. *Ibid*, s 246 (3) (a).

71. *Ibid*, s 246 (3) (b).

owners of the residential strata lots and the owners of the nonresidential strata lots.”⁷²

For residential and nonresidential strata lots, in most cases unit entitlement is determined using option (a). In effect, this means that the size of the strata lot determines its unit entitlement. It is slightly more complicated than that, because the act relies on two different standards for determining the size of a strata lot.

For residential strata lots, the size of a strata lot is determined by measuring its *habitable area*. This is a defined term,⁷³ which effectively limits unit entitlement to living areas in a strata lot, excluding things like “patios, balconies, garages, parking stalls or storage areas other than closet space.”⁷⁴ For nonresidential strata lots, size is determined by the *total area* of the strata lot.⁷⁵

In both cases, option (a) requires unit entitlement to be “determined by a British Columbia land surveyor.”⁷⁶

These rules only apply when the strata plan is a conventional (building) strata plan. For bare-land strata plans, a special rule comes into play.⁷⁷

When is unit entitlement determined and where is it found?

The unit entitlement of a strata lot must be determined at the outset of the stratification process. The act requires the “person applying to deposit a strata plan” to include the unit entitlements of the strata lots in the strata plan.⁷⁸ These unit-entitlement numbers are grouped together as a schedule to the strata plan, called

72. *Ibid*, s 246 (5).

73. See *ibid*, s 246 (4).

74. *Strata Property Regulation*, *supra* note 8, s 14.2.

75. Total area isn’t a defined term; it simply takes its everyday meaning. See *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 2.39 (“‘total area’ includes all of those areas listed as excluded from ‘habitable area’ of a residential strata lot”).

76. *Supra* note 4, s 246 (3) (a), (b).

77. *Ibid*, s 246 (6) (“The unit entitlement of a strata lot in a bare land strata plan must be (a) a whole number that is the same for all of the strata lots in the strata plan, or (b) a number that is approved by the superintendent and that in the superintendent’s opinion allocates a fair portion of the common expenses to the owner of the strata lot.”).

78. *Ibid*, s 246 (2).

the Schedule of Unit Entitlement.⁷⁹ This schedule is the definitive source of the unit entitlement of a strata lot in that strata plan.

The General Rule for Sharing Common Expenses

As a leading case puts it, when it comes to common expenses, “[t]he general rule under the [*Strata Property Act*] is that within a strata corporation ‘you are all in it together.’ ”⁸⁰ The act implements this general rule by a series of provisions requiring owners to share common expenses by means of a formula based on the unit entitlement of an owner’s strata lot.

For an important example of how the act uses unit entitlement to implement the general rule of strata-lot owners “all being in it together,” consider the act’s rules on calculating strata fees.⁸¹ Strata fees, which make up contributions to a strata corporation’s operating fund and its contingency reserve fund, are to be calculated using the following formula:⁸²

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots}} \times \text{total contribution}$$

This formula also applies when a strata corporation raises funds by way of a special levy.⁸³

Changing the General Rule: Using Something Other than Unit Entitlement as a Basis for Cost Sharing

The *Strata Property Act* allows strata-lot owners to agree to “change the basis for calculation of a contribution” to the strata corporation’s operating fund or contin-

79. See *ibid*, s 246 (2). The schedule is a prescribed form. See *Strata Property Regulation*, *supra* note 8, Form V.

80. *The Owners, Strata Plan LMS 1537 v Alvarez*, 2003 BCSC 1085 at para 35, Bauman J.

81. See *supra* note 4, s 99 (1) (“owners must contribute to the strata corporation their strata lots’ shares of the total contributions budgeted for the operating fund and contingency reserve fund by means of strata fees calculated in accordance with this section and the regulations”).

82. *Ibid*, s 99 (2).

83. See *ibid*, s 108 (2) (a).

gency reserve fund.⁸⁴ This agreement may only be made at “an annual or special general meeting held after the first annual general meeting.”⁸⁵

The act also allows for strata-lot owners to change the general rule for “calculat[ing] each strata lot’s share of a special levy.”⁸⁶ This change must result in a “way that establishes a fair division of expenses for that particular levy.”⁸⁷

Both rules implicitly allow strata-lot owners to share common expenses by reference to some standard other than unit entitlement. They appear to give strata corporations a high degree of flexibility in structuring their affairs.

But this flexibility is rather illusory, because in both cases the changes require approval by a resolution passed by a unanimous vote.⁸⁸ A *unanimous vote* means “a vote in favour of a resolution by all the votes of all the eligible voters.”⁸⁹ This is a very high hurdle to clear. It requires that every strata-lot owner consent to the resolution. In all but the smallest stratas it is very difficult to reach unanimity on a modified rule for cost sharing. So these provisions have limited utility in practice.

Dispute Resolution and the Civil Resolution Tribunal

Finally, resolution of disputes is an important part of strata governance. While other law-reform projects have made recommendations on dispute resolution,⁹⁰ this report doesn’t directly address the topic. This is because British Columbia has recently embarked on a new approach to strata dispute resolution.

The centrepiece of this new approach is the Civil Resolution Tribunal. The tribunal’s mandate is “to provide dispute resolution services in relation to matters that are within its authority, in a manner that”:

- is accessible, speedy, economical, informal and flexible,

84. See *ibid*, s 100.

85. *Ibid*, s 100 (1).

86. *Ibid*, s 108 (2).

87. *Ibid*, s 108 (2) (b).

88. See *ibid*, ss 100 (2), 108 (2) (b).

89. *Strata Property Act*, *supra* note 4, s 1 (1) “unanimous vote.”

90. See e.g. *Growing Up: Ontario’s Condominium Communities Enter a New Era: Condominium Act Review Stage Two Solutions Report*, *supra* note 27 at 30–35.

- applies principles of law and fairness, and recognizes any relationships between parties to a dispute that will likely continue after the tribunal proceeding is concluded,
- uses electronic communication tools to facilitate resolution of disputes brought to the tribunal, and
- accommodates, so far as the tribunal considers reasonably practicable, the diversity of circumstances of the persons using the services of the tribunal.⁹¹

Since its inception, the tribunal's authority has extended to most kinds of strata disputes.⁹² The tribunal has been accepting strata-dispute claims since 2016.

Given that it's still early days for the tribunal, this project hasn't tried to address reforms concerning dispute resolution. But the tribunal's existence does play into several recommendations in this report.⁹³

91. *Civil Resolution Tribunal Act*, *supra* note 42, s 2 (2).

92. See *ibid*, s 3.6.

93. See e.g., below, at 55–56.

Chapter 3. Bylaws and Rules

Background

Nature of bylaws

Bylaws have been described as stratas' "second legislative element"⁹⁴ (after the *Strata Property Act*) and as "a strata corporation's constitution," which "reflect[s] each strata community's values."⁹⁵ In effect, bylaws are the governing statement that sets out how most common issues affecting stratas will be resolved. They are at the heart of a strata corporation's governance.

The *Strata Property Act* requires a strata corporation to have bylaws.⁹⁶ The scope of what may be addressed in bylaws is mainly defined by two provisions in the act. The act holds that "bylaws may provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation and for the administration of the strata corporation."⁹⁷ But any bylaw "is not enforceable to the extent that it":

- contravenes this Act, the regulations, the *Human Rights Code* or any other enactment or law,
- destroys or modifies an easement created under section 69, or
- prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata lot.⁹⁸

A third potential limit on the scope of bylaws comes in the form of the act's section aimed at "preventing or remedying unfair acts."⁹⁹ There are cases holding the adoption of a bylaw to be an "action or threatened action by, or [a] decision of, the strata corporation," which is reviewable under this section.¹⁰⁰ The leading cases on this

94. Fanaken, *supra* note 34 at 97.

95. Mangan, *supra* note 34 at 297.

96. *Supra* note 4, s 119 (1) ("The strata corporation must have bylaws.").

97. *Ibid*, s 119 (2).

98. *Ibid*, s 121 (1). The section goes on to qualify the third bullet point, saying that this provision doesn't apply to "(a) a bylaw under section 141 that prohibits or limits rentals, (b) a bylaw under section 122 relating to the sale of a strata lot, or (c) a bylaw restricting the age of persons who may reside in a strata lot" (*ibid*, s 121 (2)).

99. *Ibid*, s 164. See also *Civil Resolution Tribunal Act*, *supra* note 42, s 48.1.

100. See e.g. *Chan v Owners, Strata Plan VR-151*, 2010 BCSC 1725 at para 21, Smith J.

section have said that “a court should not interfere with the actions of a strata council unless the actions result in something more than mere prejudice or trifling unfairness.”¹⁰¹ This type of action has been described as “conduct that is burdensome, harsh, wrongful, lacking in probity or fair dealing” or “conduct that is unjust or inequitable.”¹⁰² This is likely how a bylaw would have to be characterized if a court or the Civil Resolution Tribunal were to set it aside as being significantly unfair to an owner or owners.

Amending bylaws

There is a standard set of bylaws attached as a schedule to the *Strata Property Act*. When a strata plan is filed in the land title office, these standard bylaws apply by default to the strata corporation that comes into being on the filing of the strata plan.¹⁰³ Any of the default standard bylaws can be displaced “to the extent that different bylaws are filed in the land title office.”¹⁰⁴

There are two actors that may file “different bylaws” in the land title office: (1) the owner-developer and (2) the strata corporation. The owner-developer’s power to do this is limited by a timing requirement. It may only file different bylaws “[o]n deposit of the strata plan.”¹⁰⁵ The strata corporation’s power to amend bylaws is limited by the requirements in sections 126–128 of the act.

101. *Reid v Strata Plan LMS 2503*, 2003 BCCA 126 at para 27 [*Reid*], Ryan JA See also *Dollan v The Owners, Strata Plan BCS 1589*, 2012 BCCA 44 at paras 25–30 [*Dollan*], Garson JA (Hall JA concurring) (“In the case of a strata unit owner seeking redress under s. 164, I would adapt the test, suggested by Greycliff J. [in *Golden Pheasant Holding Corp v Synergy Corporate Management Ltd*, 2011 BCSC 173], slightly to the context of s. 164 and articulate it in this manner: 1. Examined objectively, does the evidence support the asserted reasonable expectations of the petitioner? 2. Does the evidence establish that the reasonable expectation of the petitioner was violated by action that was significantly unfair?”); *The Owners, Strata Plan BCS 1721 v Watson*, 2017 BCSC 763 at para 28, Kent J (The test under s. 164 of the *Strata Property Act* also involves objective assessment. [*Dollan*] requires several questions to be answered in that regard: 1) What is or was the expectation of the affected owner or tenant? 2) Was that expectation on the part of the owner or tenant objectively reasonable? 3) If so, was that expectation violated by an action that was significantly unfair?”).

102. *Reid*, *supra* note 101 at para 26.

103. See *Strata Property Act*, *supra* note 4, s 120 (1). Bylaw 5 (obtain approval before altering a strata lot) and bylaw 8 (d) (repair and maintenance of property by strata corporation) don’t apply to a strata lot in a bare-land strata plan (see *ibid*, Schedule of Standard Bylaws, ss 5 and 8 (d)).

104. *Ibid*, s 120 (1).

105. *Ibid*, s 120 (2).

Section 126 is a short enabling provision. Section 127 deals with the special case of amending bylaws before the strata corporation's second annual general meeting. Section 128 sets out the general procedures, which are classified by the composition of the strata corporation. In all cases, "amendments to bylaws must be approved at an annual or special general meeting," but the nature of that approval varies as follows:

- in the case of a strata plan composed entirely of residential strata lots, by a resolution passed by a 3/4 vote,
- in the case of a strata plan composed entirely of nonresidential strata lots, by a resolution passed by a 3/4 vote or as otherwise provided in the bylaws, or
- in the case of a strata plan composed of both residential and nonresidential strata lots, by both a resolution passed by a 3/4 vote of the residential strata lots and a resolution passed by a 3/4 vote of the nonresidential strata lots, or as otherwise provided in the bylaws for the nonresidential strata lots.¹⁰⁶

An amendment only takes effect after it is filed in the land title office,¹⁰⁷ and the "strata corporation must inform owners and tenants of any amendment to the bylaws as soon as feasible after the amendment is approved."¹⁰⁸

Enforcing bylaws

In enforcing its bylaws, the act says a strata corporation "may do one or more of the following":

- impose a fine under section 130;
- remedy a contravention under section 133;

106. *Ibid*, s 128 (1). This provision is introduced by the words "subject to section 197," which directs readers to special provisions that apply if the strata corporation has a section. These special provisions are: "(1) The strata corporation's bylaws apply to the section unless they have been amended by the section. (2) The bylaws may only be amended by the section if the bylaw amendment is in respect of a matter that relates solely to the section. (3) Subject to section 127 (4) (a), an amendment to the bylaws respecting a matter that relates solely to the section must be approved by a resolution passed by a 3/4 vote at an annual or special general meeting of the section. (3.1) Despite subsection (3), if a section is composed entirely of nonresidential strata lots, an amendment to the bylaws respecting a matter that relates solely to the section must be approved by a resolution passed (a) by a 3/4 vote, or (b) if a different voting threshold is provided for in the bylaws of the section, by that voting threshold at an annual or special general meeting of the section" (*ibid*, s 197 (1)–(3.1)).

107. *Ibid*, s 128 (2).

108. *Ibid*, s 128 (4).

- deny access to a recreational facility under section 134.¹⁰⁹

A strata corporation may only do these things if it has:

- received a complaint about the contravention,
- given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and
- if the person is a tenant, given notice of the complaint to the person's landlord and to the owner.¹¹⁰

A general provision early in the act says that the strata council “must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.”¹¹¹ This enforcement power can't be overridden by the power of the owners to “direct or restrict the council in its exercise of powers and performance of duties by a resolution passed by a majority vote at an annual or special general meeting.”¹¹²

The amount of a fine is to be set out in the bylaws themselves. The regulation establishes a “maximum amount that a strata corporation may set out in its bylaws as a fine for the contravention of a bylaw.”¹¹³ It is “\$200 for each contravention of a bylaw,”¹¹⁴ unless the bylaw is one that “prohibits or limits rentals” and the contravention relates to “the rental of a residential strata lot.”¹¹⁵ In these cases, the maximum amount is “\$500 for each contravention of the bylaw.”¹¹⁶

109. *Ibid*, s 129 (1). A section may also do these things “[w]ith respect to a matter that relates solely to the section” (*ibid*, s 194 (2) (f)).

110. *Ibid*, s 135 (1).

111. *Ibid*, s 26.

112. *Ibid*, s 27 (1), (2) (b) (which provides that “[t]he strata corporation may not direct or restrict the council under subsection (1) if the direction or restriction . . . (b) interferes with the council's discretion to determine, based on the facts of a particular case, (i) whether a person has contravened a bylaw or rule, (ii) whether a person should be fined, and the amount of the fine, (iii) whether a person should be denied access to a recreational facility, (iv) whether a person should be required under section 133 (2) to pay the reasonable costs of remedying a contravention of the bylaws or rules, or (v) whether an owner should be exempted under section 144 from a bylaw that prohibits or limits rentals.”).

113. *Strata Property Regulation*, *supra* note 8, s 7.1 (1).

114. *Ibid*, s 7.1 (1) (a).

115. *Ibid*, s 7.1 (2).

116. *Ibid*, s 7.1 (2).

Although the act's list of enforcement mechanisms doesn't mention obtaining an injunction to require compliance with a bylaw or a rule, court decisions¹¹⁷ and commentary make it clear that injunctive relief is another viable means for a strata corporation to enforce its bylaws and rules. The power to issue an injunction may be implicit in certain provisions of the act.¹¹⁸

Nature of rules

A strata corporation must have bylaws; it *may* have rules. Rules are optional. There is no default set of standard rules that apply if a strata corporation takes no action to adopt rules.

Rules cover a more limited range of subjects than bylaws. The act provides that the purpose of a rule is to "[govern] the use, safety and condition of the common property and common assets."¹¹⁹

Like a bylaw, a rule isn't enforceable if it

- contravenes this Act, the regulations, the *Human Rights Code* or any other enactment or law,
- destroys or modifies an easement created under section 69, or
- prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata lot.¹²⁰

117. See e.g. *The Owners, Strata Plan NW498 v Pederson*, 1999 BCCA 224; *The Owners v Grabarczyk*, 2006 BCSC 1960.

118. See *The Owners Strata Plan LMS 2768 v Jordison*, 2012 BCCA 303 at paras 14–15, Hall JA ("It appears to me that the language contained in ss. 173(a) and (b) of the Act empowers a court to order mandatory or prohibitory relief of an injunctive nature. The structure of the section, and in particular the wording of s. 173(c), seems to posit a modifier interrelationship between s. 173(c) and the other two subsections. In other words, subsection (c) appears to be designed to enhance the efficacy of the two preceding subsections, (a) and (b). I consider that ss. 173(a) and (b) authorize a court to make mandatory or prohibitory orders against a party concerning obligations imposed by the Act or bylaws of a strata corporation. A failure to abide by any such order could found, inter alia, contempt proceedings."). See also *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 9.46 ("[Section] 133 states the strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws and rules. That should include an injunction.").

119. *Supra* note 4, s 125 (1).

120. *Ibid*, s 125 (2).

A rule also can't be in conflict with a bylaw; if it is, "the bylaw prevails."¹²¹

Although the point hasn't come up in a court decision, rules are in all likelihood subject to review for "significant unfairness" in the same manner as bylaws are.

Adopting rules

The procedure for adopting rules differs from the procedure for adopting or amending bylaws. Initially, the strata council decides whether or not to adopt a rule.¹²² The rule comes into force if the strata council chooses to adopt it, but the act provides that it "ceases to have effect at the first annual general meeting held after it is made, unless the rule is ratified by a resolution passed by a majority vote":

- at that annual general meeting, or
- at a special general meeting held before that annual general meeting.¹²³

When a strata council adopts a rule it also "must inform owners and tenants of [the] new rules as soon as feasible."¹²⁴

Unlike bylaws, rules aren't registered in the land title office. But rules are subject to a special publication requirement, which holds that "[a]ll rules, including those posted on signs, must be set out in a written document that is capable of being photocopied."¹²⁵

Issues for Reform

While the committee didn't exhaust every possible concern that could be identified in connection with bylaws and rules, it did identify a broad range of issues for consideration. These issues tend not to directly address the core features of the legal framework for bylaws and rules, which were discussed in the previous pages. In-

121. *Ibid*, s 125 (5).

122. See *ibid*, s 125 (1). The provision actually says a "strata corporation may make rules." But a general provision earlier in the act says that a strata council "must exercise the powers and perform the duties of the strata corporation" (*ibid*, s 26). When it comes to sections, "[t]he executive of a section may make rules governing the use, safety and condition of (a) land and other property acquired under section 194 (2) (e), and (b) limited common property designated for the exclusive use of all the strata lots in the section." (*ibid*, s 197 (4)).

123. *Ibid*, s 125 (6).

124. *Ibid*, s 125 (4).

125. *Ibid*, s 125 (3).

stead, the issues that follow are largely aimed at ways to refine and bolster that legal framework.

Issues for Reform—Relocating Provisions from the Standard Bylaws to the Act

Introduction

Both the requirement to have bylaws and the existence of a default statutory set of bylaws have been facets of British Columbia's strata-property law since its earliest days.¹²⁶ Commentators have remarked that the advent of the *Strata Property Act* marked a sea-change in the approach to the act's standard bylaws by converting many provisions that were previously part of the standard bylaws into legislative provisions that cannot be amended by a strata corporation.¹²⁷

There have been calls to repeat the process that took place in the lead up to the *Strata Property Act* and review the standard bylaws once again. This point came up in the consultations during phase one of this project. In addition, some commentators have made general statements about the types of bylaws that should be considered for relocation to the act. For instance, one commentator has pointed to bylaws that "may be a cousin to a provision in the Act."¹²⁸ Another commentator has suggested that the test to apply is as follows: "When legislated bylaws provide direction and/or

126. See 1974 act, *supra* note 6, s 13 (1) (requirement to have bylaws), First and Second Schedules (statutory bylaws). See also *Condominium Act*, *supra* note 6, ss 26 (requirement to have bylaws), 115–132 (default "Part 5 bylaws").

127. See *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 9.1 ("The key difference [between the *Condominium Act*, *supra* note 6, and the *Strata Property Act*, *supra* note 4] was that a great number of provisions that had comprised the Part 5 Bylaws of the *Condominium Act* were incorporated into the substantive provisions of the *Strata Property Act* and therefore could not be amended by the owners under any circumstances.").

128. *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 9.19 ("An example is Standard Bylaw 6, which states that an owner must not make an alteration to common property without written approval from the strata corporation, which is, for this purpose, essentially the strata council. Section 71 of the Act provides that a significant change in the use or appearance of common property requires the approval by a resolution passed by a 3/4 vote—that is, approval of a substantial number of the owners. How can the bylaw and s. 71 be reconciled?"). In answering the question they posed, the authors pointed to the following court cases as showing the reasoning to follow: *Chan v The Owners, Strata Plan VR677* (2 February 2012), Vancouver S115516 (BCSC); *Foley v The Owners, Strata Plan VR 387*, 2014 BCSC 1333.

prescription to *all* strata corporations and are essentially consumer protection public policies, they should not be bylaws which can be amended by the owners.”¹²⁹

Other commentators have suggested that the *Strata Property Act* has already gone too far in the direction of relocating bylaw provisions into the act. One practice guide has said that the act shows “a marked departure from the old legislative scheme and removed a great deal of governing power from the owners collectively.”¹³⁰ Moving still more bylaws into the act could be seen as anti-democratic, undercutting “the extent to which the owners comprising strata corporations—the very persons subject to governance by the bylaws—could with the appropriate democratic majority and process, amend the very bylaws that govern them.”¹³¹

Taking these points into account, the committee followed through on the suggestion made in phase one of this project and reviewed each of the standard bylaws. Since the issue (should the provision be relocated to the act?) and the options (relocate or retain the status quo) are essentially the same for the sections that follow in this portion of the report, these sections depart somewhat from the organization used elsewhere in this report. In place of a brief statement of the issue and a laying out of multiple options for reform, the sections that follow simply describe the content of the bylaw and then move into the committee’s tentative recommendation for reform.

Consultation respondents generally gave strong support to the committee’s tentative recommendations in the consultation paper regarding the standard bylaws. But a recurring comment among those who questioned the committee’s proposals was that these proposals would amount to relocating a large number of standard bylaws to the act, which would have the effect of robbing strata corporations of a significant amount of flexibility in their governance. The committee gave this point extensive consideration. It decided, ultimately, not to accede to it.

The committee noted that its recommendations will raise transitional issues. Education in the nature of the reforms will have to be pursued.

The committee also observed that many strata corporations amend the standard bylaws. For this reason, it’s always risky for an observer to attempt to rely on the

129. Fanaken, *supra* note 34 at 157 [emphasis in original] (citing sections 1, 2, 4, 5, 6, 8, and 30 of the Schedule of Standard Bylaws as examples of bylaws that meet this test).

130. *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 9.1.

131. *Ibid.*

standard bylaws as giving anything like a complete picture of a strata corporation's governing provisions.

The committee noted that these two points may be addressed in some strata corporations by adopting bylaws that supplement or expand on the newly relocated provisions. This course of action is acceptable, so long as the amended bylaws aren't in conflict with a provision of the *Strata Property Act*, its regulations, or any other enactment.

Another point raised repeatedly in the consultation was that relocating standard bylaws to the act would create enforcement problems. While the act provides enforcement options for the contravention of a bylaw,¹³² similar options don't exist for the breach of a statutory provision. The committee considered this point and noted that the bulk of the standard bylaws that it recommends relocating to the act deal with subjects like responsibility for repairs and administrative matters. In most cases, they set out things that a strata corporation is responsible for doing. This reduces the concern about enforcement, since these provisions wouldn't be enforced by a strata corporation taking enforcement action against itself.

Should section 1 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 1 provides that "[a]n owner must pay strata fees on or before the first day of the month to which the strata fees relate."¹³³

The committee's recommendation for reform

The committee noted that section 99 of the act already effectively requires a strata-lot owner to pay strata fees.¹³⁴ The bylaw really just serves a scheduling function. It sets out when an owner is required to pay.

Different kinds of strata corporations might have different approaches to how to schedule payment of strata fees. For example, a strata corporation for a bare-land strata plan might favour annual payment of strata fees. While it makes sense to have

132. See *supra* note 4, s 129.

133. *Strata Property Act*, *ibid*, Schedule of Standard Bylaws, s 1.

134. See *ibid*, s 99 (1) ("owners must contribute to the strata corporation their strata lots' shares of the total contributions budgeted for the operating fund and contingency reserve fund by means of strata fees calculated in accordance with this section and the regulations").

a default provision requiring monthly payment of strata fees, strata corporations should be allowed to retain the ability to amend this provision.

The committee also considered the content of this provision. It decided that it would be helpful to clarify the standard bylaw by extending its reach to special levies approved by the strata corporation.

The committee recommends:

1. Section 1 of the Schedule of Standard Bylaws should remain a part of the standard bylaws and should be amended to read as follows:

Payment of strata fees and special levies

- 1** (1) *An owner must pay strata fees on or before the first day of the month to which the strata fees relate.*
- (2) *An owner must pay a special levy as approved by the strata corporation.*

Should section 2 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 2 of the Schedule of Standard Bylaws deals with repair and maintenance of property by a strata-lot owner.¹³⁵

The committee's recommendation for reform

The committee decided that this standard bylaw shouldn't be relocated to the act. The committee was concerned that creating a standard provision for repair and maintenance could end up hampering some strata corporations. As an example, the committee considered a strata property that catered to older adults. It may be necessary for such a strata property to amend this bylaw, in view of the age of the strata-lot owners and the obligations of the complex under health-and-safety legislation.

135. See *ibid*, Schedule of Standard Bylaws, s 2 (“(1) An owner must repair and maintain the owner’s strata lot, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws. (2) An owner who has the use of limited common property must repair and maintain it, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.”).

The committee recommends:

2. Section 2 of the Schedule of Standard Bylaws should remain a part of the standard bylaws.

Should section 3 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 3 sets out a lengthy bylaw dealing with an array of issues connected to the use of property.¹³⁶

The committee's recommendations for reform

The committee had concerns about strata corporations that have amended, or in some cases even repealed, section 3 (1) of the standard bylaws. It understands that some strata corporations have made this decision because they want to sidestep enforcing bylaws dealing, in particular, with nuisance. Repealing the bylaw is apparently seen as a way to recharacterize disputes over noise and nuisance as matters between residents in which the strata corporation plays no part. The committee also understands that some strata corporations have modified section 3 (1) in eclectic ways.

Given the diversity of British Columbia's strata corporations, revisions to section 3 (1) might be important in some cases. But overall the committee decided there was much to be gained by relocating section 3 (1) to the act, placing it beyond the reach of amendment or repeal.

136. See *ibid*, Schedule of Standard Bylaws, s 3 (“(1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that (a) causes a nuisance or hazard to another person, (b) causes unreasonable noise, (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot, (d) is illegal, or (e) is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan. (2) An owner, tenant, occupant or visitor must not cause damage, other than reasonable wear and tear, to the common property, common assets or those parts of a strata lot which the strata corporation must repair and maintain under these bylaws or insure under section 149 of the Act. (3) An owner, tenant, occupant or visitor must ensure that all animals are leashed or otherwise secured when on the common property or on land that is a common asset. (4) An owner, tenant or occupant must not keep any pets on a strata lot other than one or more of the following: (a) a reasonable number of fish or other small aquarium animals; (b) a reasonable number of small caged mammals; (c) up to 2 caged birds; (d) one dog or one cat.”).

In the committee's view, part 5 of the act, which deals generally with property, is a natural home for section 3 (1).

The committee recommends:

3. Section 3 (1) of the Schedule of Standard Bylaws should be relocated to part 5 of the Strata Property Act.

In the committee's view, the other provisions of section 3 should remain part of the standard bylaws.

The committee recommends:

4. Section 3 (2)–(4) of the Schedule of Standard Bylaws should remain a part of the standard bylaws.

Should section 4 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 4 of the Schedule of Standard Bylaws creates an obligation on a strata-lot owner to inform the strata corporation of certain information.¹³⁷

The committee's recommendations for reform

The committee gave this provision extensive consideration. It was concerned that relocating this provision to the act might reduce awareness of it. New owners are typically given a copy of the strata corporation's bylaws when they move into a strata property. The same isn't true for the act. There were also concerns about the difficulty that a strata corporation could have in enforcing a legislative provision based on this bylaw.

That said, the committee was aware that the legal issues addressed by this provision are important ones, which may only increase in importance as time goes on. The committee felt that the current provision failed to address some emerging issues regarding information flow from an owner to the strata corporation. In particular, the provision should require that the strata corporation be informed when an owner

137. See *ibid*, Schedule of Standard Bylaws, s 4 (“(1) Within 2 weeks of becoming an owner, an owner must inform the strata corporation of the owner’s name, strata lot number and mailing address outside the strata plan, if any. (2) On request by the strata corporation, a tenant must inform the strata corporation of his or her name.”).

appoints a legal representative or grants power of attorney concerning the strata lot, or when there is a transmission of title to the owner's personal representative under the *Wills, Estates and Succession Act*.¹³⁸ These issues will likely become more pronounced as the population ages.

The committee recommends:

5. Section 4 (1) of the Schedule of Standard Bylaws should be relocated to the Strata Property Act.

The committee recommends:

6. Upon relocation of section 4 (1) of the Schedule of Standard Bylaws to the Strata Property Act the provision should be amended to require that within two weeks of becoming an owner's representative with respect to the strata lot, as defined in the regulations, an owner's representative must inform the strata corporation of the number of the strata lot that the representative is representing and the representative's contact information.

In the consultation paper, the committee proposed repealing section 4 (2) of the standard bylaws, noting criticism of it as being a redundant provision.¹³⁹ As the committee viewed it at the time, this change would also effectively be a consequential amendment that followed from the committee's proposals for section 4 (1). The committee accepted the view that these changes, along with the existing requirement in these circumstances to provide a Form K (Notice of Tenant's Responsibilities) essentially made this provision redundant.

This tentative recommendation attracted a rare level of disapproval in the consultation. A majority of respondents disagreed with the committee's proposal. Commentary from some of the respondents who opposed this tentative recommendation pointed to differences between what this provision and the Form K require. In the commentators' views, repealing section 4 (2) would deprive strata corporations of a mechanism for learning about tenants.

On further reflection, the committee has taken the points raised in the consultation. It now views the section as performing a function that isn't duplicated by any other provision.

138. SBC 2009, c 13.

139. See Fanaken, *supra* note 34 at 160. See also *Strata Property Regulation*, *supra* note 8, Form K (Notice of Tenant's Responsibilities).

The committee recommends:

7. Section 4 (2) of the Schedule of Standard Bylaws should remain a part of the standard bylaws.

Should section 5 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 5 of the Schedule of Standard Bylaws sets out the occasions on which an owner must receive the approval of a strata corporation before altering a strata lot.¹⁴⁰

The committee's recommendations for reform

The committee decided that the bulk of this provision should be set in legislation. It was concerned about strata corporations altering the standard of considering decisions under subsection (2). The committee also had concerns about whether a legislative provision would be too rigid for certain kinds of strata corporations. To address this concern, the committee proposes repealing subsection (3). This decision also tied into proposals for section 8 of the standard bylaws, which are discussed below. Under section 8, a strata corporation for a bare-land strata plan could take responsibility for the repair and maintenance of a strata lot. This could lead to the anomalous situation in which a strata corporation were responsible for the repair and maintenance of a strata but had no mechanism to consider whether to approve (or, more to the point, to reject) requests to alter that strata lot.

The committee recommends:

8. Section 5 (1) and (2) of the Schedule of Standard Bylaws should be relocated to the Strata Property Act.

140. See *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws, s 5 (“(1) An owner must obtain the written approval of the strata corporation before making an alteration to a strata lot that involves any of the following: (a) the structure of a building; (b) the exterior of a building; (c) chimneys, stairs, balconies or other things attached to the exterior of a building; (d) doors, windows or skylights on the exterior of a building, or that front on the common property; (e) fences, railings or similar structures that enclose a patio, balcony or yard; (f) common property located within the boundaries of a strata lot; (g) those parts of the strata lot which the strata corporation must insure under section 149 of the Act. (2) The strata corporation must not unreasonably withhold its approval under subsection (1), but may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration. (3) This section does not apply to a strata lot in a bare land strata plan.”).

The committee recommends:

9. Section 5 (3) of the Schedule of Standard Bylaws should be repealed.

Should section 6 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 6 of the Schedule of Standard Bylaws describes when an owner must obtain the consent of the strata corporation before altering common property.¹⁴¹

The committee's recommendation for reform

In the committee's view, section 6 goes hand-in-hand with section 5. Once the decision was taken to relocate section 5 to the act, it was logical that section 6 would have to follow.

The committee recommends:

10. Section 6 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act.

Should section 7 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 7 sets out when a "a person authorized by the strata corporation" must be allowed to enter a strata lot.¹⁴²

141. See *ibid*, Schedule of Standard Bylaws, s 6 ("(1) An owner must obtain the written approval of the strata corporation before making an alteration to common property, including limited common property, or common assets. (2) The strata corporation may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.").

142. See *ibid*, Schedule of Standard Bylaws, s 7 ("(1) An owner, tenant, occupant or visitor must allow a person authorized by the strata corporation to enter the strata lot (a) in an emergency, without notice, to ensure safety or prevent significant loss or damage, and (b) at a reasonable time, on 48 hours' written notice, to inspect, repair or maintain common property, common assets and any portions of a strata lot that are the responsibility of the strata corporation to repair and maintain under these bylaws or insure under section 149 of the Act. (2) The notice referred to in subsection (1) (b) must include the date and approximate time of entry, and the reason for entry.").

The committee's recommendation for reform

In the committee's view, section 7 sets out basic standards that should appear in the legislation.

The committee recommends:

11. Section 7 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act.

Should section 8 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 8 of the Schedule of Standard Bylaws is a lengthy and important provision dealing with repair and maintenance of property by a strata corporation.¹⁴³

The committee's recommendations for reform

The committee viewed this provision as being a key provision of the standard bylaws. It gave extensive consideration to whether it should become part of the legislation.

The committee noted that there are a number of challenges to tackling this provision. Section 8 has proved to be very difficult to understand and apply in practice. Some strata corporations have amended the provision, a development which has often only added to the confusion. That said, a one-size-fits-all approach to repairs and maintenance raises its own concerns.

143. See *ibid*, Schedule of Standard Bylaws, s 8 ("The strata corporation must repair and maintain all of the following: (a) common assets of the strata corporation; (b) common property that has not been designated as limited common property; (c) limited common property, but the duty to repair and maintain it is restricted to (i) repair and maintenance that in the ordinary course of events occurs less often than once a year, and (ii) the following, no matter how often the repair or maintenance ordinarily occurs: (A) the structure of a building; (B) the exterior of a building; (C) chimneys, stairs, balconies and other things attached to the exterior of a building; (D) doors, windows and skylights on the exterior of a building or that front on the common property; (E) fences, railings and similar structures that enclose patios, balconies and yards; (d) a strata lot in a strata plan that is not a bare land strata plan, but the duty to repair and maintain it is restricted to (i) the structure of a building, (ii) the exterior of a building, (iii) chimneys, stairs, balconies and other things attached to the exterior of a building, (iv) doors, windows and skylights on the exterior of a building or that front on the common property, and (v) fences, railings and similar structures that enclose patios, balconies and yards.").

The committee felt that section 8 had to be discussed alongside section 72 of the act, which covers similar territory.¹⁴⁴ Section 8 appears to set out the minimum standards for repairs and maintenance. So section 8 could be relocated to the act and a strata corporation that was so inclined could, possibly in reliance on section 72 of the act, take on additional obligations by adopting bylaws setting those obligations out. This approach might help to allay concerns that some strata corporations could have about relocating a provision in the standard bylaws to the act.

While a strong majority of consultation respondents agreed with the committee's tentative recommendation on this point, there was some concern expressed that the committee's proposal would create a one-size-fits-all provision that could hamper some strata corporations. The committee gave extended consideration to this point. Ultimately, it decided that it was more important to guard against the possibility of strata corporations purporting to make individual owners responsible to carry out repairs to common property and the building envelope. Experience has shown that individual owners aren't well-placed or motivated to carry out such repairs. Often, they simply aren't done, to the detriment of the strata corporation as a whole.

The committee recommends:

12. Section 8 of the Schedule of Standard Bylaws should be relocated to become new section 72 (3) of the Strata Property Act.

The committee also decided to clarify one aspect of the wording of section 8, which has led to some uncertainty in practice. While the existing provision refers to "balconies," it doesn't mention patios, which in practice are viewed as being distinct from balconies. In the committee's view, adding a reference to patios would help to clarify the provision.

The committee recommends that:

13. When section 8 of the Schedule of Standard Bylaws is relocated to become new section 72 (3) of the Strata Property Act, "patios" should be added to the list of limited common property that the strata corporation has the duty to repair and maintain no matter how often the repair or maintenance ordinarily occurs.

144. See *ibid*, s 72 ("(1) Subject to subsection (2), the strata corporation must repair and maintain common property and common assets. (2) The strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of (a) limited common property that the owner has a right to use, or (b) common property other than limited common property only if identified in the regulations and subject to prescribed restrictions. (3) The strata corporation may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.").

The committee is aware that relocating section 8 to the act to become part of section 72 will result in a need to make some consequential amendments to section 72. The first such consequential amendment concerns the disposition of existing section 72 (3).

The committee recommends:

14. Existing section 72 (3) of the Strata Property Act should be renumbered as subsection (4) and should apply despite new subsection (3) (previously section 8 of the Schedule of Standard Bylaws).

In the committee's view, there will also need to be consequential amendments to section 72 (2). First, the scope of section 72 (2) (a) will need to be limited to those items of limited common property that aren't listed in current section 8 (c) (ii) of the standard bylaws (which will become part of new section 72 (3) of the act). Otherwise, the act will appear to say, illogically, that a strata corporation "may, *by bylaw*, make an owner responsible for the repair and maintenance of limited common property that the owner has a right to use."¹⁴⁵ But if a strata corporation were to act on this invitation and adopt a bylaw that purported to make an owner responsible for the repair and maintenance of an item of limited common property listed in the new section 72 (3) of the act, that bylaw would be unenforceable.¹⁴⁶ The legislation will have to be amended to make it clear that the strata corporation's ability to adopt such a bylaw is subject to compliance with new section 72 (3).

Second, existing section 72 (2) (b) will have to be addressed. Currently, this provision is something of a dead letter, because it allows a strata corporation to "make an owner responsible for the repair and maintenance of common property other than limited common property *only if identified in the regulations* and subject to prescribed restrictions."¹⁴⁷ Since no enabling regulations have ever been adopted, strata corporations aren't able to take advantage of this provision. When section 8 of the standard bylaws is relocated, the provision will lose any possible rationale, because at that time new section 72 (3) of the act will provide that the "strata corporation must repair and maintain all of the following: . . . common property that has not been designated as limited common property."¹⁴⁸ So a strata corporation will have no scope in which to make an owner responsible for the repair and maintenance of

145. *Ibid*, s 72 (2) (a) [emphasis added].

146. See *ibid*, s 121 (1) (a) ("A bylaw is not enforceable to the extent that it (a) contravenes this Act . . .").

147. *Ibid*, s 72 (2) (b) [emphasis added].

148. *Ibid*, Schedule of Standard Bylaws, s 8 (b).

common property that hasn't been designated as limited common property. As a result, when section 8 of the standard bylaws is relocated to the act, existing section 72 (2) (b) should be repealed.

Should sections 9–22 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaws

Division 3 contains 13 provisions dealing with the strata council.¹⁴⁹

The committee's recommendation for reform

In the committee's view, all of division 3 (with the three exceptions noted below) should remain a part of the standard bylaws. The division's mix of provisions dealing largely with the composition of council and meeting procedures represent the kind of provisions that should remain in the bylaws, where they will remain subject to amendment by a strata corporation.

The committee recommends:

15. With the exception of sections 19, 20 (4), and 22, all of division 3 of the Schedule of Standard Bylaws should remain a part of the standard bylaws.

Should section 19 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaws

Section 19 sets out a requirement to inform owners of the minutes of strata-council meetings.¹⁵⁰

The committee's recommendation for reform

The committee decided that the timing rule used in this provision should align with a proposed new timing rule for circulation of general-meeting minutes.¹⁵¹ The com-

149. See *ibid*, Schedule of Standard Bylaws, ss 9–22. Note that former section 15 has been repealed.

150. See *ibid*, Schedule of Standard Bylaws, s 19 ("The council must inform owners of the minutes of all council meetings within 2 weeks of the meeting, whether or not the minutes have been approved.").

151. See, below, at 160–162.

mittee was also of the view that the provision should be set in legislation, placing it beyond the reach of strata-corporation amendment.

The committee recommends:

16. Section 19 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act and revised to read “The strata corporation must circulate minutes of strata-council meetings within three weeks of the meeting, whether or not the minutes have been approved.”

Should section 20 (4) of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 20 (4) of the Schedule of Standard Bylaws contains specific prohibitions on delegation of strata-council powers and duties.¹⁵²

The committee’s recommendation for reform

In the committee’s view, this subsection deals with a baseline requirement that shouldn’t be subject to amendment.

The committee recommends:

17. Section 20 (4) of the Schedule of Standard Bylaws should be relocated to the Strata Property Act.

152. See *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws, s 20 (“(1) Subject to subsections (2) to (4), the council may delegate some or all of its powers and duties to one or more council members or persons who are not members of the council, and may revoke the delegation. (2) The council may delegate its spending powers or duties, but only by a resolution that (a) delegates the authority to make an expenditure of a specific amount for a specific purpose, or (b) delegates the general authority to make expenditures in accordance with subsection (3). (3) A delegation of a general authority to make expenditures must (a) set a maximum amount that may be spent, and (b) indicate the purposes for which, or the conditions under which, the money may be spent. (4) *The council may not delegate its powers to determine, based on the facts of a particular case, (a) whether a person has contravened a bylaw or rule, (b) whether a person should be fined, and the amount of the fine, or (c) whether a person should be denied access to a recreational facility.*” [emphasis added]).

Should section 22 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 22 provides for the limitation of liability for a strata-council member.¹⁵³

The committee's recommendation for reform

The committee decided that section 22 deals with a subject that is more appropriately found in legislation, rather than in a bylaw that could be amended.

The committee recommends:

18. Section 22 of the Schedule of Standard Bylaws should be relocated to become part of section 31 of the Strata Property Act.

Should section 23 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 23 of the Schedule of Standard Bylaws deals with the maximum fines that a strata corporation may levy in the event of a contravention of a bylaw or a rule.¹⁵⁴

The committee's recommendation for reform

The committee favoured leaving this provision in the standard bylaws. The diversity of strata corporations has to be considered here. Relocating the provision to the legislation could end up constraining some strata corporations. The committee also noted that few strata corporations have retained the standard bylaw on this issue. The bulk of them have replaced it with a custom-made bylaw, which increases the maximum fines.¹⁵⁵

153. See *ibid*, Schedule of Standard Bylaws, s 22 (“(1) A council member who acts honestly and in good faith is not personally liable because of anything done or omitted in the exercise or intended exercise of any power or the performance or intended performance of any duty of the council. (2) Subsection (1) does not affect a council member’s liability, as an owner, for a judgment against the strata corporation.”).

154. See *ibid*, Schedule of Standard Bylaws, s 23 (“The strata corporation may fine an owner or tenant a maximum of (a) \$50 for each contravention of a bylaw, and (b) \$10 for each contravention of a rule.”).

155. See *Strata Property Regulation*, *supra* note 8, s 7.1 (1) (“For the purposes of section 132 of the Act, the maximum amount that a strata corporation may set out in its bylaws as a fine for the

The committee has addressed the level of these maximum fines later in this report.¹⁵⁶

The committee recommends:

19. Section 23 of the Schedule of Standard Bylaws should remain a part of the standard bylaws.

Should section 24 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 24 deals with enforcement of a bylaw or rule in the face of a continuing contravention of that bylaw or rule.¹⁵⁷

The committee's recommendation for reform

The committee noted that applying this bylaw has proved to be a challenge for strata councils. The committee was of the view that some clarity could be provided by relocating this provision to the act. The committee decided that section 132¹⁵⁸ would provide a natural home for the subject of this provision.

The committee also noted that there appears to be some slippage between this provision and section 7.1 (3) of the regulation.¹⁵⁹ The regulation fails to include the words *without interruption*, which in the committee's view form an integral part of

contravention of a bylaw or rule is (a) \$200 for each contravention of a bylaw, and (b) \$50 for each contravention of a rule.”).

156. See, below, at 187–191.

157. See *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws, s 24 (“If an activity or lack of activity that constitutes a contravention of a bylaw or rule continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days.”).

158. See *ibid*, s 132 (“(1) The strata corporation must set out in its bylaws the maximum amount it may fine an owner or tenant for each contravention of a bylaw or rule. (2) The strata corporation may set out in its bylaws (a) different maximum amounts of fines for different bylaws and rules, and (b) the frequency at which fines may be imposed for a continuing contravention of a bylaw or rule. (3) The maximum amount of a fine and the maximum frequency of imposition of fines must not exceed the maximums set out in the regulations.”).

159. See *supra* note 8, s 7.1 (3) (“For the purposes of section 132 of the Act, the maximum frequency that a strata corporation may set out in its bylaws for the imposition of a fine for a continuing contravention of a bylaw or rule is every 7 days.”).

the concept of a continuing contravention. Relocating the provision to the legislation and repealing the regulation would deal with this slippage.

The committee deals with a proposed definition of *continuing contravention* later in this report.¹⁶⁰

The committee recommends:

20. Section 24 of the Schedule of Standard Bylaws should be relocated to form part of section 132 of the Strata Property Act and section 7.1 (3) of the Strata Property Regulation should be repealed.

Should section 25 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 25 of the Schedule of Standard Bylaws sets out the provisions governing who is to chair an annual general meeting or a special general meeting of the strata corporation.¹⁶¹

The committee's recommendation for reform

In the consultation paper, the committee tentatively recommended leaving section 25 as a part of the standard bylaws. While this tentative recommendation was strongly supported by consultation respondents, the committee gave this proposal some second thought in connection with another proposed change. The committee decided to extend the reach of recommendation no. (41), which deals with classes of people who aren't eligible to hold a proxy, to cover "contractors." In the committee's view, this change will be generally beneficial. But it was concerned about one potential unintended consequence.

Sometimes, strata corporations ask a lawyer or other trusted professional to act as chair of a general meeting. This is done with a view to lowering the temperature in contested circumstances and helping the meeting be a productive one. The appoint-

160. See, below, at 82–85.

161. See *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws, s 25 (“(1) Annual and special general meetings must be chaired by the president of the council. (2) If the president of the council is unwilling or unable to act, the meeting must be chaired by the vice president of the council. (3) If neither the president nor the vice president of the council chairs the meeting, a chair must be elected by the eligible voters present in person or by proxy from among those persons who are present at the meeting.”).

ment as meeting chair is facilitated by giving the professional a proxy appointment and then relying subsection (3) of section 25 of the standard bylaws.¹⁶² But many strata corporations have amended this standard bylaw, deleting the words *or by proxy*. If the committee's recommendation no. (41) is implemented with no further changes, then these strata corporations would no longer be able to ask a professional who is a contractor with the strata corporation to act as meeting chair. To address this concern, the committee recommends relocating section 25 to the act. This will have the effect of ensuring that the practice of allowing a lawyer or other professional to act as meeting chair may continue.

The committee recommends:

21. Section 25 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act.

Should section 26 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 26 deals with participation in an annual general meeting or a special general meeting by people who aren't eligible voters.¹⁶³

The committee's recommendation for reform

The committee decided that this provision, which deals broadly with meeting procedure, should remain a part of the standard bylaws.

The committee recommends:

22. Section 26 of the Schedule of Standard Bylaws should remain a part of the standard bylaws.

162. "If neither the president nor the vice president of the council chairs the meeting, a chair must be elected by the eligible voters present in person or by proxy from among those persons who are present at the meeting."

163. See *supra* note 4, Schedule of Standard Bylaws, s 26 ("(1) Tenants and occupants may attend annual and special general meetings, whether or not they are eligible to vote. (2) Persons who are not eligible to vote, including tenants and occupants, may participate in the discussion at the meeting, but only if permitted to do so by the chair of the meeting. (3) Persons who are not eligible to vote, including tenants and occupants, must leave the meeting if requested to do so by a resolution passed by a majority vote at the meeting."). See also *ibid*, s 1 (1) "eligible voters" ("means persons who may vote under sections 53 to 58").

Should section 27 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 27 of the Schedule of Standard Bylaws deals with voting at an annual general meeting or a special general meeting.¹⁶⁴

The committee's recommendation for reform

In the committee's view, this provision deals with the right to vote, a cornerstone of strata-property democracy. For this reason, it should be relocated to the act.

The committee examines substantive aspects of this provision later in this report.¹⁶⁵

The committee recommends:

23. Section 27 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act.

Should section 28 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 28 of the Schedule of Standard Bylaws sets out the order of business for annual general meetings and special general meetings.¹⁶⁶

164. See *ibid*, Schedule of Standard Bylaws, s 27 (“(1) At an annual or special general meeting, voting cards must be issued to eligible voters. (2) At an annual or special general meeting a vote is decided on a show of voting cards, unless an eligible voter requests a precise count. (3) If a precise count is requested, the chair must decide whether it will be by show of voting cards or by roll call, secret ballot or some other method. (4) The outcome of each vote, including the number of votes for and against the resolution if a precise count is requested, must be announced by the chair and recorded in the minutes of the meeting. (5) If there is a tie vote at an annual or special general meeting, the president, or, if the president is absent or unable or unwilling to vote, the vice president, may break the tie by casting a second, deciding vote. (6) If there are only 2 strata lots in the strata plan, subsection (5) does not apply. (7) Despite anything in this section, an election of council or any other vote must be held by secret ballot, if the secret ballot is requested by an eligible voter.”).

165. See, below, at 144–148.

166. See *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws, s 28 (“The order of business at annual and special general meetings is as follows: (a) certify proxies and corporate representatives and issue voting cards; (b) determine that there is a quorum; (c) elect a person to chair

The committee's recommendation for reform

In the committee's view, it is appropriate for this provision to remain a part of the standard bylaws.

The committee proposes changes to the items listed in this provision later in this report.¹⁶⁷

The committee recommends:

24. Section 28 of the Schedule of Standard Bylaws should remain a part of the standard bylaws.

Should section 29 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 29 sets out a voluntary dispute resolution procedure.¹⁶⁸

the meeting, if necessary; (d) present to the meeting proof of notice of meeting or waiver of notice; (e) approve the agenda; (f) approve minutes from the last annual or special general meeting; (g) deal with unfinished business; (h) receive reports of council activities and decisions since the previous annual general meeting, including reports of committees, if the meeting is an annual general meeting; (i) ratify any new rules made by the strata corporation under section 125 of the Act; (j) report on insurance coverage in accordance with section 154 of the Act, if the meeting is an annual general meeting; (k) approve the budget for the coming year in accordance with section 103 of the Act, if the meeting is an annual general meeting; (l) deal with new business, including any matters about which notice has been given under section 45 of the Act; (m) elect a council, if the meeting is an annual general meeting; (n) terminate the meeting.”).

167. See, below, at 147–148.

168. See *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws, s 29 (“(1) A dispute among owners, tenants, the strata corporation or any combination of them may be referred to a dispute resolution committee by a party to the dispute if (a) all the parties to the dispute consent, and (b) the dispute involves the Act, the regulations, the bylaws or the rules. (2) A dispute resolution committee consists of (a) one owner or tenant of the strata corporation nominated by each of the disputing parties and one owner or tenant chosen to chair the committee by the persons nominated by the disputing parties, or (b) any number of persons consented to, or chosen by a method that is consented to, by all the disputing parties. (3) The dispute resolution committee must attempt to help the disputing parties to voluntarily end the dispute.”).

The committee's recommendation for reform

The committee understands that this provision is rarely used. The advent of the Civil Resolution Tribunal has effectively made it redundant.

The committee recommends:

25. Section 29 of the Schedule of Standard Bylaws should be repealed.

Should section 30 of the Schedule of Standard Bylaws be relocated to the act?

The content of the bylaw

Section 30 addresses the display lot, which may be used as part of the marketing activities of the owner-developer.¹⁶⁹

The committee's recommendation for reform

The committee decided that this provision shouldn't be relocated to the *Strata Property Act*. In its view, the owner-developer shouldn't have an unconditional right to continue marketing strata lots. Marketing activity is more of a privilege, which may be lost, for example, in a phased strata plan in accordance with section 13.3 (2) of the regulation.¹⁷⁰ This provision should remain part of the standard bylaws, so it will remain open for strata corporations to amend it.

The committee recommends:

26. Section 30 of the Schedule of Standard Bylaws should remain a part of the standard bylaws.

169. See *ibid*, Schedule of Standard Bylaws, s 30 (“(1) An owner developer who has an unsold strata lot may carry on sales functions that relate to its sale, including the posting of signs. (2) An owner developer may use a strata lot, that the owner developer owns or rents, as a display lot for the sale of other strata lots in the strata plan.”).

170. See *supra* note 8, s 13.3 (2) (“Despite any provision of the Act, if an owner developer is in compliance with the dates for the beginning of construction of each phase as set out in the Phased Strata Plan Declaration or amended Phased Strata Plan Declaration, a strata corporation established by the deposit of a phased strata plan may not create, change, repeal, replace, add to or otherwise amend any bylaws dealing with any of the following matters until the annual general meeting held following the deposit of the final phase or until an election not to proceed under section 235 or 236 (2) of the Act, unless the strata corporation obtains the written consent of the owner developer: (a) the keeping or securing of pets; (b) the restriction of rentals; (c) the age of occupants; (d) the marketing activities of the owner developer which relate to the sale of strata lots in the strata plan.”).

Should a new standard bylaw be adopted allowing a strata corporation to proceed under the Small Claims Act against an owner or other person to collect money owing to the strata corporation, including money owing as a fine, without requiring authorization by a resolution passed by a 3/4 vote?

Brief description of the issue

Section 171 of the act deals with when a strata corporation may sue as a representative of strata-lot owners. As a default rule, the section requires that the owners give the strata corporation prior authorization before commencing a lawsuit.¹⁷¹ This authorization must come in the form of a resolution passed by a 3/4 vote.

The section provides an exception for collection proceedings in small-claims court.¹⁷² This exception is only available if a strata corporation has adopted a bylaw enabling it. Should this enabling bylaw be made a part of the Schedule of Standard Bylaws?

The committee's recommendation for reform

As part of its review of the Schedule of Standard Bylaws, the committee considered any additions that it would propose adding to the standard bylaws. In its view, an authorization to sustain proceedings in small-claims court for collecting money owing to the strata corporation is a logical addition to the standard bylaws. This new bylaw would enhance efficiency of collecting money owing to the strata corporation. A strata corporation that disagreed with the content of this standard bylaw could always act to repeal it.

The committee recommends:

27. The following should be adopted as a new standard bylaw: "The authority required in section 171 (2) of the act is not required for a proceeding under the Small Claims Act

171. See *supra* note 4, s 171 (2) ("Before the strata corporation sues under this section, the suit must be authorized by a resolution passed by a 3/4 vote at an annual or special general meeting.").

172. See *ibid*, s 171 (4) ("The authorization referred to in subsection (2) is not required for a proceeding under the *Small Claims Act* against an owner or other person to collect money owing to the strata corporation, including money owing as a fine, if the strata corporation has passed a bylaw dispensing with the need for authorization, and the terms and conditions of that bylaw are met.").

against an owner or other person to collect money owing to the strata corporation, including money owing as a fine.”

Issues for Reform—Enforcement: Expanding the Lien

Introduction

A major enforcement tool for strata corporations is the statutory lien¹⁷³ on a strata lot. This lien is a powerful tool because it gives the strata corporation priority over other creditors for specified debts owing to the strata corporation. And this quality has led to restrictions on its scope. Currently, the lien has little to do with the bylaw-enforcement process. The issues that follow explore ways to potentially expand the scope of the lien into that process.

In the consultation paper, the committee showed a wariness to expand the reach of the lien. In response to four issues for reform it offered four tentative recommendations not to expand the lien. In a departure from their responses to the bulk of the committee’s proposals, consultation respondents disagreed with each of these tentative recommendations. In some cases, that disagreement could be characterized as strong disagreement.

In view of the consultation responses, the committee reconsidered each of the following four issues for reform. As will be seen, the committee continues to be wary to expand the reach of the lien. It remains concerned about the potential for abuse and the impact on other creditors. But it did decide to change one of its tentative recommendations, ultimately recommending a limited expansion to the scope of the lien.

173. See Bryan A Garner, ed, *Black’s Law Dictionary*, 10th ed (St. Paul: Thomson Reuters) *sub verbo* “lien” (“A legal right or interest that a creditor has in another’s property, lasting usu. until a debt or duty that it secures is satisfied. Typically, the creditor does not take possession of the property on which the lien has been obtained.”).

Should the Strata Property Act enable a strata corporation to register a lien on an owner's strata lot for amounts owing with respect to fines?

Brief description of the issue

The act allows a strata corporation to “register a lien against an owner's strata lot” if “the owner fails to pay the strata corporation any of the following with respect to that strata lot”:

- strata fees;
- a special levy;
- a reimbursement of the cost of work referred to in section 85;
- the strata lot's share of a judgment against the strata corporation.¹⁷⁴

Registering a lien under this provision allows a strata corporation to secure repayment of amounts owing in any of these four categories against the owner's strata lot. In addition to the security interest, the legislation gives the strata corporation, through its lien, an enhanced priority position vis-à-vis most of the other creditors that the owner may have.¹⁷⁵ It also gives the strata corporation access to a legislative remedy that allows for the forced sale of the owner's strata lot to collect the amount owing.¹⁷⁶

Conspicuous by its absence from this list is the amount of any fines levied due to a contravention of the bylaws.¹⁷⁷ Should a strata corporation be able to secure such amounts by registering a lien against the contravening owner's strata lot?

174. *Supra* note 4, s 116 (1).

175. See *ibid*, s 116 (5) (“The strata corporation's lien ranks in priority to every other lien or registered charge except (a) to the extent that the strata corporation's lien is for a strata lot's share of a judgment against the strata corporation, (b) if the other lien or charge is in favour of the Crown and is not a mortgage of land, or (c) if the other lien or charge is made under the *Builders Lien Act*.”).

176. See *ibid*, s 117.

177. See *ibid*, s 116 (3) (c) (“Subsections (1) and (2) do not apply if . . . the amount owing is in respect of a fine or the costs of remedying a contravention.”). See also *The Owners, Strata Plan LMS 3259 v Sze Hang Holding Inc*, 2016 BCSC 32 at para 146, Harris J.

Discussion of options for reform

Expanding the scope of the strata corporation's lien to embrace fines could have a number of advantages. It would be another means to encourage compliance with the bylaws. It would enhance the strata corporation's ability to ensure compliance with the bylaws. This could have widespread significance for the strata property. Dealing swiftly and decisively with one dispute may stem other disputes before they get out of hand.

But there may be downsides to expanding the scope of the lien. Owners sometimes complain that fines are applied capriciously or maliciously. If these abusive practices were to occur, then having a lien available for enforcement would amplify their ill effects. Also worthy of consideration is the effect that broadening the lien would have on other parties. This proposal would give a strata corporation's fines priority over the claims of most other creditors of a strata-lot owner. This could have ripple effects.

The committee's recommendation for reform

The committee was wary of expanding the scope of the lien as contemplated by this issue for reform. In the committee's view, too many strata corporations have shown themselves to be inconsistent or worse when it comes to dealing with fines. Handing them the power to register a lien for amounts owing with respect to fines would be opening the door to abuses.

The committee recommends:

28. The Strata Property Act should continue not to enable a strata corporation to register a lien on an owner's strata lot for amounts owing with respect to fines.

If a court or the Civil Resolution Tribunal finds that a fine is valid, then should the Strata Property Act enable a strata corporation to register a lien on an owner's strata lot for amounts owing with respect to that fine?

Brief description of the issue

This issue is a variation on the preceding one. Section 116 doesn't provide an external check on registering a lien against a strata lot. If a lien is improperly registered, then it's up to the strata-lot owner to take steps to have it removed. If a strata corporation is given the authority to register a lien that will secure payment of fines as-

sessed due to a bylaw contravention, then should this reform go hand-in-hand with a requirement that the fine first be found to be valid by an external body?

Discussion of options for reform

This option presents something of a compromise between the two options discussed for the preceding issue. By limiting the strata corporation's power to register a lien for non-payment of fines to just those times when the fines have been upheld by a court or the Civil Resolution Tribunal it guards against potential abuses of the enhanced power to register a lien.

A potential downside of this option is that it doesn't do anything to address what expanding the scope of the strata corporation's lien will do to the claims of other creditors.

The committee's recommendation for reform

At first glance, the committee felt that the addition of court or tribunal review provided a level of comfort about this proposal. But the committee continued to have serious concerns about the effect this proposal would have on third-party creditors (such as mortgagees). Fines are punitive, not compensatory. In addition, a fine is made against a person, not a strata lot. These two points make it difficult to support giving amounts for fines the superpriority afforded by the strata corporation's lien. In this way, the committee's recommendation is in accord with the rationale for not including fines within the scope of the lien in the first place.

The committee recommends:

29. The Strata Property Act should not enable a strata corporation to register a lien on an owner's strata lot for amounts owing with respect a fine, even if the fine has been found valid by a court or the Civil Resolution Tribunal.

Should the Strata Property Act enable a strata corporation to register a lien on an owner's strata lot for amounts owing with respect to an insurance deductible or expenses incurred due to damage which are less than an insurance deductible?

Brief description of the issue

This issue for reform is best seen in light of the preceding issues. If extending the lien to cover fines (whether or not enabled by an external decision-maker) causes

concerns, can those concerns be allayed by a proposal that's more limited in its reach?

Discussion of options for reform

The main advantage of this proposed reform is its more-focused range, which might serve to check potential abuses of an enhanced lien power. This proposal could also be seen as a reasonable extension of the act's existing provision for a lien in cases in which the strata corporation obtains a work order and the owner fails to comply with it.¹⁷⁸

But this proposed reform shares many of the downsides of the proposals considered in the preceding pages. It still extends the lien into far-less-certain territory, opening the door to potential abuses.

The committee's recommendation for reform

The committee decided not to endorse this proposed reform. Although it's more limited than the previous proposals, it still creates the conditions for abuse. The committee was particularly concerned about the uncertainty created by extending the lien to cover expenses incurred in respect of damages.

The committee recommends:

30. The Strata Property Act should continue not to enable a strata corporation to register a lien on an owner's strata lot for amounts owing with respect to an insurance deductible or expenses incurred due to damage which are less than an insurance deductible.

178. See *supra* note 4, ss 84, 85, 116 (1) (c).

If a court or the Civil Resolution Tribunal finds that a charge back for an insurance deductible or expenses incurred due to damage which are less than an insurance deductible is valid, then should the Strata Property Act enable a strata corporation to register a lien on an owner's strata lot for amounts owing with respect that charge back?

Brief description of the issue

This issue for reform is an extension of the previous two. It represents another attempt to respond to enforcement concerns by giving a limited expansion of the range of the lien. Would such an expansion be acceptable if it were limited to charge backs approved by a court or the Civil Resolution Tribunal?

Discussion of options for reform

The principal advantage of this proposal is its limited scope. It would extend the lien to a compensatory (as opposed to a punitive) amount, something that is consistent with the lien's existing purposes.

The downside of this proposal is that it would have the effect of substantively reordering priorities among competing creditors. This could harm third parties, which could have knock-on effects for strata-lot owners, if they were, as a result, to find it more difficult to obtain financing from financial institutions.

The committee's recommendation for reform

In considering the issues for its consultation paper, the committee gave this issue extended consideration. While (at that time) some committee members were attracted to it as a practical extension of the lien that could solve some enforcement problems, others were concerned about its potential impact on other creditors and, indirectly, strata-lot owners. Other committee members noted that a strata corporation already has the power to bring itself within the confines of the lien in similar cases, if it obtains a work order.¹⁷⁹ Ultimately, the committee decided not to endorse this proposal in the consultation paper.

A strong majority of respondents to the consultation paper disagreed with the committee's tentative recommendation. Upon further reflection of the points raised in the consultation, the committee decided to change this tentative recommendation.

¹⁷⁹. See *ibid*, s 85.

The committee's decision on this issue was also bolstered by discussions it had with insurance professionals as part of its development of the committee's *Consultation Paper on Insurance Issues for Stratas*.¹⁸⁰

While the committee remains wary of calls to dramatically extend the reach of the lien, it has come to view a limited extension as justified. In its view, an insurance deductible is significantly different from, say, bylaw fines. Extending the lien to cover the latter would significantly open up the possibility of abuse. But a limited extension to cover just insurance deductibles wouldn't create so great a risk for abuse and would help to support other proposed reforms for a difficult area of the act.

The committee recommends:

31. The Strata Property Act should enable a strata corporation to register a lien on an owner's strata lot for amounts owing with respect to a charge back for an insurance deductible or expenses incurred due to damage which are less than an insurance deductible, if the charge back has been found valid by a court, an arbitrator, or the Civil Resolution Tribunal.

Issues for Reform—Other Enforcement Tools

Introduction

The issues that follow grapple with specific ideas to enhance the traditional tools for enforcing bylaws and rules.

180. See *supra* note 18.

Should the Strata Property Act contain a provision requiring compliance with bylaws and rules or an offence and penalty provision applicable to a contravention of a bylaw or a rule?

Brief description of the issue

The *Strata Property Act* expressly mentions three options that may be used in enforcing a strata corporation's bylaws: (1) imposing a fine;¹⁸¹ (2) remedying a contravention;¹⁸² (3) denying access to a recreational facility.¹⁸³ The sole offence provision in the act doesn't mention bylaws; it relates to anyone who "knowingly makes a false statement in a Certificate of Strata Corporation."¹⁸⁴

Other provinces provide more tools for bylaw enforcement. Alberta's act contains a remedy for "improper conduct."¹⁸⁵ In many respects, this provision is the equivalent of British Columbia's remedy for significantly unfair acts,¹⁸⁶ but Alberta's legislation goes further and includes "non-compliance with this Act, the regulations or the by-laws by a developer, a corporation, an employee of a corporation, a member of a board or an owner" within the definition of "improper conduct."¹⁸⁷ This opens the door to a wide range of judicial remedies.¹⁸⁸ Ontario's legislation allows a court to

181. See *ibid*, ss 129 (1) (a), 130–32.

182. See *ibid*, ss 129 (1) (b), 133 ("(1) The strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including (a) doing work on or to a strata lot, the common property or common assets, and, (b) removing objects from the common property or common assets. (2) The strata corporation may require that the reasonable costs of remedying the contravention be paid by the person who may be fined for the contravention under section 130.").

183. See *ibid*, ss 129 (1) (c), 134. There is also the prospect of obtaining an injunction, which may be implicit in section 173 (1) (other court remedies).

184. *Ibid*, s 290.

185. *Condominium Property Act*, *supra* note 24, s 67.

186. *Supra* note 4, s 164. See also *ibid*, s 165, which sets out "other court remedies," including a remedy that a court may "order the *strata corporation* to stop contravening this Act, the regulations, the bylaws or the rules" [emphasis added].

187. *Supra* note 24, s 67 (1) (a) (i) [emphasis added].

188. See *ibid*, s 67 (2) ("Where on an application by an interested party the Court is satisfied that improper conduct has taken place, the Court may do one or more of the following: (a) direct that an investigator be appointed to review the improper conduct and report to the Court; (b) direct that the person carrying on the improper conduct cease carrying on the improper conduct; (c) give directions as to how matters are to be carried out so that the improper conduct will not reoccur or continue; (d) if the applicant suffered loss due to the improper conduct, award com-

make a “compliance order.”¹⁸⁹ Once again, an analogous provision exists in British Columbia’s statute.¹⁹⁰ But this British Columbia provision is more narrowly framed than the Ontario equivalent, and it doesn’t mention bylaws.

Should British Columbia follow the lead of Alberta and Ontario? Should British Columbia go even further and provide that contravention of the bylaws is an offence under the act?

Discussion of options for reform

The idea of adopting a provision requiring compliance with the bylaws was first raised during phase one of this project.¹⁹¹ Several consultation participants pointed to the Alberta and Ontario provisions as models to consider.

An express legislative provision requiring compliance with a strata corporation’s bylaws would serve to ensure that a remedy may be available in a difficult case. Alberta’s provision acts as a kind of catch-all section. It essentially fills in any gaps in the legislative framework, allowing the court to make a broad range of orders to serve as remedies in any cases of non-compliance with the bylaws. One Alberta court has characterized the provision as “a kind of Condominium law *all-terrain vehicle*.”¹⁹²

Such a provision could also clarify both the act and the duties and obligations of strata-lot owners. The Alberta provision has been cited in cases involving unauthorized

pensation to the applicant in respect of that loss; (e) award costs; (f) give any other directions or make any other order that the Court considers appropriate in the circumstances.”).

189. *Condominium Act, 1998*, *supra* note 24, s 134 (1) (“an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement.”). See also *Protecting Condominium Owners Act, 2015*, *supra* note 29, Schedule 1, s 116 (1) (amending this provision to read “an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of, (a) this Act, the declaration, the by-laws or the rules; or (b) an agreement that two or more corporations have entered into to share in the provision, use, maintenance, repair, insurance, operation or administration of any land, any part of a property or proposed property, any assets of a corporation or any facilities or services”—not in force).

190. See *Strata Property Act*, *supra* note 4, s 165.

191. See *Report on Strata Property Law: Phase One*, *supra* note 12 at 24.

192. *Leeson v Condominium Plan No 9925923*, 2014 ABQB 20 at para 20, Master Schlosser [italics in original].

alterations to a strata lot that affected common property,¹⁹³ access to and use of a strata lot,¹⁹⁴ and eviction of an owner from a strata lot.¹⁹⁵

Although Ontario's provision differs in wording and detail from Alberta's, it covers largely the same territory. One commentator has noted that "[t]he vast majority of compliance cases are about 'people, pets and parking' and arise from infringement of the declaration, by-laws and rules of the condominium corporation."¹⁹⁶ The court's powers under the provision are discretionary. An early case under a predecessor provision has listed some of the criteria usually applied in considering whether to exercise that discretion.¹⁹⁷

Arguments could be advanced against the adoption of this type of provision. It could be possible to hold that British Columbia's courts have used their inherent jurisdiction and contempt power to fill in any gaps in the legislative framework.¹⁹⁸ So it might not be strictly necessary to amend the legislation. Another potential drawback of stating bluntly in the act that court remedies are available for failure to comply with the bylaws is that it could bring with it a host of ills commonly associated with civil litigation. These ills include the cost of proceeding in the court and the potential

193. See *Maverick Equities Inc v Owners: Condominium Plan 942 2336*, 2008 ABCA 221 at para 1, the court ("This appeal concerns the rights of the owner of a condominium unit to make alterations to that unit, and the duty of that owner to respect rules and regulations adopted by the Board of the condominium corporation.").

194. See *Condominium Plan No 772 0093 v Rathbone*, 2010 ABQB 69 at para 1, Master Smart (application for "solicitor-client costs of the application brought by it against Ms. Rathbone in which it sought access to her condominium unit in order to inspect and replace her unit windows").

195. See *Owners: Condominium Plan No 022 1347 v N.Y.*, 2003 ABQB 790 at para 2, Lee J ("I have decided that an owner of a condominium residence can be evicted by the Condominium Association for substantial breaches of the Condominium Bylaws, just as if she was a tenant.").

196. See Audrey M Loeb, *Condominium Law and Administration*, 2nd ed, vol 3 (Toronto: Carswell, 1998) (loose-leaf release 2010–1) at ON134§1.

197. See *Metropolitan Toronto Condominium Corp No 850 v Oikle* (1994), 44 RPR (2d) 55 at para 25; 52 ACWS (3d) 447 (Ont Gen Div), Lissaman J ("Some of the factors a Court will consider in exercising its discretion under Section 49 of the *Condominium Act* are: (1) The nature of the total development. (2) What are the reasonable expectations of the other occupants of the development? (3) How seriously do other occupants take this particular issue as opposed to other issues? (4) Does the conduct of the unit owner in question interfere with others? (5) Have there been any complaints by other unit owners? (6) What is the relationship between or amongst the various interested parties? (7) What is the actual wording of the covenant which is being enforced—are similar pets allowed, for example, while dogs are disallowed? (8) What are the advantages of requiring compliance compared to the advantages of permitting non-compliance?").

198. See *The Owners Strata Plan LMS 2768 v Jordison*, 2013 BCSC 487; *Bea v The Owners, Strata Plan LMS 2138*, 2015 BCCA 31.

to inflame marginal disputes into court cases. Such provision could also, depending on how it is interpreted, shift the balance of power between owners and the strata corporation.

Adopting an offence provision (or expanding the current offence provision) to cover contraventions of bylaws and rules would have similar benefits to the Alberta and Ontario provisions. It would encourage compliance with bylaws and rules. And it would give strata corporations and owners another place to turn in the face of a breach of a bylaw or a rule.

The public nature of such a provision presents a two-edged sword. It could be seen as an advantage to have an outside body reviewing alleged contraventions of bylaws and rules and deciding whether to proceed with prosecution. But it could also be a significant disadvantage, as the success of such a system depends to a large degree on the amount of public resources assigned to it.

The committee's recommendation for reform

The committee gave this issue careful consideration, ultimately deciding not to propose any amendments to the act. In the committee's view, the advent of the Civil Resolution Tribunal has effectively addressed the concerns noted in the previous pages. The tribunal has broad authority in strata-property claims to make "an order requiring a party to do something" or "an order requiring a party to refrain from doing something."¹⁹⁹ Such orders may be enforced by filing them in the supreme court.²⁰⁰ These provisions give people a simple, expeditious means to address compliance with a bylaw or a rule.

As time goes on, the expectation is that people will turn to the Civil Resolution Tribunal and not the courts for bylaw enforcement. This reduces the need for the statute to be amended to hand new powers to the courts. But it's worthwhile to keep tabs on developments with the tribunal. If things don't unfold as expected, then legislators may wish to revisit the decision on this issue.

Even though a majority of consultation respondents disagreed with the committee's tentative recommendation for this issue, the committee has decided to confirm it. The committee continues to believe that the existence of the Civil Resolution Tribunal in British Columbia has lessened the need for this province to follow the lead of other provinces in developing new, court-based procedures and remedies.

199. *Civil Resolution Tribunal Act*, *supra* note 42, s 48.1 (1) (a)–(b).

200. See *ibid*, s 57.

The committee recommends:

32. The Strata Property Act should not be amended to add either a provision requiring compliance with a strata corporation's bylaws and rules (which would give the court a wide range of discretionary remedies that may be ordered in cases of non-compliance) or a provision that creates an offence of non-compliance with a strata corporation's bylaws and rules.

Should the Strata Property Act make failure to pay strata fees subject to an immediate fine without the need to comply with the procedures set out in section 135?

Brief description of the issue

Section 1 of the standard bylaws provides that “[a]n owner must pay strata fees on or before the first day of the month to which the strata fees relate.”²⁰¹ Section 135 sets out the procedure that must be followed before one of the three statute-approved penalties may be applied to a bylaw contravention. The heading for the section neatly summarizes the procedure as requiring a “complaint, right to answer, and notice of decision.”²⁰² Should an exception to these requirements be made for failure to pay strata fees?

Discussion of options for reform

This proposal will help to protect a strata corporation's cash flow from strata fees. Strata fees make up the major component of this cash flow, so any interruption in the payment of strata fees is a serious concern for a strata corporation. This proposal will also simplify administration of a strata corporation. Non-payment of strata fees is often a straightforward accounting question, with all the facts already in the strata corporation's possession. Layering on additional procedural protections for delinquent owners can seem like a needless complication of the collection process.

The downside of this proposal is that it begins to undermine the goals section 135 is meant to achieve. The section encourages a strata council to hear all sides of the story before making a decision on an alleged bylaw contravention. Although it's less likely in cases of non-payment of strata fees than in other cases of bylaw contraven-

201. *Supra* note 4, Schedule of Standard Bylaws, s 1. See, above, at 31–32 (committee's recommendation regarding section 1 of the standard bylaws).

202. *Supra* note 4, s 135.

tions, it's still possible that a strata council may be proceeding on the basis of defective information, which could be cleared up by consulting the owner. Moving directly to a decision on a bylaw contravention without making this inquiry could inflame a misunderstanding into a more heated dispute.²⁰³

The committee's recommendation for reform

The committee gave extensive consideration to this issue. Committee members expressed a range of views. Some noted that the procedure under section 135 can be overly intricate for open-and-shut cases of non-payment. Others made the point that strata corporations already have a number of tools to deal with non-payment.

Ultimately, the committee was wary to endorse this proposed reform. It appeared to turn on a sense that all cases of non-payment were black and white. But there could be some shades of gray in the process. Strata corporations' accounting isn't infallible. Some committee members were also concerned that this proposal could be the thin edge of the wedge, which would lead to more calls to limit the application of the section 135 process.

Consultation respondents were divided on this issue, with a small majority favouring the committee's tentative recommendation.

The committee recommends:

33. The Strata Property Act should not make failure to pay strata fees subject to an immediate fine without the need to comply with the procedures set out in section 135.

Should the Strata Property Act prohibit a strata corporation from both applying a fine and charging interest for failure to pay strata fees?

Brief description of the issue

This issue flowed from the committee's consideration of the previous issue. Section 1 of the Schedule of Standard Bylaws provides that "[a]n owner must pay

203. See Fanaken, *supra* note 34 at 107 ("All too often these steps [set out in section 135] are not followed and the strata council discusses an alleged violation at a council meeting and then immediately fines the owner. The levying of a fine before the prescribed process is not only a violation of the Act, it also suggests very convincingly that the alleged person's subsequent response and defense is not relevant.").

strata fees on or before the first day of the month to which the strata fees relate.”²⁰⁴ Failure to make this required payment would place the strata corporation in a position to fine the owner for breach of the bylaw.²⁰⁵ The act also enables a strata corporation to adopt a bylaw providing for interest to be charged when an owner fails to pay strata fees.²⁰⁶

Should the act require a strata corporation to apply one or the other—but not both—of these enforcement tools in the face of non-payment of strata fees?

Discussion of options for reform

This proposed reform was discussed as a way to address a number of concerns. Piling on fines and interest for non-payment of strata fees can be harsh in cases. There is often some administrative and accounting awkwardness in strata corporations’ application of interest. Charging interest on small amounts can be administratively tricky. Finally, some committee members had a lurking concern that combining fines and interest could leave strata corporations vulnerable, in certain circumstances, to flouting the rules against criminal interest rates.²⁰⁷ Restricting strata corporations to a choice of one or the other enforcement tool was seen as way to protect against these dangers.

The downside of this proposed reform is that it could inhibit strata corporations’ ability to collect strata fees. Despite the administrative burdens connected with

204. *Supra* note 4, Schedule of Standard Bylaws, s 1.

205. See *ibid*, ss 129, 130. Note that this power to fine requires the strata corporation to first comply with the procedure set out in section 135.

206. See *ibid*, s 107 (“(1) A bylaw that establishes a schedule for the payment of strata fees may set out a rate of interest, not to exceed the rate set out in the regulations, to be paid if an owner is late in paying his or her strata fees under that schedule. (2) The interest payable on a late payment of strata fees in accordance with a bylaw referred to in subsection (1) is not a fine, and forms part of the strata fees for the purposes of section 116.”). See also *Strata Property Regulation*, *supra* note 8, s 6.8 (1) (“For the purposes of section 107 (1) of the Act, the maximum rate of interest that a strata corporation may set out in its bylaws for the late payment of strata fees is 10% per annum compounded annually.”).

207. See *Criminal Code*, RSC 1985, c C-46, s 347 (2) (“*interest* means the aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form, paid or payable for the advancing of credit under an agreement or arrangement, by or on behalf of the person to whom the credit is or is to be advanced, irrespective of the person to whom any such charges and expenses are or are to be paid or payable, but does not include any repayment of credit advanced or any insurance charge, official fee, overdraft charge, required deposit balance or, in the case of a mortgage transaction, any amount required to be paid on account of property taxes”).

charging interest, interest does still function as an effective deterrent against failure to pay strata fees.

The committee's recommendation for reform

The committee decided not to endorse this proposed reform because it was concerned about its potential to impair strata corporations' ability to collect strata fees. Consultation respondents strongly supported the committee's tentative recommendation.

The committee recommends:

34. The Strata Property Act should continue to allow a strata corporation both to apply a fine and to charge interest if a strata-lot owner fails to pay strata fees.

Should the Strata Property Act contain provisions regarding the inability to vote imposed on a strata-lot owner if the strata corporation is entitled to register a lien on the owner's strata lot?

Brief description of the issue

The act's baseline position on voting at an annual general meeting or a special general meeting is that "each strata lot has one vote."²⁰⁸ This baseline position is subject to a number of exceptions. The exception that is the focus of this issue for reform reads as follows: "a strata corporation may, by bylaw, provide that the vote for a strata lot may not be exercised, except on matters requiring an 80% vote or unanimous vote, if the strata corporation is entitled to register a lien against that strata lot under section 116 (1)."²⁰⁹

Concerns have been expressed that strata corporations are failing to administer this provision properly. Simply being in arrears of strata fees isn't enough to engage such a bylaw.²¹⁰ As one textbook has noted, "[t]he strata corporation cannot enforce a bylaw that prohibits voting because of arrears until the corporation has complied with all of the prerequisites for filing a lien."²¹¹ A leading practice guide spells out those

208. *Supra* note 4, s 53 (1).

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

210. See *Azura Management (Kelowna) Corp v Owners of the Strata Plan KAS2428*, 2009 BCSC 506 at paras 97–98 [*Azura Management*], Burnyeat J, varied, 2010 BCCA 474.

211. Mangan, *supra* note 34 at 154.

prerequisites as follows: “In order for the strata corporation to be ‘entitled to register a lien’ under s. 116(1), notice must have been given under s. 112(2) and at least two weeks must have passed”²¹²

Apparently, some strata corporations have denied owners the right to vote, even though the strata corporation hasn’t complied with the prerequisites for filing a lien. Can the legislation be clarified or bolstered as a way to aid its administration?

Discussion of options for reform

There are two options to consider in response to this issue. One option would be to clarify the language of section 53 (2). Right now, the section only points to the requirements for filing a lien by using a cross-reference (“entitled to register a lien against that strata lot under section 116 (1)”). The section could be amended to spell out what prerequisites a strata corporation would have to fulfil in order to file a lien. More explicit language should help to reduce misunderstandings about the intent and scope of this provision.

The drawback of this approach is that it would make the act longer and more complex. It also turns on the assumption that people administering a strata corporation’s general meeting would turn to the act before denying an owner the right to vote. In other words, this approach is less likely to work if something more than a simple misunderstanding of the words of the act is behind the failure to administer the provision correctly.

This is where the second approach comes in. It would be to create a penalty for misapplying this provision. The nature of the penalty would have to be carefully considered. One option would be to fine the strata corporation. The advantage of this approach is that it would be more likely to motivate strata corporations to comply with the strict prerequisites of the section, if it knew that there would be a cost to failing to comply with those prerequisites.

The downside of this approach is that it depends on an outside body deciding that the provision has been breached and that a fine is an appropriate penalty. It isn’t clear that public resources would be given to such a body. Without proper enforcement, such a provision would be little more than a dead letter.

212. *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 6.55.

The committee's recommendation for reform

The committee considered these options but decided not to endorse them. Instead, it favoured amending the act to remove the requirement to enable this provision by enacting a bylaw. The committee noted that strata corporations have a variety of different bylaws on this point. A legislative provision would standardize things.

Consultation respondents strongly supported the committee's tentative recommendation. One comment received in the consultation made the point that the committee's proposal could be improved by limiting the scope of the provision to cases in which a strata corporation has already registered a lien against a strata lot. The committee agreed with this point, noting that such a change would serve to clarify a provision that has proved to be challenging to apply in practice.

The committee recommends:

35. Section 53 (2) of the Strata Property Act should be amended to read "Despite subsection (1), the vote for a strata lot may not be exercised, except on matters requiring an 80% vote or unanimous vote, if the strata corporation has registered a lien against that strata lot under section 116 (1)."

Should the Strata Property Act contain provisions regarding bylaws that, in effect, adopt the rule in *Clayton's Case*—that is, provide that any payment to discharge part of a debt is applied to the oldest part of the debt, unless the debtor specifies otherwise?

Brief description of the issue

The rule in *Clayton's Case*²¹³ provides:

In the case of a current account between debtor and creditor there is, in the absence of agreement to the contrary, a presumption that the first item on the credit side of the account is intended to be applied in the payment of the first item on the debit side of the account. On a current banking account, therefore, the earlier drawings, in the absence of specific appropriation, are attributed to and deducted from the earlier payments-in.²¹⁴

213. (1816), 1 Mer 572, 35 ER 781.

214. *Ross Gibson Industries Ltd v Greater Vancouver Housing Corp* (1985), 21 DLR (4th) 481, 67 BCLR 55 at 60 (CA), Esson JA (for the court).

The rule is sometimes given in a “short form statement” as “first in, first out.”²¹⁵

“Some strata corporations,” notes a commentator, have adopted bylaws relying on this rule “to circumvent the restriction against liens for unpaid fines”:

Bearing in mind that a strata corporation may file a lien for unpaid strata fees, some strata corporations amend their bylaws to state that whenever an owner pays his or her strata fees, the payment is first applied to outstanding fines, then to strata fees.²¹⁶

Should strata corporations be allowed to adopt such bylaws? Should special requirements have to be met if a strata corporation wants to adopt such a bylaw?

Discussion of options for reform

There are a couple of legislative options to consider in the face of such bylaws.

One option would be simply to have the legislation outlaw this practice. If these bylaws are seen as being abusive, then this response would be the simplest and most direct. The downside is that it would be likely be seen as an imposition. This is an issue that has been in the hands of strata corporations to determine democratically. Legislation will force all strata corporations to adopt the same approach.

Another option would be to continue to allow strata corporations to adopt such bylaws, but to have the legislation put in place some procedural protections around the bylaw’s adoption or use. This is a more open-ended approach than the one relied on in the previous option. Some examples of such protections would be enhanced notice requirements, which could apply either when the bylaw is proposed for adoption or when it is relied upon, or a higher voting majority required to adopt such a bylaw. This approach could be seen as ensuring that a strata corporation that adopts and relies upon such a bylaw does so with its and its owners’ eyes open. It is, in effect, a compromise that lets strata corporations that want to pursue this policy do so with the heightened awareness of strata-lot owners.

215. *Re Ontario Securities Commission and Greymac Credit Corp* (1986), 55 OR (2d) 673 at 677, 30 DLR (4th) 1 (CA), Morden JA, aff’d (*sub nom Greymac Trust Co v Ontario (Securities Commission)*) [1988] 2 SCR 172, 65 OR (2d) 479.

216. Mangan, *supra* note 34 at 354 (“Suppose, for example, that the monthly strata fees for an owner’s strata lot are \$225 and the owner has an unpaid \$100 fine. When the owner makes his or her next monthly payment of \$225, the strata corporation allocates the first \$100 of that payment towards the unpaid fine, and the remaining [\$125] towards strata fees. Of course, that leaves an unpaid balance of \$100 in the payment of the owner’s monthly strata fees. Subject to certain procedural requirements for filing a lien, the strata corporation may file a lien against the owner’s strata lot for \$100, representing arrears for strata fees.”).

The compromise nature of this option points to some potential disadvantages. First, this is a more complicated approach to the issue. It's also a less direct way to address the issue. There is a possibility that no one will be satisfied with this option. People who view these bylaws as inherently abusive could note that they are still permitted under this option, so long as certain procedures are observed. Other people, who might see the use of such a bylaw as justified on occasion, could note that the test for whether the bylaw may be relied on has shifted away from whether or it is abusive to whether or not certain procedures have been followed.

A third option would be to retain the status quo. These bylaws rely on an existing legal rule. In most cases, such a bylaw would only be adopted after a strata corporation passes a resolution by a 3/4 vote.²¹⁷ An argument could be made that there is no reason to treat this matter as being anything out of the ordinary.

The committee's recommendation for reform

The committee decided that this issue poses a serious problem, which needs to be addressed by legislation. In the committee's view, these bylaws should be classified with the other unenforceable bylaws dealt with in the act.²¹⁸

The committee also considered whether its recommendation should be subject to a transitional rule. In the end, the committee decided that a transitional rule isn't appropriate in this case. The typical approach in strata-property law is not to provide a safe harbour for bylaws that become unenforceable because of a change to the legislation. As the committee saw no reason to depart from this rule in this case, its proposal should apply to existing as well as future bylaws.

Consultation respondents were generally in favour of the committee's proposed reform.

The committee recommends:

36. Section 121 of the Strata Property Act should be amended to provide that a bylaw is not enforceable to the extent that it reassigns money intended for the purposes of

217. See *Strata Property Act*, *supra* note 4, s 120 (2) (allowing owner-developer to "file bylaws that differ from the Standard Bylaws"—which means that the bylaw under discussion could enter a strata corporation's bylaws upon deposit of the strata plan and without adoption of a resolution passed by a 3/4 vote).

218. See *ibid*, s 121.

(a) strata fees, (b) a special levy, (c) a reimbursement of the cost of work referred to in section 85, or (d) the strata lot's share of a judgment against the strata corporation.

Should the Strata Property Act expressly enable a strata corporation to fine an owner for failure to pay a special levy?

Brief description of the issue

It has been noted that the *Strata Property Act* doesn't expressly allow a strata corporation to fine an owner who has failed to pay a special levy. Even though the act may be silent on this point, it may be argued that it implicitly authorizes a strata corporation levying a fine in these circumstances. Should the act be amended to add an express provision that authorizes a strata corporation to fine an owner for failing to pay a special levy?

Discussion of options for reform

Amending the act by adding a provision authorizing a strata corporation to fine an owner who has failed to pay a special levy would have a number of benefits. It would clarify the legislation on this issue. It would also provide certainty to strata corporations that want to use a fine to enforce the obligation to pay a special levy. An express legislative provision would remove any doubts on this point.

Potential downsides to this option all tend to turn on whether there are any real doubts about the legitimacy of fining an owner for failing to pay a special levy. Even though the act has a large number of provisions that make references to fines,²¹⁹ none of them appears to be an authorization to fine an owner for doing or failing to do something. For example, the only mention in the act of fines in connection with strata fees is a brief provision that makes the point that "interest payable on a late payment of strata fees . . . is not a fine."²²⁰

There also doesn't appear to be any court decision that has set aside a fine against an owner for failing to pay a special levy on the basis that the act doesn't expressly authorize such a fine. (One case has cited strata-corporation bylaws that provided for both the payment of interest and a fine for failure to pay a special levy, but the court

219. See e.g. *ibid*, ss 27 (control of council), 115 (certificate of payment), 116 (certificate of lien), 147 (assignment of powers and duties to tenant), 148 (long-term lease), 171 (strata corporation may sue as representative of all owners), 177 (disputes that can be arbitrated).

220. *Ibid*, s 107 (2). An identical provision exists for special levies (see *ibid*, s 108 (4.2)).

made no comment on the bylaw.)²²¹ Finally, practice guides and other commentary either don't touch on this issue²²² or mention it in passing, implying that there are no problems with the current state of the law.²²³

So if the status quo provides some implicit support for a strata corporation that fines an owner who fails to pay a special levy, then amending the act could have some drawbacks. One would be using legislative time and resources to address a problem that most observers don't see as a problem. Another drawback is that creating an express legislative authorization for applying a fine in this case could start to draw people to the conclusion that such a legislative authorization might be necessary for other cases in which a strata corporation wants to fine an owner.

These considerations lead to the other two options for reform. One option would be simply to propose no amendment to the act in response to this issue. This approach would retain the status quo, so its strengths and weaknesses are probably a reflection of how someone sees the current state of the law. If the current law isn't causing problems in practice, then it may be best to stay with it. But if it is creating uncertainty and difficulties, then proposing no changes to the act is effectively allowing these problems to persist.

Finally, another approach to consider is proposing to amend the act by adding a provision that would prevent a strata corporation from fining an owner for failing to pay a special levy. Like the first option, this approach would clarify the law on this issue and it would also bring certainty to strata corporations and owners. Some people could argue that strata corporations should be reined in on their ability to fine owners, and such an amendment would help in that task.

But this option would have downsides. It could be seen as a significant reduction in the tools available to strata corporations for enforcing payment of a special levy. It could also be seen as a major change in the law, which would require a demonstrated public record of abuses as evidence of a need for such a change.

221. See *Strata Plan NW 499 v Kirk*, 2015 BCSC 1487 at para 20, Armstrong J ("If an owner fails to pay a special levy, the interest rate on arrears is 10% per annum and the fine rises to \$50 per month.").

222. See *British Columbia Strata Property Practice Manual*, *supra* note 34; Mangan, *supra* note 34.

223. See Fanaken, *supra* note 34 at 89 ("It is certainly appropriate for a strata corporation to penalize owners for being late with their special levy obligations, or not paying at all. Some 3/4 vote resolutions provide for a late or non-payment fine; some 3/4 vote resolutions provide for an interest charge (usually at 10% per annum compounded annually); some resolutions provide for both.").

The committee's recommendation for reform

In the committee's view, the current law is adequate. It doesn't prevent a strata corporation from using a fine in the case of a failure to pay a special levy. It comes down to whether a given strata corporation's bylaws allow for it.

The committee recommends:

37. The Strata Property Act should continue to be silent on whether a strata corporation may fine an owner for failure to pay a special levy.

Issues for Reform—Other Issues

Should the Strata Property Act's delaying provisions for rental restrictions not apply when a strata corporation is amending bylaws that already contain rental restrictions?

Brief description of the issue

The *Strata Property Act* allows a strata corporation to restrict the rental of residential strata lots.²²⁴ The act tightly controls how a strata corporation may restrict rentals. Under the governing provision, a strata corporation “may only restrict the rental of a strata lot by a bylaw that”:

- prohibits the rental of residential strata lots, or
- limits one or more of the following:
 - the number or percentage of residential strata lots that may be rented;
 - the period of time for which residential strata lots may be rented.²²⁵

When a strata corporation adopts a rental-restriction bylaw, the bylaw is subject to the act's delaying provisions. (Some commentators refer to these provisions as creating a “grace period”²²⁶ or a “waiting period.”)²²⁷ The delaying provisions say that “a bylaw that prohibits or limits rentals does not apply to a strata lot until the later of”

224. See *supra* note 4, s 141.

225. *Ibid*, s 141 (2).

226. See Mangan, *supra* note 34 at 332.

227. See Fanaken, *supra* note at 34 at 113.

- one year after a tenant who is occupying the strata lot at the time the bylaw is passed ceases to occupy it as a tenant, and
- one year after the bylaw is passed.²²⁸

Although a full-scale review of the act's rental restrictions is not part of the mandate for this project, the committee decided to respond to a narrowly framed issue that was brought to its attention in correspondence. This issue involves concerns that the act's delaying provisions are difficult to administer when a strata corporation is amending an existing rental-restriction bylaw.²²⁹ Should the act be amended to provide that the delaying provisions either don't apply to a strata corporation that is amending an existing rental-restriction bylaw, or don't apply in certain circumstances when a strata corporation amends bylaws containing a rental-restriction bylaw?

Discussion of options for reform

The broadest way to approach this issue would be to consider whether the act's delaying provisions should apply at all if a strata corporation is amending an existing rental-restriction bylaw. This option would have the advantage of clearly and directly addressing the problem. The administrative awkwardness that now crops up when bylaws containing a rental restriction are amended would, in all likelihood, disappear.

The drawback of this approach is that its breadth could open the door to other awkward and potentially troubling consequences. For example, a strata corporation could have a bylaw that limits the number or percentage of residential strata lots that may be rented. Then, the strata corporation could amend this bylaw and replace it with one that prohibits the rental of residential strata lots. This could leave a strata-lot owner who had rented a strata lot under the previous bylaw on the horns of a dilemma: either immediately terminate the tenancy, likely causing a breach of the tenancy agreement, or face the consequences of contravening the new bylaw.

228. *Supra* note 4, s 143 (1). This grace period "does not apply to a bylaw that is passed under section 8 by the owner developer" (*ibid*, s 143 (4)). Such a bylaw is one passed by the owner developer before the first conveyance of a strata lot to a purchaser.

229. See Adrian Lipsey, email message to Strata Property Law (Phase Two) Project Committee, 6 September 2016 ("When strata corporations are updating, revising or replacing their bylaws, and there is already a bylaw in place which restricts rentals, the delaying provisions under the Act should not apply when the updated, revised, or replaced bylaws also contain rental restriction(s). This eliminates the need for convoluted bylaw wording which refers to previously approved rental restriction bylaws. The delaying provision makes sense when there are no current restrictions on rentals but it creates havoc when bylaws are amended in the case of existing rental restrictions.").

Similar concerns could arise if a strata corporation amended a rental-restriction bylaw that limited the number of strata lots that could be rented to provide that a new, lower number of strata lots could be rented (going, for example, from ten strata lots that may be rented to five). In this example, the strata corporation would be faced with the additional dilemma of deciding which strata lots may continue to be rented and which may not.

There are other options that could address these concerns by narrowing the scope of the proposed amendment. One approach would be to retain a delaying provision for the length of any tenancy agreement existing at the time of the bylaw amendment. This would ensure that an owner who entered into a tenancy agreement on the strength of the earlier bylaw wouldn't be placed in breach of either the tenancy agreement or the new bylaw. But a drawback of this approach is that its more limited reach could leave some of the administrative awkwardness that is currently complained about in place.

Another narrower approach would be to propose an amendment that would lift the delaying provisions if the amendment results in a substantially similar rental-restriction bylaw as the one in existence before the bylaw amendment. This approach could be seen as adopting a more tailored response to the administrative problems that may arise when bylaws containing rental restrictions are amended. If there is no change in the substance of a rental-restriction bylaw—for example, no change in the nature of the restrictions or in the number of strata lots that may be rented—then there should be no reason to engage the delaying provisions. On the other hand, if the amendment does result in a substantive change in how the strata corporation restricts rentals, then the owners should have the benefit of delaying the application of that new approach.

The drawback to this approach is that in addressing one source of administrative problems it might create a new source of problems. Administration under this approach would depend on strata corporations making a judgment on whether a bylaw amendment amounts to a substantive change to a rental-restriction bylaw. This may be a simple call in some cases—for example, if the strata corporation were switching from a restriction based on the number of strata lots that may be rented to an outright prohibition—but it could be trickier in others. This could cause confusion and possibly disputes.

An even narrower approach would be to suspend the operation of the delaying provisions only in cases where an amended set of bylaws retains a rental-restriction bylaw that is identical to the one found in the bylaws immediately before the amendment. This approach could be helpful in a specific type of case. A strata corporation may decide to make extensive revisions to its bylaws, affecting a whole host of pro-

visions but leaving the rental-restriction bylaw unchanged. Strata corporations in this position are often advised to simply adopt a whole new set of bylaws. This advice is usually given for the sake of clarity and certainty. It avoids the need for a complex amending resolution. It also avoids the need to review two (or more) sets of documents to get a complete picture of the bylaws. But it does potentially expose the strata corporation to a literal-minded argument that it has adopted a “new” rental-restriction bylaw and it should allow the delaying provisions to operate. This approach would take away that argument and dispel any uncertainty in this specific case.

The downside to this approach is that it does little more than respond to a very specific problem that may crop up in one type of case. If there are more general concerns about the operation of the delaying provisions, then this approach won’t address them. Its scope is so modest that some may question the need of amending the legislation to make such a small-scale change.

Finally, the last option that should be considered is retaining the status quo. British Columbia is the only Canadian jurisdiction that enables strata corporations to restrict the rental of residential strata corporations and that has extensive legislation regulating how strata corporations may achieve this goal through their bylaws. The legislation represents, by and large, a delicate balance between two broad policies. On the one hand, strata-lot owners are property owners and should be able to deal with their property as they see fit. On the other hand, strata-lot owners are members of a community governed by the strata corporation and should respect the democratic choices of that strata corporation.²³⁰ The delaying provisions can be seen as part of this delicate balance. One commentator has described their purpose in the broader rental-restriction scheme as affording a strata-lot owner “a fair opportunity to dispose of the strata lot or to move in.”²³¹ Changing how the delaying provisions operate could upset the balance that the legislation currently strikes. In other words, it could be seen as setting back the interests of individual owners in favour of allowing for smoother administration of the collective strata corporation.

230. See e.g. *The Owners, Strata Plan VR2122 v Wake*, 2017 BCSC 2386 at para 77, Loo J (“A strata operates as a democratic society in which each owner has many of the rights associated with sole ownership of real property, but in which, having regard to their co-ownership with the others, some of those rights are subordinated to the will of the majority. An equitable balance must exist between the independence of the individual owners and the interdependence of them all in a co-operative community.” [citation omitted]).

231. Fanaken, *supra* note 34 at 113.

The committee's recommendation for reform

The committee gave extensive consideration to these options for reform. It decided it favoured an approach that would have the delaying provisions apply only to strata lots that were rented in accordance with the prior rental bylaw. Owners of strata lots that weren't validly rented under the prior bylaw shouldn't be able to reap the benefits of a grace period just because the strata corporation has decided to amend its rental-restriction bylaw.

Consultation respondents strongly agreed with the committee's tentative recommendation for this issue.

The committee recommends:

38. The Strata Property Act should be amended to provide that, when a strata corporation amends a bylaw that restricts the rental of strata lots, then (a) in the case of a strata lot that was validly rented under the rental-restriction bylaw that existed immediately prior to the amendment, the new rental-restriction bylaw does not apply to the strata lot until the later of one year after a tenant who is occupying the strata lot at the time the bylaw is passed ceases to occupy it as a tenant, and one year after the bylaw is passed; and (b) in the case of any other strata lot, the new rental-restriction bylaw applies upon the bylaw taking effect in accordance with the act.

Chapter 4. Statutory Definitions

Background

The advantages of statutory definitions

This chapter stands apart from the others in that it deals primarily in word choices, as opposed to policy choices. The implications of this distinction are readily apparent in the discussion of options for addressing the issues for reform set out below. In effect, there are only two options for each issue—either add a statutory definition to the *Strata Property Act* or do not. Making this choice entails a close examination of how a given word is used in the act and its regulations.

That said, this choice isn't neutral in terms of policy. In considering this choice in each case the committee remained aware of the main advantage of statutory definitions in this branch of the law, which is that strata-lot owners often crave the certainty provided by statutory definitions as a practical aid in the administration of strata corporations. A subsidiary advantage is that statutory definitions can perform a useful role in clarifying legislation and regulations.

Two notes of caution

The committee also bore in mind a pair of countervailing disadvantages or limitations to statutory definitions. Commentators frequently raise two notes of caution about drafting statutory definitions.

First, statutory definitions shouldn't be used to deal with the substantive content of an enactment. As one judge put it:

the inclusion of substantive content in a definition is viewed as a drafting error. As stated by Francis Bennion in *Statutory Interpretation*:

Definitions with substantive effect It is a drafting error (less frequent now than formerly) to incorporate a substantive enactment in a definition. A definition is not expected to have operative effect as an independent enactment. If it is worded in that way, the courts will tend to construe it restrictively and confine it to the proper function of a definition.²³²

In other words, legislative drafters aren't supposed to use statutory definitions as a vehicle for making policy choices. As the leading Canadian textbook on statutory interpretation explains, statutory definitions have a much more limited purpose:

232. *Hrushka v Canada (Foreign Affairs)*, 2009 FC 69 at para 16, Hansen J.

It is well-established that statutory definitions should not be drafted so as to contain substantive law. Their purpose is limited to indicating the intended meaning or range of meanings attaching to a word or expression in a particular legislative context.²³³

Second, even with a careful focus on the limited purpose of statutory definitions, they may backfire. As commentators have noted, a statutory definition that is intended to clarify the meaning of a word used in an enactment may end up having the opposite effect:

Definitions may be furnished to add a greater measure of precision but the opposite is often the result: “The more words there are, the more words there are about which doubts may be entertained.”²³⁴

With these two points in mind, the discussion that follows emphasizes how the proposed defined terms are currently used in the *Strata Property Act* and its regulations.²³⁵ If a proposed statutory definition already exists as a defined term in another enactment, then that fact is noted in the discussion.

Issues for Reform

Should the Strata Property Act contain a definition of “continuing contravention”?

Brief description of the issue

The act provides that “[t]he strata corporation may set out in its bylaws . . . the frequency at which fines may be imposed for a continuing contravention of a bylaw or rule.”²³⁶ The *Strata Property Regulation* sets the “maximum frequency” the bylaws may set for imposition of a fine for a continuing contravention at “every 7 days.”²³⁷

233. Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham, ON: LexisNexis Canada, 2014) at § 4.32 [footnote omitted].

234. Pierre-André Côté, *The Interpretation of Legislation in Canada*, 4th ed, translated and revised by Steven Sacks (Toronto: Carswell, 2011) at 68 (quoting Lord Halsbury, *The Laws of England* (London: Butterworths, 1907) at ccxvi).

235. See *Bare Land Strata Plan Cancellation Regulation*, BC Reg 556/82; *Bare Land Strata Regulations*, BC Reg 75/78; *Strata Property Regulation*, *supra* note 8. See also *Interpretation Act*, RSBC 1996, c 238, s 13 (“An expression used in a regulation has the same meaning as in the enactment authorizing the regulation.”).

236. *Supra* note 4, s 132 (2) (b).

237. *Supra* note 8, s 7.1 (3).

As one commentator has put it, deciding whether a continuing contravention has occurred “can be a bit tricky.”²³⁸ Neither the act nor the regulation defines *continuing contravention* or sets out any criteria that a strata council may use in determining whether a continuing contravention is occurring. One recent case²³⁹ turned to human-rights law (which also employs this concept)²⁴⁰ for a working definition of the term:

Finally, in respect of the assertion of a continuing contravention I return to *Bapty* at para. 40:

The concept of a “continuing contravention” must be contrasted with the concept of “continuing ill-effects” of a past illegal act. The latter cannot extend a limitation period indefinitely as the limitation period is triggered by the completion of the offence even though the ongoing effects arising from the original breach may continue In [*Lynch v. British Columbia (Human Rights Commission)*, 2000 BCSC 1419 at para. 35] Hutchinson J. cited with approval the following passage from *Manitoba Human Rights Commission, supra*, where Philip J.A. on behalf of the Court stated:

What emerges from all of the decisions is that a continuing violation (or a continuing grievance, discrimination, offence or cause of action is one that arises from a succession (or repetition) of separate violations (or separate acts, omissions, discriminations, offences or actions) of the same character (or of the same kind). . . . To be a “continuing contravention,” there must be a succession or repetition of separate acts of discrimination of the same character. There must be present acts of discrimination which could be considered as separate contraventions of the Act, and not merely one act of discrimination which may have continuing effects or consequences (at p. 764).²⁴¹

238. Fanaken, *supra* note 34 at 108 (“What is the difference between a contravention and a continuing contravention? The answer is open to interpretation. If an owner transports his bike through the lobby, contrary to a bylaw, on one occasion and is fined for that violation, and then does the same thing three months later, a reasonable interpretation would suggest that the two events are far enough apart that each one constitutes a separate bylaw contravention. . . . But what if the owner violated the bylaw one week later? Would that be a separate violation? What if it is the next day? Obviously the closer the dates of violations that occur, the easier it is to conclude that a violation is not a new one and can be viewed as ‘continuing.’ It is subjective . . .”).

239. See *Zaidi v The Owners, Strata Plan LMS 3464*, 2016 BCSC 731 [*Zaidi*].

240. See *Human Rights Code*, RSBC 1996, c 210, s 22 (2).

241. *Zaidi*, *supra* note 239 at para 32, Gropper J (citing *British Columbia Securities Commission v Bapty*, 2006 BCSC 638; *Re The Queen in Right of Manitoba and Manitoba Human Rights Commission* (1983), 2 DLR (4th) 759 at 764, (*sub nom Manitoba v Manitoba (Human Rights Commission)*) 25 Man R (2d) 117 (CA)) [ellipses and brackets in original].

Should the act be amended to define a continuing contravention as “a succession or repetition of separate acts of the same character”? Should it set out a list of criteria or guidelines for determining whether a continuing contravention has occurred?

Discussion of options for reform

The main advantages of adding a legislative definition would be to clarify the act and to make its application more certain. *Continuing contravention* doesn’t refer to a simple, everyday concept. Strata corporations that have to apply the concept would likely benefit from a clearer, more direct approach to setting out its boundaries in the act. This approach would also aid in the administration of strata corporations and the enforcement of their bylaws.

The disadvantage of providing a legislative definition is that it could, in any form it takes, be seen as constraining the concept of a continuing contravention. Determining whether a continuing contravention has occurred is a decision that requires the application of judgment to a set of facts. Any legislative definition has the potential to circumscribe that judgment. Further, a definition based on a recent court case could be seen as one that relies on a premature sense of what a continuing contravention could be. Very few cases have grappled with defining a continuing contravention. An argument could be made that the time isn’t ripe to define the term. A definition should wait until a larger body of case law comes into existence.

Given the limitations of a legislative definition, another approach to this issue would be to try to describe the term in a more open-ended way. This could be done by setting out some guidelines or criteria for deciding on whether a continuing contravention has occurred. Such an approach would allow for broader, more descriptive information to be conveyed to readers. This would provide some guidance for strata corporations with the flexibility to accommodate new and unusual cases.

Where this approach would be less desirable would be in terms of certainty. Since the list would be open ended, there would still be a significant need to exercise individual judgment in applying it. Another challenge would be actually identifying the criteria to be set out in the list. Given the wide range of fact patterns that could give rise to a continuing contravention, it would be difficult to identify telling details that would apply across a spectrum of conduct.

The committee's recommendation for reform

The committee noted that strata corporations have struggled to apply the concept of a continuing contravention. In its view, a statutory definition would clarify the law and would assist strata corporations in enforcing their bylaws.

Consultation respondents strongly agreed with the committee's tentative recommendation for reform. In preparing the final report, though, the committee decided that it was necessary to amend this proposed definition, to make it clear that it would also apply to a single continuous act.

The committee recommends:

39. The Strata Property Act should define "continuing contravention" to mean "(a) a single continuous act, or (b) a succession or repetition of separate acts of the same character."

Should the Strata Property Act contain a definition of "strata manager"?

Brief description of the issue

Strata managers are key players in the strata-property sector, having an important management role in many strata properties. The act lacks a definition of *strata manager*. Should such a definition be added to it?

Summary of options for reform

The main argument in favour of adding a definition of *strata manager* is that it would provide clarity. This may be a case, though, of clarity coming less to the words of the act and more to identifying a person as a strata manager in practice.

The act itself uses the expression sparingly. *Strata manager* appears just twice in the *Strata Property Act*:

- in the headnote to section 37,²⁴² which requires a person providing strata-management services to return a strata corporation's records within four weeks of the conclusion of a strata-management contract; and

242. *Supra* note 4, s 37 ("Strata manager to return records: (1) If a strata management contract ends, the person providing the strata management services must, within 4 weeks, give the strata corporation any records referred to in section 35 that are in the person's possession or control.

- in section 179 (8), which contains a list of people who may not act as an arbitrator in an arbitration involving the strata corporation, unless all the parties to the arbitration consent.²⁴³

Strictly speaking, the expression only appears once in the substance of the act, since a headnote is considered to be just a reference aid.²⁴⁴

Strata manager also crops up in the regulations, on a handful of prescribed forms.²⁴⁵

Historically, *strata manager* appeared in section 56 (3) of the *Strata Property Act* as originally enacted in 1998.²⁴⁶ This provision was amended before the *Strata Property Act* came into force in 2000. Also of historical note, the *Homeowner Protection Amendment Act, 2001*,²⁴⁷ contained a definition of *strata manager*.²⁴⁸ This act was never brought into force. It was repealed in 2004.²⁴⁹

(2) A person who fails to comply with subsection (1) must pay to the strata corporation an amount calculated according to the regulations.”).

243. *Ibid*, s 179 (8) (“A person who is an owner, tenant or occupant in the strata corporation, or the strata manager or other employee of the strata corporation, may not be an arbitrator unless all the parties consent.”).

244. See *Interpretation Act*, *supra* note 235, s 11 (1) (“In an enactment, a head note to a provision or a reference after the end of a section or other division (a) is not part of the enactment, and (b) must be considered to have been added editorially for convenience of reference only.”)

245. See *Strata Property Regulation*, *supra* note 8, Form B (Information Certificate), Form D (Strata Corporation Change of Mailing Address), Form F (Certificate of Payment), Form G (Certificate of Lien), and Form H (Acknowledgment of Payment).

246. “Subject to the regulations, any person may be a proxy except the strata manager or other employee of the strata corporation.”

247. SBC 2001, c 14.

248. See *ibid*, s 1 “strata manager” (“means a person who performs strata management services in return for or in expectation of remuneration”).

249. See *Real Estate Services Act*, SBC 2004, c 42, s 143.

It's somewhat more common to see a strata manager described in legislation as a *person who provides strata-management services*. This expression (or slight variations on it) appears four times in the *Strata Property Act*²⁵⁰ and once in the *Strata Property Regulation*.²⁵¹

Strata-management services is defined as follows in the *Real Estate Services Act*:

“strata management services” means any of the following services provided to or on behalf of a strata corporation:

- (a) collecting or holding strata fees, contributions, levies or other amounts levied by, or due to, the strata corporation under the *Strata Property Act*;
- (b) exercising delegated powers and duties of a strata corporation or strata council, including
 - (i) making payments to third parties on behalf of the strata corporation,
 - (ii) negotiating or entering into contracts on behalf of the strata corporation,
 - (iii) supervising employees or contractors hired or engaged by the strata corporation, or
 - (iv) enforcing bylaws or rules of the strata corporation,

250. See *supra* note 4, ss 24 (1) (“A contract entered into before the first annual general meeting by or on behalf of the strata corporation for the provision of strata management services to the strata corporation ends, regardless of any provision of the contract to the contrary, on the earlier of (a) the date that is 4 weeks after the date of the second annual general meeting, (b) the termination date contained in the contract or agreed to by the parties, and (c) the cancellation date established in accordance with section 39.”), 37 (1) (“If a strata management contract ends, the person providing the strata management services must, within 4 weeks, give the strata corporation any records referred to in section 35 that are in the person's possession or control.”), 39 (1) (“A contract entered into by or on behalf of the strata corporation for the provision of strata management services to the strata corporation may be cancelled, without liability or penalty, despite any provision of the contract to the contrary, (a) by the strata corporation on 2 months' notice if the cancellation is first approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or (b) by the other party to the contract on 2 months' notice.”), 56 (3) (“The following persons may be proxies (a) only if permitted by regulation and subject to prescribed restrictions, an employee of the strata corporation; (b) only if permitted by regulation and subject to prescribed restrictions, a person who provides strata management services to the strata corporation; (c) subject to the regulations, any other person.”).

251. See *supra* note 8, s 4.3 (“For the purposes of section 37 (2) of the Act, a person providing strata management services who fails to give the strata corporation any of the records required to be given under section 37 (1) of the Act must pay to the strata corporation \$1 000.”).

but does not include an activity excluded by regulation.²⁵²

The committee's recommendation for reform

The committee did note that some confusion arises occasionally around management roles. But this confusion rarely leads to any disputes over the meaning of *strata manager* in practice. This point, and the fact that the expression is so little used in the act, led the committee not to favour adding a definition of *strata manager* to the act.

Even though a majority of consultation respondents favoured adding a definition to the *Strata Property Act*, the committee continues to doubt the need for such a definition.

The committee recommends:

40. The Strata Property Act should not be amended to add a definition of "strata manager."

Should the Strata Property Act contain a definition of "rent"?

Brief description of the issue

Disputes over rental-restriction bylaws often turn on whether consideration being paid for occupying the strata lot is rent. For example, if a person occupies a strata lot, pays for utilities, and makes no other payments to the owner, is that person paying rent? Some people prey on the confusion created by the absence of a definition of *rent*, using that confusion as means to get around a strata corporation's rental restrictions. Even though defining *rent* won't prevent all disputes over rental restrictions, would adding a definition of the term improve the operation of rental-restriction bylaws?

252. *Supra* note 249, s 1. See also *Real Estate Services Regulation*, BC Reg 506/2004, ss 2.17 (exemption for strata-lot owners), 2.18 (exemption for strata caretakers employed by strata corporation or brokerage), 2.19 (exemption for owner developers).

Summary of options for reform

The word *rent* (and derivatives of it) appears frequently in the *Strata Property Act*.²⁵³

The act doesn't define *rent*. It appears to rely on the ordinary meaning of the word.

Rent has multiple meanings in everyday speech. The *Strata Property Act* appears to use *rent* consistently as a verb defined in the following way: "let (property) for rent or payment; hire out."²⁵⁴

For example, *rent* appears in the act's definitions of *landlord* and *tenant*:

"landlord" means an owner who *rents* a strata lot to a tenant and a tenant who *rents* a strata lot to a subtenant, but does not include a leasehold landlord in a leasehold strata plan as defined in section 199;

"tenant" means a person who *rents* all or part of a strata lot, and includes a subtenant but does not include a leasehold tenant in a leasehold strata plan as defined in section 199 or a tenant for life under a registered life estate.²⁵⁵

Part 8 of the act, which deals with "rentals," is the place where *rent* (and its derivatives, such as *rental*) crops up most frequently. For example, here is the term used in relation to disclosure by the owner-developer:

An owner developer who *rents* or intends to *rent* one or more residential strata lots must

- (a) file with the superintendent before the first residential strata lot is offered for sale to a purchaser, or conveyed to a purchaser without being offered for sale, a Rental Disclosure Statement in the prescribed form, and

253. See *supra* note 4, ss 1 "landlord," "tenant", 59 (Information Certificate), 130 (fines), 139 (rental disclosure by owner-developer), 141 (restriction of rentals by strata corporation), 142 (limits to rental restriction bylaws), 145 (rental agreement in contravention of rental restriction bylaw), 146 (landlord to give bylaws, rules and Notice of Tenant's Responsibilities to tenant), 211 (renewal terms). *Rent* is also found in the Schedule of Standard Bylaws, ss 17 (4) (council meetings), 30 (display lot). See also *Strata Property Regulation*, *supra* note 8, Form B (Information Certificate), Form J (Rental Disclosure Statement).

254. Lesley Brown, ed, *The New Shorter Oxford English Dictionary* (Oxford: Clarendon Press, 1993) *sub verbo* "rent." See also Katherine Barber, ed, *Canadian Oxford Dictionary*, 2d ed (Don Mills, ON: Oxford University Press, 2004) *sub verbo* "rent" ("occupy or use (property, equipment, etc.) for a fixed, usu. temporary period, in return for payment").

255. *Supra* note 4, s 1 "landlord," "tenant" [emphasis added].

- (b) give a copy of the statement to each prospective purchaser before the prospective purchaser enters into an agreement to purchase.²⁵⁶

And here is *rent* used in a provision concerning restricting the rental of strata lots:

The strata corporation may only restrict the *rental* of a strata lot by a bylaw that

- (a) prohibits the *rental* of residential strata lots, or
- (b) limits one or more of the following:
 - (i) the number or percentage of residential strata lots that may be *rented*;
 - (ii) the period of time for which residential strata lots may be *rented*.²⁵⁷

Sometimes *rent* appears in other contexts; for example, here the term is used in connection with fines:

The strata corporation may fine an owner if a bylaw or rule is contravened by

- (a) the owner,
- (b) a person who is visiting the owner or was admitted to the premises by the owner for social, business or family reasons or any other reason, or
- (c) an occupant, if the strata lot is not *rented* by the owner to a tenant.²⁵⁸

Rent, used as a noun, has a technical meaning in the law. The leading Canadian textbook on landlord-and-tenant law defines *rent* in this sense as follows:

Rent is a certain profit issuing periodically out of lands and tenements corporeal, or out of them and their furniture in retribution (*redditus*) for the land that passes; it must always be a profit, but need not necessarily be a sum of money; it may be paid in kind or by the performance of services or partly in one way and partly in another.²⁵⁹

A plain-language version of this sense of rent appears in a definition found in the *Residential Tenancy Act*:

“rent” means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a

256. *Ibid*, s 139 (1) [emphasis added].

257. *Ibid*, s 141 (2) [emphasis added].

258. *Ibid*, s 130 (1) [emphasis added].

259. Christopher A W Bentley, John H McNair, & Mavis J Butkus, eds, *Williams & Rhodes Canadian Law of Landlord and Tenant*, 6th ed, vol 1 (loose-leaf release 2018–3) (Toronto: Carswell, 1998) at § 6:1:1.

rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*].²⁶⁰

Rent, used as a noun, doesn't appear in the *Strata Property Act*.

The committee's recommendation for reform

The committee noted that there are concerns about people exploiting the lack of certainty in the act's use of the word *rent*. In its view, a legislative definition would help to clarify the situation.

These concerns rear their heads most often in strata corporations that have rental restrictions. The question that often trips up enforcement of those restrictions is whether the people occupying the strata lot are paying rent. The act uses this word but doesn't define it. The focus of disputes is often on whether consideration being paid for occupying the strata lot is rent.

The committee decided that a definition of *rent* that is tailored to the monetary aspect of the landlord-tenant relationship would help to clarify the act. It may also help to keep disputes from getting into the hands of adjudicators for resolution, allowing strata corporations and strata-lot owners to avoid the costs associated with adjudicated dispute resolution.

The committee's tentative recommendation was strongly supported in the public consultation.

The committee recommends:

41. The Strata Property Act should be amended to define "rent" as "means to pay monetary consideration or other value to occupy a strata lot."

260. SBC 2002, c 78, s 1 "rent."

Should the Strata Property Act's definition of "residential strata lot" be revised?

Brief description of the issue

The *Strata Property Act* defines *residential strata lot* to mean "a strata lot designed or intended to be used primarily as a residence."²⁶¹ A recent court decision has characterized this language as creating "uncertainty."²⁶² Is the definition in need of revision and clarification?

Summary of options for reform

Residential strata lot crops up frequently in the act. The expression appears in 15 sections. These sections can be sorted into two groups. The first group is made up of sections dealing with rental restrictions.²⁶³ The second concerns the composition and amendment of strata plans, particularly in relation to unit entitlement, voting rights, and "parking stalls, garage areas, storage areas and similar areas or spaces."²⁶⁴

261. *Ibid*, s 1 (1) "residential strata lot."

262. *East Barriere Resort Ltd v The Owners, Strata Plan KAS1819*, 2017 BCCA 183 at para 46 [*East Barriere CA*], Bauman CJ (Tysoe and Savage JJA concurring).

263. See *Strata Property Act*, *supra* note 4, ss 137 (eviction by landlord—"repeated or continuing contravention of a reasonable and significant bylaw or rule by a tenant of a residential strata lot"), 138 (eviction by strata corporation—"repeated or continuing contravention of a reasonable and significant bylaw or rule by a tenant of a residential strata lot that seriously interferes with another person's use and enjoyment of a strata lot, the common property or the common assets"), 139 (rental disclosure by owner-developer—required from owner-developer "who rents or intends to rent one or more residential strata lots"), 140 (contravention of disclosure requirements), 142 (4) (limits to rental-restriction bylaws), 145 (rental agreement in contravention of rental-restriction bylaw), 146 (landlord to give bylaws, rules and Notice of Tenant's Responsibilities to tenant), 148 (2) (long-term lease—"if a residential strata lot is leased under a long term lease, the tenant is assigned the powers and duties of the landlord under this Act, the bylaws and the rules for the term of the lease").

264. See *ibid*, ss 70 (4) (changes to strata lot—amendment to Schedule of Unit Entitlement required "if an owner wishes to increase or decrease the habitable part of the area of a residential strata lot"), 244 (2) (strata plan requirements—"parking stalls, garage areas, storage areas and similar areas or spaces intended to be used in conjunction with a residential strata lot must not be designated as separate strata lots but must be included as part of a strata lot or as part of the common property"), 246 (Schedule of Unit Entitlement—calculation and approval), 259 (4) (amending strata plan to add to, consolidate or divide a strata lot—"an amendment to a strata plan under this section may result in a residential strata lot having less than one or more than one vote"), 260 (4) (exceptions to requirement for unanimous vote—"an amendment to the strata plan to divide a residential strata lot into 2 or more strata lots must be approved by a resolution

Residential strata lot also appears three times in the regulations²⁶⁵ and on two prescribed forms.²⁶⁶

A legislative definition of *residential strata lot* first appeared with the enactment of the *Strata Property Act*. One commentator has said that the addition of this legislative definition was an improvement on the prior legislation, which used the term but didn't provide a definition.²⁶⁷

The definition hadn't received much judicial consideration, until the recent *East Barriere* case.²⁶⁸ In *Winchester Resorts Inc v Strata Plan KAS2188 (Owners)*,²⁶⁹ a case decided shortly after the *Strata Property Act* came into force, the court drew on the definition in determining that use of a strata lot as a fishing lodge was "not residential given the transient nature of the guests' visits which renders the use of the lodge as more akin to a motel than to a residence."²⁷⁰ In *Azura Management (Kelowna) Corp v Owners of the Strata Plan KAS2428*,²⁷¹ the definition was cited in the context of a dispute over bylaw amendments and compliance with section 128 of the act.²⁷²

passed by a 3/4 vote at an annual or special general meeting"), 261 (amending Schedule of Unit Entitlement), 264 (calculation of unit entitlement and voting rights following amendment).

265. See *Strata Property Regulation*, *supra* note 8, ss 5.1 (minor changes to strata lot size), 7.1 (2) (maximum fines—for rental of residential strata lot), 14.2 (definition of *habitable area* for section 246 of the act).

266. See *ibid*, Form V (Schedule of Unit Entitlement), Form W (Schedule of Voting Rights).

267. See Scott D Smythe & EM (Lisa) Vogt, eds, *McCarthy Tétrault's Annotated British Columbia Strata Property Act* (Toronto: Canada Law Book, 2002) (loose-leaf release no 19, October 2016) at SPA-7 ("This definition clarifies former uncertainty under the *Condominium Act*, which did not define 'residential strata lot.'"). To illustrate this "uncertainty," the authors cited the following case decided under the *Condominium Act*, *supra* note 6: *Butterfield v The Owners, Strata Plan NW 3214*, 2000 BCSC 1110 ("caretaker's suite did not qualify as a residential strata lot because it was not defined as such in the strata plan").

268. *East Barriere Resort Ltd v The Owners, Strata Plan KAS1819*, 2016 BCSC 1609, [*East Barriere SC*], rev'd in part *East Barriere CA*, *supra* note 262.

269. 2002 BCSC 1165.

270. *Ibid* at para 16, Blair J.

271. *Azura Management*, *supra* note 210.

272. *Ibid* at para 74. See also Smythe & Vogt, *supra* note 267 at SPA-7 ("although a fishing lodge was not a residential use, the developer's statutory declaration that the strata plan was entirely for residential use did not restrict commercial uses expressly permitted by a registered building scheme").

East Barriere also involved a dispute over the validity of amended bylaws in light of the rules laid down in section 128. The case dealt with a bare-land strata plan that had been developed in four phases.²⁷³ The advance disclosure and zoning of the property gave some hints as to its intended uses:

Declarations filed in the Land Titles office with the Strata Plan describe phases 1 and 3 as residential, phase 2 as residential/commercial. No such declaration was filed with phase 4.

Phases 1, 2 and 4 are within areas zoned “C-4 recreational, commercial” and phase 3 is zoned “CR-1 country residential.”²⁷⁴

But despite all this, owners ultimately used their strata lots solely for residential purposes.²⁷⁵ From time to time, the strata corporation adopted bylaw amendments in a manner consistent with this sense that it was composed solely of residential strata lots (that is, by owners voting collectively on a single resolution to be passed by a 3/4 vote).²⁷⁶

Eventually, a dispute over rental restrictions and the use of common property (docks and boat slips) led a group of owners to challenge this approach to amending bylaws. These owners launched a petition in BC Supreme Court seeking

declarations that the lots in phases 1, 2 and 4 are not residential and that those in phase 3 are residential. They then seek declarations that s. 128 of the *Strata Property Act*, S.B.C. 1998, c. 43, should operate to require separate three-quarter majority votes for proposed bylaw amendments.²⁷⁷

Section 128 (1) of the *Strata Property Act* provides:

Subject to section 197, amendments to bylaws must be approved at an annual or special general meeting,

- (a) in the case of a strata plan composed entirely of residential strata lots, by a resolution passed by a 3/4 vote,

273. *East Barriere SC*, *supra* note 268 at para 2, Betton J.

274. *Ibid* at paras 7–8.

275. See *ibid* at para 9 (“Owners have constructed detached single-family homes used as vacation residences. Some owners rent their units some of the time, but all have been developed and used as residential lots since 1996.”).

276. See *East Barriere CA*, *supra* note 262 at para 32 (“Since 1996, the strata corporation has considered the strata plan to be composed entirely of residential strata lots and owners have voted collectively on bylaws.”).

277. *East Barriere SC*, *supra* note 268 at para 15.

- (b) in the case of a strata plan composed entirely of nonresidential strata lots, by a resolution passed by a 3/4 vote or as otherwise provided in the bylaws, or
- (c) in the case of a strata plan composed of both residential and nonresidential strata lots, by both a resolution passed by a 3/4 vote of the residential strata lots and a resolution passed by a 3/4 vote of the nonresidential strata lots, or as otherwise provided in the bylaws for the nonresidential strata lots.²⁷⁸

This petition put the definition of *residential strata lot* squarely before the court, as the determination of whether the strata lots were residential strata lots would decide whether paragraph (a) or paragraph (c) applied to the strata corporation's by-law amendments.

At first instance, the chambers judge began by noting

the definition of "residential strata lot" references only design and intention. It does not incorporate any other considerations such as zoning or disclosure statements. It does not clarify whether the intention referenced is that of the original developers or the owners.²⁷⁹

This consideration led the judge to conclude "[t]here is a distinction to be drawn between the hopes and aspirations of certain owners, in this case the petitioners[,] and the actual nature and use of the lots."²⁸⁰ Since the strata lots were actually used for residential purposes, they were residential strata lots.

The court of appeal rejected this conclusion. In its view, "the appropriate approach must be to assess the design and intention at and around the time of the inception of the development":²⁸¹

"design" and "intention" must be determined by the documents prepared and filed at and around the inception of the development. Otherwise, there would be uncertainty concerning the proper voting procedures, filing requirements, and the applicability of numerous other provisions in the SPA that rely on the definition of "residential strata lot."²⁸²

Critically for the committee, the court of appeal also lamented what it saw as the underdeveloped state of the legislation as playing a role in fostering this dispute:

278. *Supra* note 4, s 128 (1).

279. *East Barriere SC*, *supra* note 268 at para 37.

280. *Ibid* at para 45.

281. *East Barriere CA*, *supra* note 262 at para 13.

282. *Ibid* at para 46.

It is to be regretted that the SPA does not put this issue beyond debate by requiring binding declarations to be made at the time of the filing of the strata plans instead of creating the uncertainty thrown up by a phrase like “designed or intended to be used primarily as a residence” in the definition of “residential strata lot.”²⁸³

The committee’s recommendation for reform

The committee considered whether the definition of *residential strata lot* could be improved or whether the court’s call for substantive reforms to the *Strata Property Act* (“requiring binding declarations to be made at the time of the filing of the strata plans”) would be a better approach to improving the law. In the end, it wasn’t convinced that *East Barriere* was anything more than an anomalous case. If the case were part of a trend showing difficulty with applying the current definition, then there would be a reason to amend that definition. But adopting a solution to fix an anomalous case could just create more problems for the law.

Consultation respondents strongly supported the committee’s tentative recommendation for this issue.

The committee recommends:

42. *The Strata Property Act’s definition of “residential strata lot” should not be amended.*

Should the Strata Property Act contain a definition of “nonresidential strata lot”?

Brief description of the issue

This issue is something of a sequel to the previous one. Unlike *residential strata lot*, *nonresidential strata lot* isn’t defined in the *Strata Property Act*. The term does tend to be used in the act in a relatively straightforward way, as effectively meaning “a strata lot that isn’t a residential strata lot.” Still, the absence of a legislative definition raises the question whether *nonresidential strata lot* merits its own legislative definition.

283. *Ibid.* The authors of the *British Columbia Strata Property Practice Manual*, *supra* note 34, also appear to criticize the definition of *residential strata lot* when they note “[i]ts legal meaning is barely sketched out in the *Strata Property Act*” (at § 4.1A).

Summary of options for reform

The expression *nonresidential strata lot* appears a few times in the *Strata Property Act*: in sections 128 (1) (bylaw amendment procedures),²⁸⁴ 139 (3) (rental disclosure by owner-developer),²⁸⁵ 191 (1) (enabling creation of sections),²⁸⁶ 197 (3.1) (bylaws and rules for a section),²⁸⁷ 245–48 (Schedules of Unit Entitlement and Voting Rights),²⁸⁸ and 264 (calculation of unit entitlement and voting rights following strata-plan amendment).²⁸⁹

While these provisions can be detailed and complex, their use of *nonresidential strata lot* tends to be as a point of contrast to *residential strata lot*. *Nonresidential strata lot* is often used to emphasize these points: (1) the procedures for amending bylaws that apply to residential strata lots apply in different ways to nonresidential strata lots (owners of nonresidential strata lots may approve a bylaw amendment by a resolution passed with a voting threshold other than a 3/4 vote) and (2) owners of residential and nonresidential strata lots invariably have different interests, and these different interests will result in requiring separate resolutions when bylaws are amended, may (if an owner-developer or strata corporation chooses) form the

284. See *supra* note 4, 128 (1) (“Subject to section 197, amendments to bylaws must be approved at an annual or special general meeting, (a) in the case of a strata plan composed entirely of residential strata lots, by a resolution passed by a 3/4 vote, (b) in the case of a strata plan composed entirely of *nonresidential strata lots*, by a resolution passed by a 3/4 vote or as otherwise provided in the bylaws, or (c) in the case of a strata plan composed of both residential and *nonresidential strata lots*, by both a resolution passed by a 3/4 vote of the residential strata lots and a resolution passed by a 3/4 vote of the *nonresidential strata lots*, or as otherwise provided in the bylaws for the *nonresidential strata lots*.” [emphasis added]).

285. See *ibid*, s 139 (3) (“For the purposes of the 3/4 vote referred to in subsection (2), the following persons are not eligible voters: (a) a person voting in respect of a *nonresidential strata lot*; (b) a person voting in respect of a residential strata lot which is currently rented; (c) the owner developer.” [emphasis added]).

286. See *ibid*, s 191 (1) (“A strata corporation may have sections only for the purpose of representing the different interests of (a) owners of residential strata lots and owners of *nonresidential strata lots*, (b) owners of *nonresidential strata lots*, if they use their strata lots for significantly different purposes, or (c) owners of different types of residential strata lots.” [emphasis added]).

287. See *ibid*, s 197 (3.1) (“Despite subsection (3), if a section is composed entirely of *nonresidential strata lots*, an amendment to the bylaws respecting a matter that relates solely to the section must be approved by a resolution passed (a) by a 3/4 vote, or (b) if a different voting threshold is provided for in the bylaws of the section, by that voting threshold[,] at an annual or special general meeting of the section. [emphasis added]).

288. See *ibid*, ss 245–248. See also *Strata Property Regulation*, *supra* note 8, Form V (Schedule of Unit Entitlement), Form W (Schedule of Voting Rights).

289. See *supra* note 4, s 264.

basis of separate sections, and will call for different approaches in determining unit entitlement and voting rights.

There doesn't appear to be any criticism of the lack of a definition of *nonresidential strata lot* to be found in either the case law or the commentary. So this issue is probably best approached as a matter of first principles. Would the act be improved by a legislative definition of *nonresidential strata lot*? Is there any danger to confining this term within clearer or more precise limits—specifically, could it result in a strata lot being neither a residential strata lot nor a nonresidential strata lot?

The committee's recommendation for reform

The committee didn't see a pressing need to add a definition of *nonresidential strata lot* to the act. Instead, it was more concerned about the potential that such a definition might have for creating mischief. To take one example, the committee pointed to the concerns with short-term rentals, such as those facilitated by Airbnb.²⁹⁰ In these cases, it wouldn't be desirable for an owner operating a short-term rental property to be able to point to a statutory definition and claim that the strata lot is really a nonresidential strata lot. If the owner could make this case, then it would become impossible to amend the strata corporation's bylaws to address concerns about short-term rentals, as bylaw amendments would now require that owner's consent.²⁹¹

Even though a bare majority of consultation respondents favoured adding a definition of *nonresidential strata lot* to the act, the committee decided to confirm its tentative recommendation.

The committee recommends:

43. The Strata Property Act should not contain a definition of "nonresidential strata lot."

290. See, online: *Wikipedia* <en.wikipedia.org/wiki/Airbnb> ("Airbnb is an online marketplace and hospitality service, enabling people to lease or rent short-term lodging including vacation rentals, apartment rentals, homestays, hostel beds, or hotel rooms. The company does not own any lodging; it is merely a broker and receives percentage service fees (commissions) from both guests and hosts in conjunction with every booking." [footnotes omitted]).

291. See *Strata Property Act*, *supra* note 4, s 128 (1) (c) ("amendments to bylaws must be approved at an annual or special general meeting, . . . (c) in the case of a strata plan composed of both residential and nonresidential strata lots, by both a resolution passed by a 3/4 vote of the residential strata lots and a resolution passed by a 3/4 vote of the nonresidential strata lots, or as otherwise provided in the bylaws for the nonresidential strata lots.").

Chapter 5. General Meetings and Strata-Council Meetings

Background

Scope of this chapter

The *Strata Property Act* has a dedicated division on “annual general meetings and special general meetings.” It’s division 4 of part 4 (“strata corporation governance”) of the act, which contains 13 sections that address the following subjects:

- requirement to hold annual general meeting; authorization to waive annual general meeting;
- authorization to call special general meeting—strata corporation; authorization to call special general meeting—20 percent of voters; waiver of special general meeting;
- notice requirements and safe-harbour provision;
- agenda and resolutions;
- quorum;
- electronic attendance;
- voting;
- reconsideration of resolution passed by 3/4 vote;
- unanimous votes.²⁹²

Most, but not all, of these subjects are covered in this chapter. This is because the chapter focuses on topics the committee has identified as issues for reform, rather than simply working through every section in this division of the act. As a result, this chapter doesn’t address some topics covered by the act (because they don’t raise pressing issues for reform) and does address some topics not covered by the act. The chapter’s focus is on the following subjects:

- proxies;
- conduct of meetings;

292. *Ibid*, ss 40–52.

- quorum;
- voting;
- strata-council elections;
- agenda and meeting minutes.

While the bulk of this chapter concerns general meetings, a couple of issues involve consideration of strata-council meetings.

Finally, a note on terminology: this chapter follows the *Strata Property Act* and calls the people who are entitled to attend, participate in the discussion, and vote at a general meeting *eligible voters*.²⁹³

General meetings—definition and purpose

While many of the principles incorporated into the *Strata Property Act* are drawn from real-property law, when it comes to general meetings corporate law dominates the act's legal framework.²⁹⁴

Corporate law classifies corporate meetings into two kinds: directors' meetings and shareholders' meetings.²⁹⁵ Shareholders' meetings are often called *general meetings*, a term which is picked up in the *Strata Property Act*. *General meeting* isn't a term of art, meriting its own special legislative definition.²⁹⁶ It's a term that's meant to be understood in its everyday sense as a meeting that's open to all shareholders.²⁹⁷

293. See *ibid*, s 1 (1) "eligible voters."

294. See *Rodgers*, *supra* note 5 at para 5 ("The law relating to corporations is also of importance because the condominium is administered by the condominium corporation in which the unit holders are in a position analogous to shareholders").

295. See Hartley R Nathan & Mihkel E Voore, *Corporate Meetings: Law and Practice* (Toronto: Carswell, 1995) (loose-leaf revision 2010–1) at 1-1.

296. The *Strata Property Act* doesn't contain a definition of *general meeting*. British Columbia corporate legislation also tends to rely on the ordinary meaning of *general meeting*, by using a tautology to define the term. See *Business Corporations Act*, SBC 2002, c 57, s 1 (1) "general meeting" ("means a general meeting of shareholders"); *Societies Act*, SBC 2015, c 18, s 1 "general meeting" ("means a general meeting of the members of a society").

297. See *The Oxford English Dictionary*, *supra* note 9 *sub verbo* "general meeting" ("a meeting which all members of a society or other organization may attend").

The purpose of general meetings in corporate law is to provide a vehicle for making collective decisions.²⁹⁸ According to a leading textbook on Canadian corporate law, there are “three important roles for general meetings”:

- deciding certain routine matters on an ongoing basis;
- deciding certain special measures or steps;
- allowing for proposals from individual shareholders, which provide a forum for voicing concerns and giving directions to the corporation’s directors.²⁹⁹

All three roles crop up in the *Strata Property Act*.³⁰⁰

Kinds of general meetings

The *Strata Property Act* distinguishes between two kinds of general meetings: annual general meetings and special general meetings.

Unless a strata corporation meets the high bar to waive the legislative requirement,³⁰¹ it must hold an annual general meeting each year “no later than 2 months after the strata corporation’s fiscal year end.”³⁰² Certain business must be dealt with at each annual general meeting, such as receiving reports on insurance coverage³⁰³ and on strata-council activities and decisions since the last annual general meet-

298. See Nathan & Voore, *supra* note 295 at 1-1 (“At common law, all corporate decisions had to be arrived at by means of a validly constituted meeting.”).

299. Kevin Patrick McGuinness, *Canadian Business Corporations Law*, 2nd ed (Markham, ON: LexisNexis Canada, 2007) at § 12.38.

300. See e.g. *supra* note 4, ss 154 (b) (strata corporation required to give report on insurance coverage at each annual general meeting), 128 (1) (requiring amendments to strata-corporation by-laws be approved at either an annual general meeting or a special general meeting), 43 (allowing eligible voters to call special general meeting).

301. See *ibid*, s 41 (1) (“The strata corporation does not have to hold an annual general meeting if, before the last date by which the meeting must be held, all eligible voters waive, in writing, the holding of the meeting and consent, in writing, to resolutions that (a) approve the budget for the coming fiscal year, (b) elect a council by acclamation, and (c) deal with any other business.”).

302. *Ibid*, s 40 (2).

303. See *ibid*, s 154.

ing,³⁰⁴ approving a budget for the strata corporation,³⁰⁵ and electing a strata council.³⁰⁶

In contrast to annual general meetings, special general meetings aren't required under the *Strata Property Act*. That said, a strata corporation may decide to hold any number of special general meetings "at any time."³⁰⁷ And the act also contains a procedure whereby a group of voters may demand that the strata corporation hold a special general meeting to consider some specified item of business.³⁰⁸

Special general meetings tend to be used for the second of general meetings' three roles ("deciding certain special measures or steps"). Often the focal point of the meeting is authorization of a major repair or renovation project or a significant change in corporate governance, such as the amendment of bylaws.

That said, there are routine items of business that are dealt with at any general meeting, be it an annual general meeting or a special general meeting. These items include approving minutes of the last general meeting and ratifying any new rules made by the strata corporation.³⁰⁹

Issues for Reform

General observations

Most of the issues that follow concern procedural laws. These procedures often aren't found in the *Strata Property Act*. It's usually necessary to look at corporate bylaws, past practices, and court cases³¹⁰ to get a fix on what a procedure at a meeting should be.

304. See *ibid*, Schedule of Standard Bylaws, s 28 (h).

305. See *ibid*, s 103.

306. See *ibid*, s 25.

307. *Ibid*, s 42.

308. See *ibid*, s 43 (1) ("Persons holding at least 20% of the strata corporation's votes may, by written demand, require that the strata corporation hold a special general meeting to consider a resolution or other matter specified in the demand.").

309. See *ibid*, s 125.

310. See *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 6.38 ("In legal proceedings, the extensive common law applicable to corporate proceedings can be expected to govern.").

This body of procedure can seem detailed and rule bound, but commentators usually interpret it as trying to further a few broad goals. These goals include promoting a reasonable exchange of ideas, treating minority interests fairly, encouraging participation, and making decisions transparently and democratically.³¹¹

Meeting chairs and participants are often said to be the best judges of whether a given meeting is achieving these goals. Courts typically apply a light touch to enforcing procedural laws.³¹² Even if a corporation has failed to comply strictly with a procedure, a court is often unwilling to invalidate a meeting if these goals are met and no one has suffered any prejudice from the irregularity. But different considerations may apply if the procedure has become a statutory provision.³¹³

Likely out of a desire to preserve corporate flexibility, most corporate-law statutes contain next-to-no procedural provisions. The *Strata Property Act* follows the basic corporate pattern, but it and its standard bylaws do have slightly more procedural detail than other British Columbia corporate statutes. This may be due to a desire to provide some guidance to strata corporations, which are often administered by volunteers without training in the law and corporate procedure.

While the issues that follow tackle a diverse range of topics, one theme comes up repeatedly. Again and again, the committee was asked to strike a balance between preserving flexibility for strata corporations (at the risk that they will use this flexibility to do something that can broadly be called undesirable) and amending the act to give more direction to strata corporations (at the risk that this direction will lead to broadly acceptable meetings being held to be invalid).

Issues for Reform—Proxies

Introduction

The word *proxy* is capable of creating some confusion. This is because it can be used to refer either to a person or to a document. As a BC judge once explained:

[I]t is appropriate to acknowledge that the word “proxy” is often used in two senses. It may be used to designate the person appointed by a shareholder (or a limited partner)

311. See Nathan & Voore, *supra* note 295 at 19-1; Hartley R Nathan, *Nathan’s Company Meetings Including Rules of Order*, 9th ed (Toronto: CCH Canadian, 2011) at xxv.

312. See Nathan & Voore, *supra* note 295 at 1-12.1 (“Irregularities in the holding of meetings do not necessarily invalidate them.”).

313. See Nathan, *supra* note 311 at 4; *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 6.38.

to vote his shares in a company (or his interest in a limited partnership). It may also be used to designate the instrument by which a person is appointed to vote the shares (or interest) of another.³¹⁴

The *Strata Property Act* uses *proxy* to refer to a person.³¹⁵ This usage bucks the trend of most corporate-law legislation, which uses *proxy* in the second sense, to refer to a document.³¹⁶ While this report follows the *Strata Property Act* and uses *proxy* to refer to a person and *proxy appointment* to refer to a document appointing a proxy, readers should be aware that some of the commentary quoted uses *proxy* to refer to a document.

Whichever way the word is used, the key to understanding the legal conception of a proxy appointment is that it creates an agency relationship between someone who has voting rights in a corporation and another person who is authorized to exercise those rights on behalf of the first person. At corporate law, as a leading textbook explains it, “[a] proxy is an authority given by one person to another which authorizes the person to whom it is given (the ‘proxy holder’) to exercise a voting right or rights of the donor.”³¹⁷

The *Strata Property Act* clearly adopts this conception of *proxy*. As the act puts it, a proxy “stands in the place of the person appointing the proxy, and can do anything that person can do, including vote, propose and second motions and participate in the discussion, unless limited in the appointment document.”³¹⁸

314. *Beatty v First Exploration Fund 1987 and Co* (1988), 25 BCLR (2d) 377 at 381, 40 BLR 90 (SC), Hinds J.

315. While the act doesn’t contain a legislative definition of *proxy*, it’s clear that the act uses the word to refer to a person. See e.g. *Strata Property Act*, *supra* note 4, s 56 (3) (“The following persons may be proxies . . .”).

316. See *Business Corporations Act*, *supra* note 296, s 1 (1) “proxy” (“means a record by which a shareholder appoints a person as the nominee of the shareholder to attend and act for and on behalf of the shareholder at a meeting of shareholders”); *Securities Act*, RSBC 1996, c 418, s 116 “form of proxy” (“means a written or printed form that, on completion and execution by or on behalf of a security holder, becomes a proxy”), “proxy” (“means a completed and executed form of proxy by which a security holder has appointed a person as the security holder’s nominee to attend and act for the security holder and on the security holder’s behalf at a meeting of security holders”).

317. McGuinness, *supra* note 299 at § 12.134.

318. *Supra* note 4, s 56 (4).

Legislation enabling and regulating the appointment of proxies first appeared in corporate statutes in the early twentieth century.³¹⁹ This legislation was primarily aimed at large public corporations. It essentially had two purposes: (1) to facilitate shareholder participation in corporate decision-making;³²⁰ and (2) to help corporations meet the quorum needed to hold a valid general meeting.³²¹

While there are important differences between large public corporations and strata corporations and significant variations in the legal frameworks applicable to proxies for both types of organizations, these same two purposes also underlie proxy legislation for strata corporations.³²²

But there have been concerns that proxy legislation for strata corporations isn't working out as planned. Rather than deepening open and democratic involvement in making decisions, it has been (according to some complaints) leading to the opposite result: entrenching control by unrepresentative factions that manipulate owners' apathy and proxy laws to keep themselves in power.³²³

319. While shareholders didn't automatically have a right to appoint proxies at common law, corporations could adopt bylaws enabling proxy appointments. Statutes reversed this default position. Now shareholders have a statutory right to appoint proxies, unless a corporation's bylaws take this right away.

320. See *Montreal Trust Co of Canada v Call-Net Enterprises Inc* (2002), 57 OR (3d) 775 at 781, 20 BLR (3d) 279 (SCJ), Lax J ("The relationship between a proxyholder and a shareholder is one of agency. It is essentially an administrative mechanism to facilitate shareholder participation in the corporate decision-making process. . . . The proxy framework established under the *Canada Business Corporations Act*, and Ontario's *Securities Act* reinforces this." [citations omitted]), aff'd (2004), 70 OR (3d) 90, 40 BLR (3d) 108 (CA).

321. See Nathan & Voore, *supra* note 295 at 18-14 ("Of course, the solicitation of proxies by management is very often necessary in any case where the corporation is large and management needs to obtain a certain quorum or level of shareholder approval.").

322. See *Growing Up: Ontario's Condominium Communities Enter a New Era: Condominium Act Review Stage Two Solutions Report*, *supra* note 27 at 39 ("[P]roxies are a valid expression of an owner's voting rights. Proxies can allow those unable to attend a meeting to take a meaningful part in it, or those who feel unqualified to make a judgment on the issues to nominate someone more qualified to act in their interest."); *Strata Title Law Reform: Strata & Community Title Law Reform Position Paper*, *supra* note 26 at 9 ("it is acknowledged that many schemes find it difficult to reach a quorum at meetings and the proxy voting system helps them to do so").

323. See e.g. *Hamilton v The Owners, Strata Plan NWS 1018*, 2017 BCCRT 141 at para 16 ("The owner's requests for records stem from her concern that the strata council since 2012 has been dominated by 2 owners holding over 51% of votes, given the proxies they held at general meetings."); *Seymour v Allen*, 2018 BCCRT 742 at para 38 ("the owner says unverified proxies are relied upon at meetings").

The committee has heard versions of these complaints in correspondence it has received over the course of the project from members of the general public.³²⁴ Criticisms of proxy laws have also cropped up from time to time in stories in the media.³²⁵ These concerns have moved other law-reform projects to study proxy laws and make recommendations for reform.³²⁶

The tenor of these recommendations tends to be to rein in the use of proxies, typically by standardizing the form of proxy appointment, setting limits on the number of proxy appointments a person may hold at a general meeting, or placing restrictions on who may be a proxy. The challenge is to ensure that these proposals don't end up completely undermining the twin goals of facilitating participation and helping to reach a required quorum.

Should the Strata Property Act require a defined form of proxy appointment?

Brief description of the issue

The *Strata Property Act* places few limits on the form of proxy appointment. The only formalities that the act requires are for the proxy appointment to “be in writing

324. See Bitu Bayanpour, email message to Strata Property Law (Phase Two) Project Committee, 7 April 2015 (asking for restrictions on who may be a proxy and for limits on the number of proxies allowed at a general meeting: “we believe the number of proxies should not exceed the people who are attending the meeting”); Dave Nelson, email message to Strata Property Law (Phase Two) Project Committee, 23 April 2015 (concerns about the number of proxies and the form of proxy used); Mark Latham, email message to Strata Property Law (Phase Two) Project Committee, 6 May 2015 (“a universal proxy form for condominiums”).

325. See e.g. John Lancaster & Michael Smee, “Questionable proxies shut down Charles Street condo election, sources say” (17 May 2017), online: *CBC News* <www.cbc.ca/news/canada/toronto/questionable-proxies-shut-down-charles-street-condo-election-sources-say-1.4118643> (“Blanchard allegedly handed staff 91 proxies he wanted to register. . . . A subsequent review of the proxies handed in allegedly revealed many of the signatures didn’t match. In fact, more than a dozen owners signed affidavits claiming their signatures had been forged.”); Joe Friesen & Tu Thanh Ha, “Directors elected to several Toronto condos spark outrage,” *The Globe and Mail* (15 May 2017) A.1 (“Scrutineers’ documents show he received 99 votes, all of them from proxies. Intrigued by the high number of proxies, some unit owners later asked to see them, but they were told that a flood had damaged them.”).

326. See *Growing Up: Ontario’s Condominium Communities Enter a New Era: Condominium Act Review Stage Two Solutions Report*, *supra* note 27 at 39 (“Proxy abuse was a topic of much discussion during stage one of the review process.”); *Strata Title Law Reform: Strata & Community Title Law Reform Position Paper*, *supra* note 26 at 9.

and be signed by the person appointing the proxy.”³²⁷ There is a prescribed proxy-appointment form, but its use is “optional.”³²⁸

It has been suggested that requiring the use of a specific form or requiring that a proxy appointment meet stringent formalities is one way to cut down on abuses by clearly defining the agency relationship at the heart of a proxy appointment. Should the *Strata Property Act* adopt this approach to proxy appointments?

Discussion of options for reform

Ontario’s recent *Condominium Act* review recommended the adoption of “a standardized, pre-printed proxy form.”³²⁹ The rationale for this recommendation was spelled out in an earlier publication, which said the goal of a prescribed form is to “minimize opportunities for manipulation by ensuring the role assigned to the proxy holder is clear.”³³⁰

The Ontario government has accepted this recommendation. As part of a package of reforms passed in 2015,³³¹ the relevant provision in the *Condominium Act, 1998*, was repealed and replaced with the following: “An instrument appointing a proxy shall be in writing under the hand of the appointer or the appointer’s attorney, shall be for one or more particular meetings of owners, shall comply with the regulations and *shall be in the prescribed form.*”³³² This provision came into force on 1 November 2017, at which date the new proxy form was made available on an Ontario government website.³³³

327. See *supra* note 4, s 56 (2) (a).

328. See *Strata Property Regulation*, *supra* note 8, Form A (Proxy Appointment).

329. *Growing Up: Ontario’s Condominium Communities Enter a New Era: Condominium Act Review Stage Two Solutions Report*, *supra* note 27 at 39.

330. *Ontario’s Condominium Act Review: Stage One Findings Report*, *supra* note 27 at 17.

331. See *Protecting Condominium Owners Act, 2015*, *supra* note 29.

332. *Supra* note 24, s 52 (4), as am by *Protecting Condominium Owners Act, 2015*, *supra* note 29, Schedule 1, s 48 (3) [emphasis added].

333. See, online: *Ontario Government—search land registration documents* <www.ontario.ca/search/land-registration?sort=desc&field_forms_act_tid=condominium>.

Like British Columbia, Ontario previously had an optional proxy-appointment form that its condominium corporations were allowed to choose to adopt.³³⁴ The other provinces and territories impose few to no formalities on proxy appointments.³³⁵

Another approach to this issue for reform is, in place of prescribing a specific form, to spell out requirements in any proxy appointment that may be used. For example, a regulation under the *Canada Not-for-profit Corporations Act*³³⁶ requires a proxy appointment that is “created by a person other than the member” to meet a long list of formal requirements.³³⁷

334. See Form 9 (Proxy for General Matters and for the Election of Directors).

335. See Alberta: *Condominium Property Act*, *supra* note 24, Appendix 1 (bylaws of the corporation), s 29 (“An instrument appointing a proxy shall be in writing under the hand of the person making the appointment or that person’s attorney, and may be either general or for a particular meeting, but a proxy need not be an owner.”); see also proposed amendments to the *Condominium Property Regulation*, Alta Reg 168/2000, online: <www.alberta.ca/assets/documents/condominium-property-regulation.pdf> [perma.cc/7W79-7GP9], ss 31.201–31.202 (proposed new written requirements and restrictions for proxies—projected to be in force on 1 July 2019) [Proposed Amendments to the *Condominium Property Regulation*]; Saskatchewan: *The Condominium Property Act*, 1993, *supra* note 24, s 41.1 (imposes writing requirement; must be for specific meeting or resolution, or “a standing appointment that is valid for a maximum of six months from the date it is executed”); Manitoba: *The Condominium Act*, *supra* note 24, s 128 (writing requirement); Québec: arts 1087–1103 CCQ (general meeting of owners of syndicate; no formalities for proxy appointments prescribed); New Brunswick: *Condominium Property Act*, *supra* note 24 (no formalities prescribed); Prince Edward Island: *Condominium Act*, *supra* note 24 (no formalities prescribed); Nova Scotia: *Condominium Act*, *supra* note 24 (no formalities prescribed); Newfoundland and Labrador: *Condominium Act*, 2009, *supra* note 24 (no formalities prescribed); Yukon: *Condominium Act*, *supra* note 24 (no formalities prescribed); Northwest Territories and Nunavut: *Condominium Act*, *supra* note 24 (no formalities prescribed).

336. SC 2009, c 23.

337. See *Canada Not-for-profit Corporations Regulations*, SOR/2011-223, s 74 (2) (d) (“if a form of proxy is created by a person other than the member, the form of proxy shall (i) indicate, in bold-face type, (A) the meeting at which it is to be used, (B) that the member may appoint a proxyholder, other than a person designated in the form of proxy, to attend and act on their behalf at the meeting, and (C) instructions on the manner in which the member may appoint the proxyholder, (ii) contain a designated blank space for the date of the signature, (iii) provide a means for the member to designate some other person as proxyholder, if the form of proxy designates a person as proxyholder, (iv) provide a means for the member to specify that the membership registered in their name is to be voted for or against each matter, or group of related matters, identified in the notice of meeting, other than the appointment of a public accountant and the election of directors, (v) provide a means for the member to specify that the membership registered in their name is to be voted or withheld from voting in respect of the appointment of a public accountant or the election of directors, and (vi) state that the membership represented by the proxy is to be voted or withheld from voting, in accordance with the instructions of the member, on any ballot that may be called for and that, if the member specifies a choice under subparagraph (iv) or (v) with respect to any matter to be acted on, the membership is to be voted ac-

A third option to consider is to retain the status quo. Under the current law, strata corporations and eligible voters have an optional form of proxy appointment (Form A) that they may choose to employ. But they aren't bound to this form; any regular proxy appointment³³⁸ may be used.

The three options have the following advantages and disadvantages.

A standard form helps to address concerns about abuse of proxy appointments. One aspect of this problem is the exploitation of uncertainties or gaps in the document establishing the proxy's agency relationship. A standard form clarifies the terms of that relationship. A standard form may also foster and support one of the main goals of the proxy system, which is to facilitate an eligible voter's participation in collective decision-making in the strata corporation. More clearly defining the scope of the proxy's authority makes the proxy appointment more of a conduit for the grantor's wishes and less of a vehicle that could benefit some unrepresentative faction in the strata corporation. And, finally, a standard form could, in the long run, turn out to be easier to administer and could help to cut down on disputes over the validity of proxy appointments.

Where a standard form could cause problems is in the short term. Strata corporations and strata managers would have to be educated on the existence and use of the form. While the learning curve would likely be relatively simple, some confusion and conflict could result. It could also be a challenge to design a form that was both simple to use and relevant for the diversity of general meetings. Restricting the form of proxy appointment could also tend to make it less attractive to authorize proxies for general meetings. This could lead to eligible-voter apathy and difficulties for strata corporations in meeting quorum requirements.

The second option—spelling out a list of prescribed criteria for any proxy appointment to meet—has a similar set of advantages and disadvantages as the first option. This approach would also clarify the agency relationship between proxy and grantor, thereby helping to combat abuse of the proxy system. The main advantage this

cordingly"). See also Proposed Amendments to the *Condominium Property Regulation*, *supra* note 335, s 31.201 (1) ("A proxy is invalid unless it is in an electronic or hard copy format and contains at least the following elements: (a) the name and unit number of the owner or mortgagee giving the proxy; (b) the name of the individual to whom the proxy is given; (c) the date the proxy is given; (d) the signature of the owner or mortgagee giving the proxy, or in the case of an owner or mortgagee that is not an individual, the signature of a person authorized to sign for that owner or mortgagee."—projected to be in force on 1 July 2019).

338. That is, one that meets the act's formal requirements that a proxy appointment be in writing and signed by the person appointing the proxy.

option appears to have over the first one is that it would give strata corporations and eligible voters a bit more flexibility in crafting proxy appointments for specific meetings and circumstances.

One potential drawback of both the first and the second options is how to treat what would be otherwise regular proxy appointments that fail either to use the standard form or to comply with the prescribed criteria. This concern raises some complex questions that are worth exploring in a separate issue for reform, which appears after this issue.

The third option to consider is retaining the status quo. The current law has the advantage of avoiding the problem that non-compliance with formalities could lead to disqualification of proxy appointments. It offers a form of proxy appointment as an optional model, rather than as a rigid mandatory requirement. The downside of retaining the status quo on this point is that it offers little to combat perceived abuses of the system.

The committee's recommendation for reform

The committee favoured the adoption of a mandatory standard form. A standard form may help to clarify the relationship between an eligible voter and the person identified as that owner's proxy. All too often when disputes arise about a proxy appointment the parties look to the strata corporation to take a position on them, even though this isn't the strata corporation's role. A defined form should cut down on the number of disputes by making it clear what is a valid proxy appointment.

Consultation respondents in both the full and summary consultations strongly supported the committee's proposal to create a standard form of proxy appointment.

The committee recommends:

44. The Strata Property Act should require the appointment of a proxy to be made using a standard form with the following features: (a) a warning that the strata corporation has no obligation to ensure that the proxy votes in accordance with any instructions set out in this proxy appointment; (b) a space to record either the grantor's strata-lot number or unit number and street address; (c) check boxes to indicate whether the proxy appointment is a general appointment or an appointment for a specific meeting; (d) a space to record the date on which the proxy appointment is signed; (e) a signature block; (f) a space to record any voting instructions, labelled "optional."

How should the Strata Property Act deal with non-compliance with the standard form of proxy appointment or any formal requirements prescribed for proxy appointments?

Brief description of the issue

This issue flows from the previous one. There are two dimensions to this issue: (1) settling what the consequences should be for an otherwise regular and valid proxy appointment that isn't in the standard form; and (2) deciding whether the act needs to spell out these consequences.

Discussion of options for reform

There are essentially two standards to determine what the consequences should be for an otherwise valid proxy appointment that doesn't comply with a required formality. One approach is to conclude that any non-compliance renders the proxy invalid. This sets strict compliance as the standard. The other approach is to allow for some flexibility to depart from the required formality. This makes substantial compliance the standard.

Until very recently, no strata-property act or regulation in Canada required proxy appointments to meet a stringent set of formalities. Late last year Ontario adopted a standard form,³³⁹ but it is too early for that form to have been the subject of judicial comment. So no one knows yet which standard a court would adopt in the face of non-compliance. Some guidance can be taken from the general corporate law of meetings, which has addressed this issue. While there is no guarantee that a court hearing a strata-property case would apply this body of law, commentators generally agree that it would likely be considered in the absence of any applicable strata-property provisions.³⁴⁰

The corporate law on general meetings appears to have adopted a substantial-compliance standard. When it comes to formalities for proxy appointments, as a legal textbook on general meetings explains:

Any form of proxy must obviously comply with the proxy regulations. However, where the proxy has been signed and is otherwise regular, such non-compliance is not grounds for refusal by the scrutineers insofar as this matter is a question properly for the regulators and the courts. It has been held that, where the articles of association provide that a form of proxy be as nearly as possible in "the following form" and specify a form appli-

339. See *supra* note 332.

340. See *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 6.38.

cable to voting at a particular meeting, these instructions are only directory in nature and do not invalidate a proxy which authorizes voting at any meeting.³⁴¹

This passage seems to indicate that substantial compliance with formal requirements is the standard, unless the governing legislation adopts a different one.

Why would the legislation adopt a strict-compliance standard? This standard may be seen as the surest way to achieve the benefits that the formal requirements are supposed to provide. If the rationale for these requirements is to curb abuse by clarifying the agency relationship at the heart of a proxy appointment, then this rationale may be undercut by validating proxy appointments that fail to meet formal requirements. The disadvantage with the strict-standard approach is that it will lead to proxy appointments being invalidated for the smallest of deviations from the formal requirements. This may end up eroding the broader advantages of the proxy system to encourage participation in strata-corporation governance. It could also be seen as being harsh and overbearing.

A substantial-compliance standard would avoid these disadvantages. What is meant by *substantial compliance* could be spelled out in the legislation. This would have the advantage of clarity. The downside of this approach is that it may be difficult to define substantial compliance in legislative language. In addition, using a liberal hand to deal with non-compliance could, at some point, end up undercutting the rationale for having formal requirements.

A third approach would be to leave the act silent on this point. All signs appear to point to the courts applying common sense to non-compliance with formal requirements. An argument could be made that it isn't necessary to try to spell this out in the statute, and doing so might just end up robbing the courts of some of their flexibility in dealing with the issue case by case. The disadvantage with leaving the statute silent on this point is that it risks uncertainty and unexpected outcomes.

The committee's recommendation for reform

The committee favoured adopting a strict-compliance standard. In its view, selecting any other option would end up undercutting the utility of the form.

Consultation respondents strongly favoured the committee's tentative recommendation for reform.

341. Nathan & Voore, *supra* note 295 at 18-30 [footnotes omitted].

The committee noted that amendments to section 56 of the act³⁴² would be necessary to implement its proposal.

The committee recommends:

45. Section 56 (2) of the Strata Property Act should be amended to provide that (a) a document appointing a proxy must be in the prescribed form, and (b) a document appointing a proxy that is not in the prescribed form is invalid.

Should the Strata Property Act limit the number of proxy appointments that a person may hold?

Brief description of the issue

One of the perennial complaints about strata-property proxy legislation is that it has encouraged what one law-reform body colourfully referred to as “proxy farming,” which is “where an individual or small group of owners gather large numbers of proxy votes in order to gain control of the decisionmaking process.”³⁴³ Among the ills attributed to proxy farming are that it breeds resentment and apathy, and results in unrepresentative decisions.³⁴⁴

The *Strata Property Act* (like all other strata-property legislation in Canada) places no limits on the number of proxy appointments that a person may hold for a general meeting. So, in theory at least, strata corporations in British Columbia are vulnerable to threats posed by proxy farming. Should the act be amended to stamp out proxy farming by limiting the number of proxy appointments one person may hold?

Discussion of options for reform

Placing a limit on holding proxy appointments clearly and effectively addresses the concerns raised by proxy farming. If the number of proxy appointments that a single person or a small group is allowed to hold is limited to a low number, then it is hard for that person or group to hold decision-making authority for the entire strata corporation in its hands. Legislation setting such a limit could also be seen as support-

342. See *supra* note 4, s 56 (2) (“A document appointing a proxy (a) must be in writing and be signed by the person appointing the proxy, (b) may be either general or for a specific meeting or a specific resolution, and (c) may be revoked at any time.”).

343. *Strata Title Law Reform: Strata & Community Title Law Reform Position Paper*, *supra* note 26 at 9.

344. See *ibid* (“Proxy farming can lead to decisions that are not always in the best interest of the strata community as a whole. The practice also builds resentment and further discourages participation by owners.”).

ing the broader goal of the proxy system of encouraging participation in the democratic affairs of the strata corporation.

But such legislation would also make it harder to use the proxy system. Eligible voters could feel that such a provision would unduly restrain their voting rights.³⁴⁵ It could end up backfiring, leading to greater apathy and more difficulty in reaching quorum. And it could also make administering a general meeting a more demanding and difficult task.

So one option for this issue would be confirming the status quo and its lack of a limit on proxy appointments. The current system has the benefit of making it comparatively easy to make proxy appointments. The legislation might want to put a premium on this quality, as a way of affirming the value of proxy appointments as an expression of voting rights and as a mechanism to achieve quorum.

The other option would be to propose a legislative limit. An integral part of this option is the number at which that limit is set. There is necessarily an arbitrary element to this choice. Nothing logically compels the choice of one number over another. Some guidance may be found in the experience of other jurisdictions:

- New South Wales has proposed something of a sliding scale, “[l]imit[ing] the number of proxies able to be held by any person to 5 per cent of the lots if the scheme [strata plan] has more than 20 lots, or one if the scheme has fewer than 20 lots.”³⁴⁶
- Queensland, which adopts a hub-and-spoke model to strata legislation,³⁴⁷ has a similar sliding-scale limit.³⁴⁸ The numbers are identical to the New South Wales proposal for strata corporations that come within its “standard module.”³⁴⁹ “Accommodation module” stratas allow for a person to hold proxy appointments up to a number equal to 10 percent of the strata lots, if

345. See Fanaken, *supra* note 34 at 47 (“Some strata corporations have attempted to control proxy voting by introducing bylaws that limit the number of proxies any one person can hold. It does not happen very often. Surprisingly, when a council does attempt to introduce such a bylaw, owners reject the proposition: there is usually a sense that democracy is being thwarted.”).

346. *Strata Title Law Reform: Strata & Community Title Law Reform Position Paper*, *supra* note 26 at 9.

347. See *Body Corporate and Community Management Act 1997* (Qld), 1997/28, s 122 (regulation module).

348. See *ibid*, s 103.

349. See *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld), 2008/273, s 107 (4).

the strata corporation has 20 or more strata lots.³⁵⁰ (If the number is fewer than 20 strata lots, then the limit is one.)³⁵¹ There are no limits for “commercial module” or “small schemes module” stratas.³⁵²

- There is one British Columbia corporate statute that sets a hard limit on proxy appointments. The *Cooperative Association Act* provides that “[a] member may not vote more than 3 membership proxies.”³⁵³

A drawback to setting a legislative limit is that it might bring with it some administrative problems. For example, what happens if one person collects more proxy appointments than is allowed under the legislation? Some proxy appointments may provide for alternates. This could bring the person back under the limit. But if the person remains over the limit, then presumably the person will only be allowed to vote under some of the proxy appointments. Those that don’t make the cut will effectively result in a loss of voting rights for the eligible voter who gave the proxy appointment.

In this situation, who gets to decide which proxy appointments will be exercised and which won’t? Should some kind of legislative rule, such as first in time, apply? Should it be left to the prospective proxy to choose? Or should it be subject to the chair’s judgment?

The committee’s recommendation for reform

The committee was acutely aware that proxy farming is a serious problem. But it was also aware of the need to strike a balance between two general concerns in formulating its recommendation. First, there are concerns about the abusive collection of large numbers of proxy appointments, which can allow a small, unrepresentative minority to hijack a strata corporation’s governance. A second, and countervailing, consideration is the role proxies play in facilitating democratic decision-making.

While there would be advantages to having a legislative limit on collecting proxy appointments, it could also create a technical nightmare. If a person turned up at a

350. See *Body Corporate and Community Management (Accommodation Module) Regulation 2008* (Qld), 2008/270, s 105 (4) (a).

351. See *ibid*, s 105 (4) (b).

352. See *Body Corporate and Community Management (Commercial Module) Regulation 2008* (Qld), 2008/271, s 73–77; *Body Corporate and Community Management (Small Schemes Module) Regulation 2008* (Qld), 2008/272, ss 54–57.

353. SBC 1999, c 28, s 43 (7). Note that “[p]roxies under this section may be given only to a member of the association” (*ibid*, s 43 (6)).

general meeting with a handful of proxy appointments in excess of the limit, then this situation could devolve into a game of go fish, with the proxy and the meeting chair taking turns selecting proxy appointments that will or will not be voted.

The committee was also aware of the need to consider the variety of strata corporations. Some recreational strata corporations, for example, may have developed the practice of giving many proxy appointments to the strata-council president, as a way to ensure that business gets done at the general meeting. There is no abuse in this scenario. These strata corporations could be harmed by a legislative limit.

This specific point leads to a broader concern that affected the committee's thinking on this issue. When it comes to limiting proxy appointments, the diversity of British Columbia's strata corporations has to be taken into account. For example, corporate and commercial strata-lot owners rely on proxies to make their voices heard at strata-corporation meetings. Limiting proxy appointments could have an adverse impact on their interests. Discussions of limiting proxy appointments often focus mainly on strata corporations made up of owners of residential strata lots. It's important to bear in mind how any proposed limitation on proxy appointments would affect owners of nonresidential strata lots, corporate owners, and other classes of strata-lot owners.

The committee also noted that, while legislation could alleviate concerns in the short term, there is no guarantee that proxy farmers won't ultimately find ways around it. Proxy farmers tend to be a lone individual. Faced with a legislative limit, this individual might respond by conscripting his or her spouse and children to be proxies.

Ultimately, the only effective way to fix the problem would be to stamp out the intimidation and abuses that proxy farmers use. A limit on collecting proxy appointments wouldn't address these concerns, because proxy farmers will just continue to use abusive practices to circumvent the limit.

While a majority of consultation respondents agreed with the committee's tentative recommendation, a substantive minority disagreed. This minority tended to be quite passionate in its comments. These comments led the committee to give further consideration to its decision not to propose a cap on proxy appointments. In the end, the committee continued to believe that a legislative cap wouldn't be the most effective tool to deal with the governance problems identified in the comments and would likely have the effect of harming the governance of some strata corporations.

The committee recommends:

46. *The Strata Property Act should not limit the number of proxy appointments that may be held for a general meeting.*

Should the Strata Property Act provide that certain persons may not be a proxy?

Brief description of the issue

Section 56 (3) of the act deals with persons who may be proxies. The default position is that anyone at all can be a proxy, so long as that person complies with any regulations on proxies. This position is subject to two exceptions, one for “an employee of the strata corporation” and the other for “a person who provides strata management services to the strata corporation.” A person who falls into either of these categories is allowed to be a proxy “only if permitted by regulation” (and, in both cases, in compliance with anything else those regulations might say).

The catch is that no regulations on proxies have been adopted.³⁵⁴ The effect of this absence of regulation is:

- an employee of a strata corporation can’t be a proxy;
- a person who provides strata-management services to the strata corporation can’t be a proxy; and
- anyone else can be a proxy, subject to no restrictions.

Despite having the legislative machinery in place to regulate in a more active way who may be proxy, this machinery remains unused. Should the act or the regulations take a different approach to who may be a proxy?

Discussion of options for reform

British Columbia’s legislative limitations on who may be a proxy first appeared in the *Strata Property Act*. Unfortunately, there’s no public record that explains the rationale for the act’s limitations. It may be possible to divine a rationale just by looking closely at who is caught by the provision. They seem to be aimed at people (employees and strata managers) who can be seen as having a special position in the strata corporation that could be exploited to collect proxy appointments. It could also be argued that employees and strata managers who exercise voting rights on be-

354. With the exception of the prescription of an optional proxy-appointment form. See *Strata Property Regulation*, *supra* note 8, Form A (Proxy Appointment).

half of an owner could be in a perceived conflict of interest.³⁵⁵ Since the limitations can be reversed by regulation, confidence in these rationales may have been weaker than usual.

British Columbia is something of an outlier in placing restrictions on who may be a proxy. Only Saskatchewan and Manitoba have similar legislation.³⁵⁶ Saskatchewan's provision is substantially similar to British Columbia's, in that it targets employees and strata managers and is expressed as being "subject to the regulations."³⁵⁷

Manitoba has gone somewhat further than British Columbia and Saskatchewan.³⁵⁸ Like those two provinces, it places restrictions on employees and strata managers. Manitoba also restricts an owner-developer from being an owner's proxy. And, unlike British Columbia's or Saskatchewan's, Manitoba's restrictions aren't subject to the regulations. In fact, the legislation flatly declares that any proxy appointment that appoints someone from a restricted class is "void."³⁵⁹

Every other Canadian province and territory places no legislative or regulatory limits on who may be a proxy. Notably, Ontario has recently passed major amendments

355. See *Strata Title Law Reform: Strata & Community Title Law Reform Position Paper*, *supra* note 26 at 7 ("The current strata laws contain only a few provisions dealing with conflicts of interest. For example, a strata managing agent or caretaker cannot use a proxy vote on a motion from which they may gain a material benefit.").

356. Alberta has recently announced plans to join Saskatchewan and Manitoba by restricting who may be a proxy. See Proposed Amendments to the *Condominium Property Regulation*, *supra* note 335, s 31.2 ("(1) Subject to subsections (2) and (3), a proxy may be given to any individual by an owner or mortgagee who has given written notice under section 26(3) of the Act. (2) A proxy is invalid if it is given to a minor or a person other than an individual. (3) A proxy is invalid if it is given to a manager or employee of either the corporation or a management company retained by the corporation, unless the proxy contains a limitation that it was given only for the purposes of establishing quorum for a meeting."—projected to be in force on 1 July 2019).

357. See *The Condominium Property Act*, *supra* note 24, s 41.1 (3) ("Subject to the regulations, any person may be appointed as a proxy except the property manager or any other employee of the corporation."). Like British Columbia, Saskatchewan hasn't promulgated any regulations on point.

358. See *The Condominium Act*, *supra* note 24, s 128 (5) ("The following persons may not be a proxy of a unit owner who is not a declarant or owner-developer: (a) an employee or agent of the condominium corporation; (b) a declarant or an employee or agent of the declarant or a person who does not deal with the declarant at arm's length; (c) an owner-developer or an employee or agent of the owner-developer or a person who does not deal with the owner-developer at arm's length; (d) a person who provides management services to the condominium corporation under a property management agreement or that person's employee or agent. Any proxy document appointing such a person is void.")

359. *Ibid.*

to its legislation.³⁶⁰ These amendments don't contain a limit on who may be a proxy. The rationale for this hands-off approach appears to be that it supports the broader purposes of allowing proxy appointments as a means to encourage greater participation in the strata corporation's democratic decision-making and as a means to help strata corporations reach their quorum requirements.

This all yields a sizable range of options to consider. At one end would be retaining the current limits and adding a new class or classes of people who should be restricted from being a proxy. These new restrictions could be justified as reducing perceived conflicts of interest or preventing someone from taking advantage of a privileged position to collect proxy appointments and unduly influence the governance of the strata corporation. One example to consider would be to follow Manitoba's lead and prevent an owner-developer or an employee or agent of an owner-developer from being a proxy for anyone other than the owner-developer.

The downside of placing further restrictions on proxy appointments is that they make the proxy system harder to use and may in their own way exacerbate apathy and dysfunction. In addition, these restrictions are little-used in Canada, so there aren't many models to point to for potential reforms in British Columbia.

Another option would be to consider liberalizing the current restrictions. For example, restrictions on strata-corporation employees or strata managers could be made only to apply to a vote on a matter from which the employee or strata manager may gain a material benefit. This option would focus the restriction on clearer cases of potential conflicts of interest.

Moving even further in this direction, another option would be to do away with legislative restrictions altogether. This would leave it up to the eligible voter to pick the proxy that the eligible voter feels can best represent his or her interests. It would also support the view that open access to the proxy system is still a valuable way to encourage eligible-voter participation and help strata corporations reach their quorum requirements. But the disadvantage of this option and the previous one is that it does little to nothing to address the complaints about the proxy system that have built up in recent years.

The committee's recommendation for reform

The committee initially favoured the approach Manitoba has taken. In particular, the committee approved extending the reach of the prohibition to owner-developers.

360. See *Protecting Condominium Owners Act, 2015*, *supra* note 29.

While this tentative recommendation was strongly supported by consultation respondents, some of the comments on it led the committee to reflect on its scope. The committee decided that it would be beneficial to extend the recommendation to cover contractors. In the committee's view, contracts belong within the scope of this provision for the same reasons as the other listed groups. The potential for conflicts of interest would raise questions about their capacity to act as a proxy.

The committee recommends:

47. Section 56 (3) of the Strata Property Act should be amended to provide that the following persons may not be proxies for an eligible voter who is not an owner-developer: (a) an employee, an agent, or a contractor of the strata corporation; (b) an owner-developer or an employee or agent of the owner-developer or a person who does not deal with the owner-developer at arm's length; (c) a person who provides strata management services to the strata corporation or that person's employee or agent.

In view of this revised recommendation, the committee has also amended recommendation (21) to address the situation in which a lawyer takes a proxy appointment for the purpose of acting as a chair of a strata corporation's general meeting.

Issues for Reform—Conduct of Meetings

Introduction

The procedures used to govern the conduct of general meetings are called rules of order. This term doesn't have a legislative definition or even a precise meaning in the law.

Some sense of what constitutes rules of order can be obtained by looking at the topics covered by major publications on the subject. *Robert's Rules of Order* focuses primarily on what it calls "motions," which are roughly equivalent to the *Strata Property Act's* resolutions.³⁶¹ It classifies motions and deals with discussing and voting on motions. It also has chapters addressing topics such as quorum, order of business, nominations and elections, officers, committees, bylaws, and disciplinary procedures.

Two Canadian guidebooks cover the same topics found in *Robert's Rules of Order*, along with some other subjects. *Bourinot's Rules of Order* also addresses reports and

361. Henry M Robert III et al, *Robert's Rules of Order Newly Revised*, 11th ed (Philadelphia: Da Capo Press, 2011).

records,³⁶² while *Wainberg's Society Meetings* contains practical advice for “inexperienced chairs” and “strategic manoeuvres” members may take advantage of in bringing forward motions.³⁶³

Although the *Strata Property Act* has been described as being “silent” on rules of order and having a “gap” on meeting procedures,³⁶⁴ it is apparent that the act and the standard bylaws contain some provisions on the subjects addressed in these guides. What the act and standard bylaws don’t do is address these matters in the comprehensive detail found in commercially published rules of order.

In the absence of provisions in the governing legislation, regulations, and bylaws, a strata corporation (like any other kind of corporation) may adopt its own rules of order.³⁶⁵ This may be done by articulating its own code of rules or by adopting one already in existence (such as one of the guidebooks mentioned above).³⁶⁶ If a corporation hasn’t adopted rules of order, then the common law would apply.³⁶⁷

Rules of order have been described as being “first and foremost purposive.”³⁶⁸ Their purpose is to advance “the basic principle with respect to meetings,” which is that “they must be conducted fairly and reasonably.”³⁶⁹ Courts have disdained strict en-

362. John George Bourinot, *Bourinot's Rules of Order*, 3rd ed by Geoffrey H Stanford (Toronto: McClelland and Stewart, 1977).

363. JM Wainberg & Mark I Wainberg, *Wainberg's Society Meetings Including Rules of Order* (Don Mills, ON: CCH Canadian, 1992). See also Nathan, *supra* note 311 (parallel publication with a focus on for-profit corporations).

364. *The Owners, Strata Plan NW 971 v Daniels*, 2010 BCCA 584 at para 35 [*Daniels CA*], Smith JA, aff'g *The Owners, Strata Plan NW971 v Daniels*, 2009 BCSC 1235 [*Daniels SC*]. See also Fanaken, *supra* note 34 at 184 (“The *Strata Property Act* does not prescribe or mandate specific rules of order for the conduct of council meetings or general meetings of the owners.”); *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 6.38 (“The Act contains only a few provisions governing conduct of general meetings.”).

365. See Nathan & Voore, *supra* note 295 at 19-2; *Daniels SC*, *supra* note 364 at para 24, Hyslop J.

366. See Nathan & Voore, *supra* note 295 at 19-2.

367. See Nathan & Voore, *ibid* at 19-3; *Daniels SC*, *supra* note 364 at para 25.

368. Nathan & Voore, *supra* note 295 at 19-4.

369. Nathan & Voore, *ibid* at 19-1. See also Nathan, *supra* note 311 at xxv (“The paramount purpose of parliamentary procedure is to democratically ascertain the will of the majority and to see that their will is carried out, but with fairness and good faith. When the majority decision has been determined by a vote, that vote becomes the decision of the assembly. It is then the duty of the minority to accept and abide by that decision. . . . This submission to the will of the majority is conditional upon the fairness of the majority and utilization of democratic principles.”).

forcement of “technical” rules if strict enforcement is determined to violate this basic principle and cause prejudice to someone at the meeting.³⁷⁰

Should the Strata Property Act provide default rules of order for general meetings?

Brief description of the issue

While the *Strata Property Act*, *Strata Property Regulation*, and standard bylaws each contain provisions that deal with selected aspects of meeting procedure, taken together these sources don’t provide a comprehensive set of rules of order for general meetings. The absence of rules of order could be called a gap in the legislation, which may cause uncertainty and needless conflict. Should the *Strata Property Act* prescribe rules of order for general meetings?

Discussion of options for reform

This issue comes down to a yes-or-no question: should the act prescribe a complete set of rules of order? Or, should it retain the status quo (which sees the act, regulation, and standard bylaws address certain aspects of meeting procedure while leaving some space for strata corporations to adopt their own rules on the subjects that aren’t addressed)?

The main arguments in favour of prescribed rules of order are that it would bring greater certainty and accessibility to this area of the law. As it stands, rules of order appear in a host of different places. A handful are found in the act and the regulation; a few more show up in the standard bylaws. Some strata corporations may have adopted rules of order from a commercially published source, but many likely have not. For these strata corporations, many procedural questions can only be decided by reference to the strata corporation’s customs and past practices and the common law on corporate meetings. These latter two sources are not simple to state and apply. Turning to them may exacerbate disputes in contested general meetings.

Having a complete set of written rules of order in one place may overcome these problems. Having rules of order prescribed by law would reduce the scope for disputes over the content of the rules. It would also make the rules more accessible, particularly for volunteer strata-corporation eligible voters who likely won’t have the time or training to pursue rules in a voluminous body of case law and practical guidebooks. A clearer and more-accessible body of rules of order could also contribute to better decision-making at strata corporation meetings.

370. *Daniels SC*, *supra* note 364 at paras 51–55.

Prescribing rules of order may have disadvantages. For one, any gains in certainty about the rules would inevitably come at the expense of the flexibility that is the hallmark of the current system. Currently, strata corporations are free to choose the bulk of their meeting procedures, subject to a few provisions that are set out in the act and the regulation. Moving to a prescribed set of rules of order would mean moving to something more like a one-size-fits-all approach to meeting procedure. Given the diversity of strata corporations in British Columbia, this approach could produce rules that are felt to be too rigid and formal for some strata corporations or procedures that are inconsistent with other strata corporations' past practices.

Enforcement of prescribed rules of order might also create problems. The courts currently apply something of a light touch in enforcing procedural rules, making them subject to broad goals of ensuring fair and reasonable treatment of meeting participants. This could change if the rules of order were spelled out in legislation or a regulation.

Even if the courts generally kept their current approach to enforcing procedural rules, the existence of a prescribed set of rules of order would, in itself, create a learning curve for strata corporations. General meetings would have to broadly adhere to the standards set by the prescribed rules. Responsibility for achieving this result would be placed in the hands of those who run strata-corporation general meetings.

Finally, any prescribed set of rules of order would likely have to be much longer and more detailed than the current standard bylaws. Commercial publications tend to run to hundreds of pages, a length that is felt to be necessary to address the situations and concerns that may crop up during a general meeting. A prescribed set of rules of order would likely have to match this level of complexity and detail. Otherwise, people would perceive gaps in the prescribed rules and would have to turn to commercial publications or the common law to fill in those gaps.

The other option to consider is retaining the status quo by proposing that the act not prescribe a comprehensive set of rules of order. The *Strata Property Act's* current approach to rules of order is consistent with the approach taken by other strata-property and corporate acts. Corporate legislation rarely deals with rules of order,³⁷¹ and even corporate bylaws tend not to have provisions dealing with meeting

371. See Nicholas & Voore, *supra* note 295 at 19-2 ("Corporate law statutes are generally silent with respect to rules of order.").

procedures.³⁷² Legislators and policymakers rarely give reasons for why they aren't doing something, and this pattern holds true for the absence of rules of order in British Columbia's strata-property framework. Nevertheless, it is possible to discern a rationale for the status quo: it essentially is the mirror-image position on the disadvantages listed earlier.

The status quo preserves flexibility for strata corporations to adopt their own rules of procedure. It avoids the need to compile a lengthy, detailed, and complex set of statutory or regulatory provisions on procedural matters. And it also avoids potential enforcement issues.

The disadvantages of the current approach are that it leaves the law in a relatively uncertain and inaccessible state. This places a burden on strata corporations to adopt and apply rules of order. Some strata corporations may turn to commercial sources that aren't compatible with the *Strata Property Act*.³⁷³ Others may simply fail to spell out rules of order, which could lead to confusion and protracted disputes over procedure.

The committee's recommendation for reform

The committee didn't favour proposing that the act prescribe a comprehensive set of rules of order. In its view, in practice, retaining order all comes down to the chair. Most meeting chairs are competent and able to control the meeting. Those who aren't tend to perceive their weaknesses and turn the chairing duties over to someone with experience, such as the strata manager. Putting in place a set of rigid rules of order would likely cause more problems than it could solve.

The committee was also concerned that establishing a comprehensive set of rules of order could transform complaints about the outcome of votes into disputes over whether meeting procedures were strictly followed.

A bare majority of consultation respondents supported the committee's tentative recommendation. Even though a substantial minority of consultation respondents expressed a preference for prescribing a comprehensive set of rules of order, the committee continued to stand behind its original decision.

372. See *ibid* ("it usually proves impractical to adopt formal rules of order in the by-laws" [footnote omitted]).

373. See Fanaken, *supra* note 34 at 185 ("With all due respect to Robert's [Rules of Order], that source should not be fully relied upon and utilized for strata corporation meetings although certain basic aspects can be used for application in a strata corporation environment.").

Despite its skepticism about the need for a prescribed, comprehensive set of rules of order, the committee did note that there are specific areas in which meeting procedures could benefit from legislative reform.

The committee recommends:

48. The Strata Property Act should not prescribe a comprehensive set of rules of order for strata-corporation general meetings.

Issues for Reform—Quorum

Introduction

As a textbook on corporate meetings explains, a *quorum* is “the minimum number of shareholders that must be present in order that the business of the meeting may be validly transacted.”³⁷⁴ The purpose of a legislative quorum requirement is “to avoid the usurping of decision making by a small and potentially unrepresentative group.”³⁷⁵

The *Strata Property Act* implements a quorum requirement by providing that “[b]usiness must not be conducted at an annual or special general meeting unless a quorum is present.”³⁷⁶ For most strata corporations quorum at a general meeting is reached by attendance of “eligible voters holding 1/3 of the strata corporation’s votes, present in person or by proxy.”³⁷⁷ But strata corporations are free to change what their quorum for general meetings will be by spelling out a different quorum in their bylaws.³⁷⁸

374. Nathan & Voore, *supra* note 295 at 16-11.

375. *Ibid.*

376. *Supra* note 4, s 48 (1).

377. *Ibid*, s 48 (2) (a). A special provision applies to very small strata corporations: “if there are fewer than 4 strata lots or fewer than 4 owners, [then quorum is] eligible voters holding 2/3 of the strata corporation’s votes, present in person or by proxy” (*ibid*, s 48 (2) (b)).

378. See *ibid*, s 48 (2).

Should the Strata Property Act contain provisions spelling out what happens when a quorum isn't present at the start of a general meeting?

Brief description of the issue

The act contains a detailed procedure that applies by default whenever a general meeting is set to begin but a quorum isn't present:

Unless otherwise provided in the bylaws, if within 1/2 hour from the time appointed for an annual or special general meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same place and time but, if on the day to which the meeting is adjourned a quorum described in subsection (2) is not present within 1/2 hour from the time appointed for the meeting, the eligible voters present in person or by proxy constitute a quorum.³⁷⁹

Provisions like this one are commonly found in strata-property and other corporate-law statutes. They create a kind of safety valve, allowing a strata corporation to get on with its business, even if it is repeatedly unable to attain a quorum for a general meeting.

The *Strata Property Act's* provision isn't the only way to address this issue. For example, the time limits in the provision could be changed. It could also be argued that the provision shouldn't be in the act. Should any changes be made to this provision?

Discussion of options for reform

The current provision requires strata corporations to wait 30 minutes from the start of a meeting, then adjourn the meeting for seven days, then wait another 30 minutes before getting on with business. These numbers are, at some level, arbitrarily chosen. It could be argued that they end up dragging out the process well past the time when it has become clear that a quorum will not be reached. Strata corporations would benefit from shorter time lines, which would allow them to reach decisions more quickly and carry on their business more efficiently.

The danger of this proposal is that it goes too far in the direction of efficiency and ends up undermining the quorum requirement. If a strata corporation is able to move too quickly from declaring a lack of quorum to validly transacting business, then this might empower small, unrepresentative factions to make decisions on behalf of the whole collective.

379. *Ibid*, s 48 (3).

Another approach would be to take the numbers out of the statute altogether. The *Societies Act* takes this approach. Its equivalent to section 48 (3) of the *Strata Property Act* reads “[t]he bylaws of a society may provide that if a general meeting is adjourned until a later date because a quorum is not present, and if, at the continuation of the adjourned meeting, a quorum is again not present, the voting members present constitute a quorum for the purposes of that meeting.”³⁸⁰ This provision leaves the time lines up to the bylaws of a society, giving the society the flexibility to come up with a timetable that makes sense to its members.

The downside with this approach is that it probably wouldn’t represent much of a change from the current *Strata Property Act* provision. That provision already operates as a default choice (“unless otherwise provided in the bylaws”).

A third option would be to tighten up the legislative requirement. The provision has been criticized as being unclear and allowing strata corporations to manipulate the time limits set out in the act by amending their bylaws.³⁸¹ Restricting the extent to which bylaws can amend the time limits would give added support to the quorum requirement. But it would also hamper meeting efficiency and ease of administration.

Finally, it could be argued that the provision should come out of the act. The act requires a quorum to transact business at a general meeting, and this provision can be seen as undercutting that policy. The downside is that, in the absence of this provision, some strata corporations may lapse into deadlock, and may end up requiring radical intervention (such as the appointment of an administrator) to make necessary decisions.

380. *Supra* note 296, s 82 (4).

381. See Fanaken, *supra* note 34 at 41 (“[S]ome inventive bylaws provide that, if a quorum is not established in a 1/2 hour, the meeting stands adjourned for a further 1/2 hour at which time those owners who are present will constitute a quorum. This saves all the hassle of sending out new notices and returning a week later. It certainly works very efficiently but is it what the legislators intended? Perhaps not. It seems that the legislators conceded that a time threshold of less than 1/2 an hour would be acceptable but did they contemplate and also concede that the one-week postponement provision could be avoided by a clever bylaw amendment? Some strata corporation bylaws have quorum requirements (waiting times) of just fifteen minutes. The legislators need to reconsider this matter. If the intent was to provide a fair opportunity to all owners to exercise participatory democracy, the interpretation of ‘unless otherwise provided in the bylaws’ surely means only the level (1/2, 1/3, 1/5) not the time (one week).”).

The committee's recommendations for reform

The committee perceived there to be two issues linked together under this heading.

The first is the timing issue with the current provision. In the committee's view, the requirement to adjourn the meeting for seven days causes mischief in practice. For example, the committee noted concerns about two aspects of the existing provision: its call to hold the meeting in the same location and its lack of direction on notice for the adjourned meeting.

In the committee's view, the provision could be improved by simply excising the reference to adjourning the meeting. A strong majority of consultation respondents agreed with the committee's proposal.

The committee recommends:

49. Section 48 (3) of the Strata Property Act should be amended by striking out the words "the meeting stands adjourned to the same day in the next week at the same place and time but, if on the day to which the meeting is adjourned a quorum described in subsection (2) is not present within 1/2 hour from the time appointed for the meeting."

The second issue arises in connection with meetings requisitioned by a group of eligible voters.³⁸² In this case, the voters requisitioning the meeting may be the only ones who show up. This means that they can ultimately be deemed to constitute a quorum, with the result being that an unrepresentative group makes decisions on behalf of the strata corporation.

A majority of consultation respondents supported the committee's proposed reform to address this issue.

The committee recommends:

50. Section 48 of the Strata Property Act should be amended by adding a new subsection that reads "Subsection (3) does not apply to a special general meeting called by voters under section 43."

382. See *Strata Property Act*, *supra* note 4, s 43.

Should the Strata Property Act address when a quorum must be present during a general meeting?

Brief description of the issue

Must a quorum be present throughout the meeting? Neither the *Strata Property Act* nor the standard bylaws directly answers this question. Section 48 (1) of the act (“[b]usiness must not be conducted at an annual or special general meeting unless a quorum is present”) could be read as implicitly endorsing the need to have a quorum present continuously at a general meeting, or at the very least when any votes are taken.³⁸³

More support for the argument that a quorum must be continuously present can be found in the common law of corporate meetings.³⁸⁴ But the common law has a couple of wrinkles that can complicate the answer to this question. First, it appears that a corporation could vary this common-law rule by adopting bylaws setting out a different rule. In a case decided under British Columbia’s old *Company Act*,³⁸⁵ the supreme court upheld a vote taken at a general meeting that began with a quorum of shareholders but that had been reduced to one shareholder’s proxy at the time of the vote, on the strength of a bylaw that provided that “the quorum need not be present throughout the meeting.”³⁸⁶ Second, “courts have been reluctant to invalidate corporate proceedings where a shareholder has withdrawn from a meeting for the sole purpose of breaking the quorum.”³⁸⁷

383. For an example of a provision that directly addresses this issue, see *Societies Regulation*, BC Reg 216/2015, Schedule 1, Model Bylaws, s 3.9 (“If, at any time during a general meeting, there ceases to be a quorum of voting members present, business then in progress must be suspended until there is a quorum present or until the meeting is adjourned or terminated.”).

384. See Nathan & Voore, *supra* note 295 at 16-14 to 16-14.1 (“[W]here a quorum was represented at the commencement of a meeting, but certain shareholders subsequently withdrew with that result that, at the time of the meeting, there was no longer a quorum, it was held that the meeting failed for lack of quorum and was therefore a nullity.” [citations omitted]).

385. RSBC 1979, c 59.

386. *Moco Management Ltd v Llernam Holdings Ltd* (1985), 68 BCLR 128 at 133, 35 ACWS (2d) 441 (SC), Catliff LJSC. The court found support for the company’s bylaw in a provision of the *Company Act* that set the quorum for general meetings, but made the number subject to a company’s bylaws—similar to section 48 (2) of the *Strata Property Act* (see *ibid* at 133–34).

387. Nathan & Voore, *supra* note 295 at 16-15 [citation omitted]. Nathan & Voore qualify this statement by noting that it’s “U.S.” courts that have gone on the record making this point, but their broader discussion of the issue indicates that Canadian courts would likely, if faced with the same set of facts, rule in the same way as their American counterparts.

Some corporate-law statutes have gone a step further and adopted as their default position (subject to the bylaws) that “opening quorum [is] sufficient.”³⁸⁸ Should the *Strata Property Act* be amended to follow the lead of this other corporate legislation?

Discussion of options for reform

The main advantage of adopting a provision that only requires a quorum to be present at the beginning of a general meeting is that it would streamline business at a meeting. Leaving the issue open also leaves open the possibility that a meeting chair will have to make a judgment on a member’s motives for withdrawing from a meeting. This could be a difficult decision. Finally, the provision would serve to clarify the law.

The drawback of this proposal is that it could serve to undermine the quorum requirement. Attendance at a meeting could dwindle away and important decisions might end up being made by a small, unrepresentative group. In addition, this proposal isn’t one that has been embraced in strata-property legislation. Only New Brunswick³⁸⁹ and Nova Scotia³⁹⁰ have enacted legislative versions of this proposal, which is found more commonly in general corporate statutes. Finally, if there is a desire to clarify the law, then that goal could be accomplished by adopting a provision that directly states that a quorum must be continuously present throughout a general meeting.

The committee’s recommendation for reform

The committee favoured a clear rule stating that a quorum must only be present at the start of a general meeting. In its view, this option is the most practical approach to the issue. A strong majority of consultation respondents agreed with the committee.

388. See e.g. *Canada Business Corporations Act*, RSC 1985, c C-44, s 139 (2) (“If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.”); *Canada Not-for-profit Corporations Act*, *supra* note 336, s 164 (3).

389. See *Condominium Property Act*, *supra* note 24, s 26 (2) (“No business shall be transacted at an owners’ meeting unless a quorum is present at the beginning of business.”).

390. See *Condominium Act*, *supra* note 24, s 14A (2) (“No business shall be transacted at a meeting of the members of the corporation unless a quorum is present at the commencement of business.”).

The committee recommends:

51. The Strata Property Act should provide that if a quorum is present at the opening of an annual general meeting or a special general meeting, the eligible voters present may, unless the bylaws otherwise provide, proceed with the business of the meeting, even if a quorum is not present throughout the meeting.

Should the Strata Property Act address whether quorum at a strata-council meeting is affected by a member's recusal on an issue due to a conflict of interest?

Brief description of the issue

The standard bylaws address quorum for strata-council meetings.³⁹¹ Neither the act nor the standard bylaws directly addresses the effect on quorum when a council member complies with the act's conflict-of-interest provision and "leave[s] the council meeting (i) while the contract, transaction or matter is discussed, unless asked by council to be present to provide information, and (ii) while the council votes on the contract, transaction or matter."³⁹² Implicitly, the council member might not be considered part of the quorum because "[c]ouncil members must be present in person at the council meeting to be counted in establishing quorum."³⁹³ But it isn't clear how this general provision would apply to the specific case of a council member leaving a meeting due to a conflict of interest. A strata council in these circumstances could find itself in a tight spot: a member or members have to leave the meeting to comply with the conflict-of-interest provision and this results in the council lacking quorum to transact business. Should the act contain a provision that addresses this concern?

Discussion of options for reform

One of the other corporate statutes in British Columbia has a provision that directly addresses this issue, and which could be used as a model for the *Strata Property Act*. The *Business Corporations Act* provides that "a director who has a disclosable interest in a contract or transaction and who is present at the meeting of directors at which the contract or transaction is considered for approval may be counted in the

391. See *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws, s 16 (1) ("A quorum of the council is (a) 1, if the council consists of one member, (b) 2, if the council consists of 2, 3 or 4 members, (c) 3, if the council consists of 5 or 6 members, and (d) 4, if the council consists of 7 members.").

392. See *ibid*, s 32 (e).

393. See *ibid*, Schedule of Standard Bylaws, s 16 (2).

quorum at the meeting whether or not the director votes on any or all of the resolutions considered at the meeting.”³⁹⁴

This provision would ensure that strata councils don’t get caught in an awkward spot by the operation of the quorum and conflict-of-interest provisions. It might also give some support to the conflict-of-interest provision, as it would ensure that a declaration of a conflict or a potential conflict wouldn’t place the council in a position in which it couldn’t act due to a loss of quorum. And, finally, this proposal would clarify the law by setting out in the act a provision that directly addresses the issue.

The one drawback of this proposal is that it could be seen as undermining the quorum requirement. The proposal will allow strata councils to make decisions when they don’t have enough members present to reach a quorum. This result raises concerns that quorum requirements were meant to address.

The committee’s recommendation for reform

The committee decided that the act should address this issue. It preferred the option of allowing a council member to be counted in the quorum in these circumstances. The vast majority of consultation respondents agreed with the committee’s proposal on this issue.

The committee recommends:

52. The Strata Property Act should provide that a strata-council member who has a direct or indirect interest in (a) a contract or transaction with the strata corporation, or (b) a matter that is or is to be the subject of consideration by the council, if that interest could result in the creation of a duty or interest that materially conflicts with that council member’s duty or interest as a council member, and who is present at a council meeting in which the contract, transaction, or matter is considered for approval may be counted in the quorum at the meeting even if the council member leaves the council meeting while the contract, transaction, or matter is discussed and while the council votes on the contract, transaction, or matter.

394. *Supra* note 296, s 149 (4). Note that this legislative provision is a default rule; it applies “[u]nless the memorandum or articles provide otherwise.”

Issues for Reform—Voting

Introduction

Part 4, division 5 of the act deals with the voting rights, eligibility to vote, and the mechanics of voting.³⁹⁵ Voting is the way to determine the collective's decision on an issue put to it.

Decisions taken at general meetings are formalized into resolutions, which are agreed-upon expressions of the will of the general meeting.

The act classifies resolutions by reference to the voting margin needed to adopt the resolution. By this system, there are four kinds of resolutions:

- a resolution passed by a majority vote, which “means 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 proxy at the time the vote is taken and who have not abstained from voting”;³⁹⁶
- a resolution passed by a 3/4 vote, which “means 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”;³⁹⁷
- a resolution passed by an 80% vote, which “means a vote in favour of a resolution by at least 80% of the votes of all the eligible voters”;³⁹⁸
- a resolution passed by a unanimous vote, which “means a vote in favour of a resolution by all the votes of all the eligible voters.”³⁹⁹

395. *Supra* note 4, ss 53–58.

396. *Ibid*, s 1 (1) “majority vote.”

397. *Ibid*, s 1 (1) “3/4 vote.”

398. *Ibid*, s 1 (1) “80% vote.”

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

Should the Schedule of Standard Bylaws to the Strata Property Act be amended to clarify the effect of an abstention in voting at a strata-council meeting?

Brief description of the issue

The standard bylaws contain the following provision for voting at strata-council meetings: “decisions must be made by a majority of council members present in person at the meeting.”⁴⁰⁰ The committee understands that there has been some confusion in applying this bylaw when a council member abstains from voting. Should the bylaw be amended to address this confusion?

Discussion of options for reform

One option would be to amend this bylaw to bring its wording more into line with the act’s definitions of “majority vote”⁴⁰¹ and “3/4 vote.”⁴⁰² These definitions, which set out the voting thresholds for strata-corporation resolutions, both clearly spell out that an abstaining voter isn’t included in the count to determine whether a vote has reached its threshold. In addition to clarity, this option would have the advantage of aligning voting at strata-council meetings with voting on the bulk of resolutions that would appear in a strata-corporation general meeting.⁴⁰³

Another option would be to amend the bylaw to make it clear that abstentions *do* count toward the vote total. This would put voting at strata-council meetings at odds with voting at general meetings when it comes to abstentions, a result that could be justified by pointing to differences between the two kinds of meetings.

400. *Ibid*, Schedule of Standard Bylaws, s 18 (1).

401. See *ibid*, s 1 (1) “majority vote” (“means 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 proxy at the time the vote is taken and who have not abstained from voting”).

402. See *ibid*, s 1 (1) “3/4 vote” (“means 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”).

403. But note that resolutions passed by an 80-percent vote or a unanimous vote treat abstentions differently. See *ibid*, s 1 (1) “80% vote” (“means a vote in favour of a resolution by at least 80% of the votes of all the eligible voters”), “unanimous vote” (“means a vote in favour of a resolution by all the votes of all the eligible voters”). That said, these voting thresholds apply to exceptional resolutions that are rarely up for a vote in most strata corporations.

Finally, a third option would be to leave the bylaw as is. An argument could be made that it is being applied adequately and there is no need for amending the bylaw at this time.

The committee's recommendation for reform

The committee decided that the standard bylaw's position on abstentions should be clarified. Leaving the wording of the bylaw in its current state would run the risk of it being misapplied. The committee favoured aligning the bylaw's approach to abstentions to that found in the definitions of *majority vote* and *3/4 vote*. In its view, this approach would also align with the expectations of strata-council members. The majority of consultation respondents agreed with the committee's proposal by a wide margin.

The committee recommends:

53. Section 18 (1) of the Schedule of Standard Bylaws should be amended by adding "and who have not abstained from voting" after "majority of council members present in person at the meeting."

Should the Strata Property Act allow the president (or the vice president) when acting as meeting chair to have a casting vote?

Brief description of the issue

If there is a tie vote on a resolution at a general meeting, then the *Strata Property Act* makes it possible for "the president, or, if the president is absent or unable or unwilling to vote, the vice president" to "break the tie by casting a second, deciding vote."⁴⁰⁴ This provision doesn't set out the default position for strata corporations. The provision only comes into effect "if the bylaws so provide."⁴⁰⁵

404. *Ibid*, s 53 (4).

405. *Ibid*, s 53 (4). The act's standard bylaws enable the operation of this provision. See *ibid*, Schedule of Standard Bylaws, ss 18 (2) (applicable to strata-council meetings), 27 (5) (applicable to general meetings).

What this provision is referring to is commonly called the meeting chair's *casting vote*.⁴⁰⁶ While the casting vote isn't a feature of the common law,⁴⁰⁷ it is regularly enabled by corporate legislation. Its purpose is to "resolve disputes"⁴⁰⁸ and "remedy occasional, or even frequent, tie votes."⁴⁰⁹ The casting vote operates as "a second vote exercisable in addition to the votes that the chair personally has as a shareholder."⁴¹⁰ It is meant to be exercised in "good faith,"⁴¹¹ and "not to promote the personal interests of the chair."⁴¹²

Should the act continue to enable this casting vote, or does its use raise enough concerns to call for its abolition?

Discussion of options for reform

There are essentially two options for this issue, with one wrinkle. The main options are to recommend abolishing the casting vote or retaining the status quo. The wrinkle is that, despite not being mentioned in the legislation, the standard bylaws make reference to a president having a casting vote at strata-council meetings.⁴¹³ Strata-council meetings aren't general meetings, so it's possible to view them as being outside the scope of this issue. But it's equally possible to fairly decide that they should be addressed as part of this issue. And it could be argued that the casting vote should be treated differently for general meetings and strata-council meetings.

Even though there has been little-to-no commentary suggesting that the casting vote is causing problems for strata corporations, it's still possible to make out a case for abolition. Commentators on the law of general meetings concede that "the chair may

406. Note that the *Strata Property Act* and the standard bylaw implement a limited version of the casting vote. It only applies if the president (or, if the president is absent or unable or unwilling to vote, the vice president) is acting as meeting chair. If anyone else is acting as meeting chair, then that person doesn't have the casting vote.

407. See Nathan & Voore, *supra* note 295 at 2-11.

408. *Ibid* at 11-18.

409. *Ibid* at 2-11.

410. *Ibid*.

411. *Ibid* at 11-18.1.

412. *Ibid* at 11-18.

413. *Supra* note 4, Schedule of Standard Bylaws, s 18 (2) ("Unless there are only 2 strata lots in the strata plan, if there is a tie vote at a council meeting, the president may break the tie by casting a second, deciding vote.").

be put in a difficult position to cast the deciding vote.”⁴¹⁴ While the casting vote is meant to be taken in good faith, it may be difficult for a strata-corporation president (or vice president) to avoid the perception of acting to further his or her own interests, particularly if the casting vote is used to grant approval of a resolution the president (or vice president) supports. Commentators note that “it is traditional for chairs to vote against the motion” when exercising the casting vote, presumably as a way to preserve the status quo and to insulate their conduct against charges of self-dealing.⁴¹⁵ But this tradition undercuts much of the rationale for a casting vote, as it suggests that the president (or vice president) should use this power to reach the same result that would have occurred in the absence of a casting vote.

The existence of such a tradition points to an even more worrying concern. Instead of creating the perception of self-interested acting, the casting vote could actually be a vehicle for abuse and self-dealing. While bad-faith use of the casting vote doesn’t appear to have come up in any strata-property cases, there is at least one company-law judgment that has overridden corporate bylaws allowing the use of a casting vote in a company with a small number of shareholders.⁴¹⁶ Similar concerns could make a casting vote problematic in small strata corporations or in strata corporations with equal-sized voting blocs.

Finally, apart from any issues with bad faith or self-dealing, the existence of a casting vote adds a level of complexity to general meetings and potentially places an additional burden on a strata-corporation president. The casting vote is something of a counterintuitive concept. It also runs somewhat in opposition to the one-vote-per-strata-lot standard that prevails in residential strata corporations. Using the casting vote in such a way that everyone agrees is manifestly transparent and fair could be a tall order, particularly in fraught circumstances.

There would be downsides to eliminating the casting vote. These disadvantages tie into the problem that the casting vote is meant to address, which is that tie votes defeat resolutions and may thwart the strata corporation in taking action that it needs to take.

414. Nathan & Voore, *supra* note 295 at 2-11.

415. *Ibid.*

416. See *Daniels v Fielder* (1998), 65 OR (2d) 629 at 632, [1988] OJ No 1592 (QL), Eberle J (“I further order the cancellation *nunc pro tunc* of arts. 11 and 46 of the by-laws which provide for the chairman of the meeting to have a casting vote. The existence of a casting vote is inimical to and inconsistent with the partnership basis upon which this company was commenced and operated until Daniels’ death.”).

There may be other advantages to maintaining the status quo. It could be argued that the current provision strikes a helpful balance. Because the casting vote must be enabled in a strata corporation's bylaws, any strata corporation that was opposed to allowing the casting vote could simply do away with it for their general meetings by amending their bylaws.

The committee's recommendation for reform

The committee was of the view that it needed to address the casting vote for both general meetings and strata-council meetings. The committee perceived a distinction between the two kinds of meetings. It noted that the casting vote is rarely used for general meetings. When it is used, it has the potential to cause confusion. But for strata-council meetings the casting vote is used more often and appears to serve a more useful purpose. Given the small numbers at play in council meetings, having a casting vote is important to avoid deadlock.

A majority of consultation respondents favoured the committee's approach to this issue.

The committee recommends:

54. The Strata Property Act should not allow any person who is chair of an annual general meeting or a special general meeting to break a tie on a resolution at the general meeting by casting a second, deciding vote, but should continue to allow a president (or, if the president is absent or unable or unwilling to vote, the vice president) to break a tie vote at a strata-council meeting by casting a second, deciding vote.

Should the voting threshold for a resolution passed by a 3/4 vote be changed?

Brief description of the issue

There are essentially four voting thresholds for passing strata-corporation resolutions. One of these thresholds, the unanimous-vote threshold, applies to fundamental changes to a strata that are rarely encountered in practice. A second threshold, the 80-percent-vote threshold for winding-up resolutions,⁴¹⁷ can be traced back to the committee's *Report on Terminating a Strata*.⁴¹⁸

417. See *Strata Property Act*, *supra* note 4, s 1 (1) "winding-up resolution" ("means a resolution referred to in (a) section 272 (1) [vote to cancel strata plan and become tenants in common], or (b) section 277 (1) [appointment of liquidator]").

418. See *supra* note 14.

The third voting threshold applies to resolutions passed by a majority vote. This threshold implements the basic democratic principle of majority rule. It's difficult to see how this principle could be removed from the act in favour of some other approach.

That leaves the fourth voting threshold, which is for resolutions passed by a 3/4 vote. This voting threshold is used for resolutions authorizing major, long-range changes to a strata corporation's governance or important, far-reaching repairs to and renewal of property. Some examples of actions requiring authorization by a resolution passed by a 3/4 vote are:

- amending bylaws in a strata plan exclusively composed of residential strata lots;⁴¹⁹
- paying funds out of the contingency reserve fund;⁴²⁰
- approving a special levy;⁴²¹
- borrowing money;⁴²²
- changing the fiscal year end;⁴²³
- approving a significant change in the use or appearance of common property;⁴²⁴
- authorizing a lawsuit as representative of the owners;⁴²⁵
- cancelling a strata-management contract;⁴²⁶
- amalgamating with another strata corporation.⁴²⁷

419. See *Strata Property Act*, *supra* note 4, s 128 (1) (a).

420. See *ibid*, s 96 (b) (i) (B).

421. See *ibid*, s 108 (2) (a).

422. See *ibid*, s 111 (1).

423. See *ibid*, s 102 (1).

424. See *ibid*, s 71.

425. See *ibid*, s 171 (2).

426. See *ibid*, s 39 (1).

427. See *ibid*, s 269 (2).

A 2014 amendment to the *Strata Property Act* has placed a qualifier on one of the items on this list.⁴²⁸ Some expenditures from the contingency reserve fund may now be authorized by a resolution passed by a majority vote.⁴²⁹

While it continues to make sense to require greater-than-majority-vote approval for the listed items and similar ones, arguments can be made that the voting threshold shouldn't be set as high as a 3/4 vote. Should the act be amended to provide a new voting threshold, replacing the 3/4 vote?

Discussion of options for reform

Setting a voting threshold for resolutions is all about striking the right balance. The goal is to have a substantial number (greater than a majority) of voters in agreement with a decision while not making that number so high as to make reaching the threshold too difficult in practice.

The argument in favour of a lower threshold is that it would do a better job of reaching this goal. While any number selected for the threshold could be called arbitrary, there is a clear trend in corporate legislation away from using the 3/4 threshold and toward using a 2/3 threshold. This trend is evident in both for-profit⁴³⁰ and not-for-profit⁴³¹ legislation.

Where this trend is less in evidence is in strata-property legislation. Across Canada, Saskatchewan is the only directly comparable example of using the 2/3 threshold in cases where British Columbia calls for a resolution passed by a 3/4 vote.⁴³² New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, the Northwest Territories, and Nunavut all use either 2/3 or 60 percent as their vot-

428. See *Natural Gas Development Statutes Amendment Act, 2014*, SBC 2014, c 10, s 43 (in force 9 April 2014).

429. See *Strata Property Act*, *supra* note 4, s 96 (b) (i) (A) ("the expenditure is first approved by a resolution passed by (A) a majority vote at an annual or special general meeting if the expenditure is (I) necessary to obtain a depreciation report under section 94, or (II) related to the repair, maintenance or replacement, as recommended in the most current depreciation report obtained under section 94, of common property, common assets or the portions of a strata lot for which the strata corporation has taken responsibility under section 72 (3)").

430. See e.g. *Business Corporations Act*, *supra* note 296, s 1 (1) "special majority"; *Canada Business Corporations Act*, *supra* note 388, s 2 (1) "special resolution."

431. See e.g. *Societies Act*, *supra* note 296, s 1 (1) "special resolution"; *Cooperative Association Act*, *supra* note 353, s 1 (1) "special resolution"; *Canada Not-for-profit Corporations Act*, *supra* note 336, s 2 (1) "special resolution."

432. See *The Condominium Property Act*, *supra* note 24, s 2 (1) (z).

ing threshold. But the threshold is applied against a different voting pool than the one used in British Columbia. Under the *Strata Property Act*, a 3/4 vote is one that achieves 3/4 of the votes cast on a resolution at a general meeting (not counting abstentions).⁴³³ In these other jurisdictions, the threshold is applied to “ownership of the common elements”—a concept equivalent to British Columbia’s unit entitlement.⁴³⁴

It could be argued that the current law in British Columbia operates well by setting a high but not impossible-to-reach hurdle, which effectively protects minority rights. There is some support for using a 3/4 vote threshold in other provinces. Alberta,⁴³⁵ Manitoba,⁴³⁶ and Québec⁴³⁷ use versions of this threshold.⁴³⁸ The current threshold also has the benefit of familiarity.

In considering this issue, the committee also paid heed to the 2014 amendment.⁴³⁹ The significance of this amendment could be seen to weigh in favour of either reforming the current threshold or retaining it. On the one hand, the amendment could be evidence that the threshold is too high and is impeding strata corporations from carrying out necessary renewals and repairs. On the other, it could be seen as fixing the most pressing problem, leaving behind a more flexible approach that captures the best of a high threshold for most resolutions and a practical way to resolve concerns about renewal and repair.

433. See *Strata Property Act*, *supra* note 4, s 1 (1) “3/4 vote.”

434. See New Brunswick: *Condominium Property Act*, *supra* note 24, ss 19 (7), 27 (13), 32 (3) (60 percent); Prince Edward Island: *Condominium Act*, *supra* note 24, ss 13 (1), 19 (66 2/3 percent); Nova Scotia: *Condominium Act*, *supra* note 24, ss 14 (1C), 14 (3A) (66 2/3 percent), 23 (1) (60 percent); Newfoundland and Labrador: *Condominium Act, 2009*, *supra* note 24, ss 18 (3), 35 (1) (66 percent); Yukon: *Condominium Act*, *supra* note 24, ss 12 (1), 16 (1), 19 (2), 22 (1) (66 2/3 percent); Northwest Territories and Nunavut: *Condominium Act*, *supra* note 24, s 17 (1) “special resolution” (66 2/3 percent).

435. See *Condominium Property Act*, *supra* note 24, s 1 (1) (x). See also *Condominium Property Amendment Act, 2014*, *supra* note 29, ss 2 (a) (xiii) (amending *Condominium Property Act*, s 1 (1) (x)), 17 (adding new s 26.4) (both retaining current threshold—not in force).

436. See *The Condominium Act*, *supra* note 24, s 1 (1) “specified percentage” (b).

437. See art 1098 CCQ (requiring for specified decisions “a majority of three-quarters of the co-owners representing 90% of the votes of all the co-owners”).

438. Ontario’s legislation appears to lack any intermediate threshold between a majority vote and an 80-percent vote.

439. See *supra* note 428.

The committee's recommendation for reform

The committee believes that the current 3/4-vote threshold works reasonably well in practice. It was reluctant to endorse what could be a disruptive change to it. A strong majority of consultation respondents agreed with the committee's tentative recommendation.

The committee recommends:

55. The Strata Property Act should not change the voting threshold for all resolutions requiring passage by a 3/4 vote.

Should the reference to a “secret ballot” in section 27 of the Schedule of Standard Bylaws be changed to a “written ballot”?

Brief description of the issue

While the *Strata Property Act* doesn't address how voters cast their votes at a general meeting, the Schedule of Standard Bylaws does have a section on the mechanics of voting.⁴⁴⁰ One provision in this section addresses voting by ballot. It allows an eligible voter to compel a strata corporation to hold a vote by secret ballot: “[d]espite anything in this section, an election of council or any other vote must be held by secret ballot, if the secret ballot is requested by an eligible voter.”

A supreme-court decision has interpreted this provision as calling for voting procedures that are analogous to those used by labour unions.⁴⁴¹ After noting the absence of voting booths,⁴⁴² and a general lack of privacy in casting votes,⁴⁴³ the court concluded that “the vote was not conducted by secret ballot and the petitioners are entitled to a declaration that the vote . . . is null and void . . .”⁴⁴⁴

440. See *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws, s 27.

441. See *Imbeau v Owners Strata Plan NW971*, 2011 BCSC 801 at para 22 [*Imbeau*], Truscott J (“I see no material difference between the importance of a secret ballot at a union election and the importance of a secret ballot for a special resolution at a strata corporation meeting, where that method of voting was required by the Chair of the meeting.”). See also *The Owners, Strata Plan NW 2243 v Cole*, 2018 BCCRT 823 at paras 113–116 (recent example of dispute over holding a vote by secret ballot).

442. See *ibid* at para 24.

443. See *ibid* at para 26.

444. *Ibid* at para 28.

It could be argued that the union model for holding secret ballots places too many administrative burdens on a strata corporation and is out of step with voting procedure in corporate general meetings. Should section 27 of the standard bylaws be amended to do away with the reference to *secret* before *ballot*?

Discussion of options for reform

Eliminating *secret* in section 27 would relieve a default requirement that has the potential to impose significant costs and administrative burdens on a strata corporation. Few strata corporations would be prepared to meet the standard for a secret ballot set out in the *Imbeau* case. But, since as little as one voter can invoke the requirement to hold a secret ballot, in theory a strata corporation should always be ready to meet this standard; otherwise, it runs the risk of a court declaring any vote taken to be null and void. This means that, in order to ensure compliance with the standard bylaw, strata corporations should either conduct general meetings or be ready to conduct general meetings with the high level of formality and voting privacy that marks labour-union votes.

A second concern about the reference to a secret ballot is that it's out of step with ordinary practice for corporate meetings. Typically, corporate legislation and bylaws allow a shareholder or member to demand that a vote be taken by a poll.⁴⁴⁵ (A *poll* is "[t]he casting or recording of votes by ballot of shareholders at a meeting.")⁴⁴⁶ As a textbook on corporate meetings notes, the meeting chair has discretion to determine the mechanics of voting by poll.⁴⁴⁷ Usually, ballots are used for the poll, but even more informal procedures (such as voting lists) are acceptable.⁴⁴⁸ Voting by poll doesn't imply the level of formality and privacy that has been held by the courts to apply to voting by secret ballot. The other strata-property statutes in Canada that

445. See e.g. *Business Corporations Act*, *supra* note 296, s 173 (2). But note that British Columbia's two other corporate statutes do refer to secret ballots at general meetings. The model bylaws prescribed under the *Societies Act*, *supra* note 296, allow "2 or more voting members" or the meeting chair to require voting by secret ballot (see *Societies Regulation*, *supra* note 383, Schedule 1 Model Bylaws, s 3.13). The form of rules prescribed by the *Cooperative Association Act* contains references to both: see *supra* note 353, Schedule B, ss 82–86 (voting by poll), s 109 ("If the number of nominees in an election for directors exceeds the number of directors to be elected at the election, the election of directors must be by secret ballot.").

446. Nathan & Voore, *supra* note 295 at cix.

447. See Nathan & Voore, *ibid* at 21-55 ("In the absence of a specific provision, one could argue that, because the responsibility of declaring a poll normally rests with the chair of the meeting, it should also be the chair's task to determine the arrangements for the poll.").

448. See *ibid* at 21-55 to 21-59.

address this issue refer to voting by poll or an analogous term, not by secret ballot.⁴⁴⁹

All that said, there may be disadvantages to proposing this change. These disadvantages tie into the interests that a secret ballot is meant to protect.

The rationale for requiring a secret ballot is that strata-corporation governance can function better if voters know their privacy can be protected. Voters might feel inhibited and reluctant to cast a public vote on sensitive issues. In its discussion of strata-property reforms, NSW Fair Trading recognized that “[s]ome owners may choose not to vote on motions rather than risk being ostracised if they are seen to vote in a certain way.”⁴⁵⁰ It recommended amending New South Wales’s legislation to “introduce options for conducting secret ballots.”⁴⁵¹

The committee’s recommendation for reform

The committee decided that the standard bylaw, as it has been interpreted, places too great an administrative burden on strata corporations. The bylaw should be amended to bring it more into line with corporate voting practices.

Consultation respondents strongly agreed with the committee’s proposed reform.

The committee recommends:

56. Section 27 of the Schedule of Standard Bylaws should be amended by striking out the word “secret” wherever it appears and replacing it with the word “written.”

449. See Alberta: *Condominium Property Act*, *supra* note 24, Appendix 1, ss 23–24 (“poll”), Appendix 2, Schedule A, ss 21–22 (“poll”); Saskatchewan, *The Condominium Property Regulations, 2001*, RRS c C-26.1, Reg 2, Appendix, Part II (bylaws), ss 24–25 (“vote by unit factors”); Manitoba, *The Condominium Act*, *supra* note 24, s 121 (“recorded vote”); Ontario, *Condominium Act, 1998*, *supra* note 24, s 52 (1) (“recorded vote”) (as amended by *Protecting Condominium Voters Act, 2015*, *supra* note 29, Schedule 1, s 48 (1)).

450. *Strata Title Law Reform: Strata & Community Title Law Reform Position Paper*, *supra* note 26 at 6.

451. *Ibid.*

Should section 27 of the Schedule of Standard Bylaws require that a vote be taken by written ballot only if a resolution authorizing such a vote is approved by a majority vote?

Brief description of the issue

This issue is connected with the previous one. It contemplates further changes to section 27 of the standard bylaws. Section 27 permits a single voter to call for a secret ballot. Currently, if a voter asks for a secret ballot, then “an election of council or any other vote must be held by secret ballot.”⁴⁵² If section 27 is amended to refer to written ballots, then should it require the approval of a majority of voters to authorize a written ballot?

Discussion of options for reform

The rationale for the proposed change is that it would ensure that a majority supports the choice to use a written ballot. The proposed change would also limit the possibility of voters’ requesting secret ballots for spiteful or frivolous reasons.

But requiring a resolution passed by a majority vote to authorize a written ballot would also significantly undercut one rationale for having ballots. Voters tend to call for ballots when they fear that their position on a resolution may cause friction with other voters. The ballot protects their privacy, letting them vote their conscience without fear of reprisal.

A compromise option between these two would be to follow the approach taken in the *Societies Act* model bylaws and require that at least two eligible voters or the meeting chair must request a vote by written ballot.⁴⁵³ This option would address concerns about protecting minority interests. It would also serve to cut down on frivolous requests. But its drawback is that it might not provide enough protection against frivolous demands for a ballot.

The committee’s recommendation for reform

The committee decided that calling for a vote by written ballot should require the authorization of a majority of eligible voters, unless the vote relates to a strata-council election. A majority of consultation respondents agreed with the committee’s tentative recommendation for this issue.

452. *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws, s 27 (7).

453. See *Societies Regulation*, *supra* note 383, Schedule 1 Model Bylaws, s 3.13.

The committee recommends:

57. Section 27 of the Schedule of Standard Bylaws should be amended to provide that a strata corporation is only required to hold a vote by written ballot if it is authorized to do so by a resolution passed by a majority vote, unless the vote is an election to the strata council.

The committee noted that implementing these two recommendations would require a consequential amendment to section 27 (7) of the Schedule of Standard Bylaws,⁴⁵⁴ striking out the words “or any other vote.”

Issues for Reform—Strata-Council Elections

Introduction

One of the major decisions eligible voters make at a general meeting is deciding who is going to serve on the strata council. The strata corporation must make this decision by holding an election for council at each annual general meeting.⁴⁵⁵

Apart from this requirement to hold an annual election for council and some basic provisions on eligibility for council,⁴⁵⁶ the act has little else to say about strata-council elections.

Should the Strata Property Act expressly provide that election to a strata council requires a majority of the ballots cast?

Brief description of the issue

The act provides that “[a]t each annual general meeting the eligible voters who are present in person or by proxy at the meeting must elect a council.”⁴⁵⁷ The Supreme Court of British Columbia has held that, since *election* isn’t a defined term, it “can include choosing an individual or individuals by acclamation” and, despite sec-

454. See *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws, s 27 (7) (“Despite anything in this section, an election of council or any other vote must be held by secret ballot, if the secret ballot is requested by an eligible voter.”).

455. See *Strata Property Act*, *ibid*, s 25.

456. See *ibid*, s 28.

457. *Ibid*, s 25.

tion 50 (1) of the act,⁴⁵⁸ a valid election doesn't require passing a resolution by a majority vote.⁴⁵⁹ The practice of electing individuals to a strata council by acclamation⁴⁶⁰ has been criticized as undermining strata-corporation governance, entrenching control by unrepresentative cliques.

Should the act require voting on each candidate for strata council?

Discussion of options for reform

The main advantage of this proposed reform is that it ensures eligible owners get an opportunity to evaluate each candidate for strata council. The proposal acts as a safeguard against an entire group being acclaimed as the council without individual consideration. This situation has the potential to entrench a clique in power or to allow people on to council whom the owners might feel pressured to support in order to retain other people in the group. The proposal might also help to promote accountability of individual council members to the owners.⁴⁶¹

The last point in the preceding paragraph came up in a recent law-reform project considering amendments to the federal for-profit corporate statute. This project endorsed individual election of directors, requiring majority approval for each. Legisla-

458. See *ibid*, s 50 (1) ("At an annual or special general meeting, matters are decided by majority vote unless a different voting threshold is required or permitted by the Act or the regulations.").

459. *Yang v Re/Max Commercial Realty Associates (482258 BC Ltd)*, 2016 BCSC 2147 at para 114, Punnett J.

460. = "Election of a slate of directors where the number of nominees is equal to (or less than) the number of directors to be elected." See Nathan, *supra* note 311 at xi.

461. See Industry Canada, Corporate, Insolvency, and Competition Law Policy, *Consultation on the Canada Business Corporations Act* (December 2013) at 6, online: <[www.ic.gc.ca/eic/site/cilp-pdci.nsf/vwapj/CBCA_Consultation.pdf/\\$file/CBCA_Consultation.pdf](http://www.ic.gc.ca/eic/site/cilp-pdci.nsf/vwapj/CBCA_Consultation.pdf/$file/CBCA_Consultation.pdf)> [perma.cc/ZEC3-MFG8].

tive amendments to implement this proposal for publicly traded corporations⁴⁶² were recently adopted by parliament.⁴⁶³

This federal law-reform project also noted a downside to this proposal. The project's consultation paper pointed out that "concern has been expressed that such provisions may result in 'failed elections,' wherein no candidate receives a majority and the board of directors does not achieve the necessary quorum to conduct corporate business."⁴⁶⁴ A similar concern with failed elections could arise for strata corporations, particularly smaller strata corporations. The proposal would also make council elections marginally more complicated. They would take up more time at a general meeting.

The committee's recommendation for reform

The committee was in favour of amending the act to clarify election of strata-council members. It was concerned about the potential for abuses and irregularities to arise from the current law.

The committee considered the mechanics of proposed reform. It decided not to go as far as recommendations made for business corporations at the federal level. Adopting those recommendations for strata corporations would require a resolution passed by a majority vote for each council member. In the committee's view, requiring separate resolutions for each strata-council member would create difficulties, could bog down meetings, and could foster conflict. The committee favoured requiring simply that council members command the majority of ballots cast. This approach would add sufficient clarity to council elections.

462. The technical term for the kind of corporation that the amendments apply to is *distributing corporation*, which is defined to mean "(a) a corporation that is a reporting issuer under any legislation that is set out in column 2 of an item of Schedule 1; or (b) in the case of a corporation that is not a reporting issuer referred to in paragraph (a), a corporation (i) that has filed a prospectus or registration statement under provincial legislation or under the laws of a jurisdiction outside Canada, (ii) any of the securities of which are listed and posted for trading on a stock exchange in or outside Canada, or (iii) that is involved in, formed for, resulting from or continued after an amalgamation, a reorganization, an arrangement or a statutory procedure, if one of the participating bodies corporate is a corporation to which subparagraph (i) or (ii) applies." See *Canada Business Corporations Regulations, 2001*, SOR/2001-512, s 2 (1).

463. See *An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act*, SC 2018, c 8, s 13 (1) (amending *Canada Business Corporations Act*, *supra* note 388, to add s 106 (3.3) and (3.4)—not in force).

464. See *Consultation on the Canada Business Corporations Act*, *supra* note 461 at 6.

Sizable majorities of consultation respondents, in both the full and summary consultations, agreed with the committee's proposal on this issue.

The committee recommends:

58. The Strata Property Act should require that each strata-council member must be elected by a majority of the ballots cast.

Should the Strata Property Act address the number of council members required?

Brief description of the issue

The *Strata Property Act* doesn't address the number of strata-council members a strata corporation must have. The standard bylaws do provide that "the council must have at least 3 and not more than 7 members."⁴⁶⁵ But this is a default provision, which a strata corporation is free to amend.⁴⁶⁶

Should the act provide more guidance on the number of council members that a strata corporation must elect?

Discussion of options for reform

The options for this issue are more open ended than those for previous issues.

One option to consider is whether the numbers in the range should be changed. For example, small strata corporations may find it hard to recruit three members to council and end up operating (in breach of their bylaws) with just two council members. A member of the public has asked the committee to consider recommending that the required number of members be lowered to two.⁴⁶⁷

465. *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws, s 9 (1). This bylaw doesn't apply to very small strata corporations, because "if the strata plan has fewer than 4 strata lots or the strata corporation has fewer than 4 owners, all the owners are on the council" (*ibid*, Schedule of Standard Bylaws, s 9 (2)).

466. See e.g. *Clayton v Chantler*, 2017 BCCRT 18 (decision in case in which strata council had acted with fewer than number of council members prescribed in its bylaws).

467. See Ina McMillan, Email message to the Strata Property Law (Phase Two) Project Committee, 6 July 2017 ("What I have found is that many small stratas have not passed a bylaw as to the number on council & filed it in the land titles office. Even if they have passed such a bylaw. Small stratas have a hard time getting 3 on council. My experience has been that they are running with 2 members, contrary to the act—in other words an illegal council with no legal clout.").

NSW Fair Trading has looked at the other number in the range.⁴⁶⁸ After noting that the “Act currently sets an upper limit of nine for the number of people who can be appointed to the committee,” it suggested “there is no clear reason why an upper limit needs to be provided for in the law.”⁴⁶⁹ In its view, removing the upper limit would reflect the diversity of strata corporations and hand some power back to owners.⁴⁷⁰ The position paper ended up recommending allowing strata corporations “to appoint as many people as they wish to the committee provided that at least three people are appointed to the committee in large schemes.”⁴⁷¹

There are disadvantages to consider for all three proposals. Lowering the minimum number of council members would make it slightly easier for a small, unrepresentative group to wield power. It might also be seen as a step back in governance standards, as it would mean fewer eyes providing oversight and fewer opinions to consider in making decisions. And removing the upper limit on the number of council members that may be elected could result in some strata corporations ending up with large, unwieldy councils.

The committee’s recommendation for reform

The committee did not favour making any changes to address the number of members that must be elected to a strata council. A strong majority of consultation respondents agreed with the committee.

The committee recommends:

59. The Strata Property Act should not be amended to address the number of members that must be elected to council.

468. See *Strata Title Law Reform: Strata & Community Title Law Reform Position Paper*, *supra* note 26 at 7–8. In New South Wales’s terminology, a *committee* is what British Columbia calls a *strata council* and a *scheme* is a *strata plan*.

469. *Ibid* at 7–8.

470. *Ibid* at 8 (“There are many different types of strata scheme and owners corporations should be able to appoint as many committee members as is necessary to effectively administer the scheme and to provide suitable representation.”).

471. *Ibid* at 7.

Should the Strata Property Act establish statutory qualifications for council members?

Brief description of the issue

The *Strata Property Act*'s provision on "eligibility for council" only limits strata-council members to "(a) owners; (b) individuals representing corporate owners; [and] (c) tenants who . . . have been assigned a landlord's right to stand for council."⁴⁷²

Given the responsibilities of strata-council members,⁴⁷³ should the act establish qualifications the must be met by a person who wants to be a council member?

Discussion of options for reform

Setting out statutory qualifications for strata-council members was one part of a major set of reforms proposed in Ontario's *Condominium Act* review.⁴⁷⁴ The review's final report set out the following reasons for this recommendation:

Because condo owners come from all walks of life, many have little or no experience serving on a board of directors or dealing with the issues that a board must address. Board inexperience creates risks for condo communities. It can lead to poor decisions on repairs, investments or insurance coverage. It can also make directors vulnerable to more savvy managers, lawyers, contractors or even other directors who may try to take advantage of their inexperience.⁴⁷⁵

Statutory qualifications can also protect strata corporations from having unscrupulous people take positions on their councils.

Ontario accepted this recommendation and included a provision on statutory qualifications in its *Protecting Condominium Owners Act, 2015*.⁴⁷⁶ When the bulk of the

472. *Supra* note 4, s 28 (1). The section goes on to say that "the strata corporation may, by a bylaw passed at an annual or special general meeting held after the first annual general meeting, allow classes of persons, other than those referred to in subsection (1), to be council members" (*ibid*, s 28 (2)).

473. See *ibid*, s 31.

474. See *Growing Up: Ontario's Condominium Communities Enter a New Era: Condominium Act Review Stage Two Solutions Report*, *supra* note 27 at 41–42. In addition to statutory qualifications, the report also recommended training for council members and term limits.

475. *Ibid* at 41.

476. *Supra* note 29.

provisions of that act came into force on 1 November 2017, this provision became a part of Ontario's *Condominium Act, 1998*:

Qualifications

29. (1) No person shall be a director if,
- (a) the person is not an individual;
 - (b) the person is under 18 years of age;
 - (c) the person has the status of bankrupt;
 - (d) the person has been found, under the *Substitute Decisions Act, 1992* or the *Mental Health Act*, to be incapable of managing property;
 - (e) subject to the regulations, the person has been found to be incapable by any court in Canada or elsewhere; or
 - (f) the person has not complied with the prescribed disclosure obligations within the prescribed time.

Disqualification

- (2) A person immediately ceases to be a director if,
- (a) the person has the status of bankrupt;
 - (b) the person has been found, under the *Substitute Decisions Act, 1992* or the *Mental Health Act*, to be incapable of managing property;
 - (c) subject to the regulations, the person has been found to be incapable by any court in Canada or elsewhere;
 - (d) a certificate of lien has been registered under subsection 85 (2) against a unit owned by the person and the person does not obtain a discharge of the lien under subsection 85 (7) within 90 days of the registration of the certificate of lien;
 - (e) the person has not completed the prescribed training within the prescribed time; or
 - (f) the person has not complied with the prescribed disclosure obligations within the prescribed time.⁴⁷⁷

477. *Ibid*, s 27 (repeals s 29 of the *Condominium Act, 1998*, *supra* note 24 and replaces it with this new section 29). See also *General Regulation*, O Reg 48/01, s 11.6 ("For the purpose of clause 29 (1) (f) of the Act, a person shall provide the following statements and information in accordance with this section: 1. If the person mentioned in that clause is a party to any legal action to which the corporation is a party, a statement of that fact and a brief general description of the action. 2. If the spouse, child or parent of the person, or the child or parent of the spouse of the person, is a party to any legal action to which the corporation is a party, a statement of that fact, the name of the spouse, child or parent and a brief general description of the action. 3. If an occupier of a unit that the person or the person's spouse owns or that the person occupies with the occupier is a party to any legal action to which the corporation is a party, a statement of that fact, the name of the occupier and a brief general description of the action. 4. If the person has been con-

While the Ontario provision breaks new ground for strata corporations, similar provisions are commonly found in Canadian for-profit⁴⁷⁸ and not-for-profit⁴⁷⁹ corporate statutes.

The main disadvantage of such statutory qualifications is that they can make it that much harder to recruit people to serve on council. And, as the stage-two report for Ontario's *Condominium Act* review noted, "there is also a risk of making the role of a director so demanding that owners are discouraged from standing for office."⁴⁸⁰

The committee's recommendation for reform

The committee was aware of needing to walk a fine line on this issue. The absence of statutory qualifications for strata-council members opens the door to a host of potential problems for strata-corporation governance. But a too-ambitious set of qualifications would likely impair the recruitment of council members, which would cause its own set of concerns. For the committee, the balance is best struck by taking a cautious approach and using established criteria from other British Columbia corporate statutes. In this vein, the committee has modelled its proposals on the qualifications for directors found in the recently enacted *Societies Act*.

The vast majority of consultation respondents agreed with the committee's tentative recommendation on this issue.

victed of an offence under the Act or under the regulations within the preceding 10 years, a statement of that fact and a brief general description of the offence. 5. Subject to subsection (3), if the person has, directly or indirectly, an interest in a contract or transaction to which the corporation is a party, in a capacity other than as a purchaser, mortgagee, owner or occupier of a unit, a statement of that fact and a statement of the nature and extent of the interest. 6. Subject to subsection (3), if the person has, directly or indirectly, an interest in a contract or transaction to which the declarant or declarant affiliate is a party, in a capacity other than as a purchaser, mortgagee, owner or occupier of a unit, a statement of that fact and a statement of the nature and extent of the interest. 7. If the person is an owner in the corporation and if the contributions to the common expenses payable for the person's unit are in arrears for 60 days or more, a statement of that fact. 8. If the person is not an owner of a unit in the corporation, a statement of that fact. 9. If the person is not an occupier of a unit in the corporation, a statement of that fact. 10. All other information that a by-law of the corporation requires the person to disclose.").

478. See e.g. *Business Corporations Act*, *supra* note 296, s 124.

479. See e.g. *Societies Act*, *supra* note 296, s 44.

480. *Supra* note 27 at 41.

The committee recommends:

60. *The Strata Property Act should require that a strata-council member (a) must be an individual who is at least 18 years of age, and (b) despite item (a), an individual is not qualified to be a strata-council member if the individual is (i) found by any court, in Canada or elsewhere, to be incapable of managing the individual's own affairs, (ii) an undischarged bankrupt, or (iii) convicted in or out of British Columbia of an offence in connection with the promotion, formation, or management of a corporation or unincorporated entity, or of an offence involving fraud.*

The committee is aware that implementing this proposal would likely require a consequential amendment that made it clear that section 9 (2) of the Schedule of Standard Bylaws⁴⁸¹ is subject to compliance with the statutory qualifications for council members.

Should the Strata Property Act allow a strata corporation to elect a council member at any special general meeting?

Brief description of the issue

A strata corporation must elect a strata council at each annual general meeting.⁴⁸² Sometimes this election doesn't result in a council that has the maximum number of council members allowed for the strata corporation.⁴⁸³ In other cases, council members are removed by the owners⁴⁸⁴ or they resign between annual general meetings.⁴⁸⁵

When these things occur, there is only a limited power to elect a new council member at a special general meeting. This power only applies if a council member is removed at a special general meeting and the strata corporation hasn't amended the standard bylaw that reads: "[a]fter removing a council member, the strata corporation must hold an election at the same annual or special general meeting to replace

481. See *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws, s 9 (2) ("If the strata plan has fewer than 4 strata lots or the strata corporation has fewer than 4 owners, all the owners are on the council.").

482. See *Strata Property Act*, *ibid*, s 25.

483. See *ibid*, Schedule of Standard Bylaws, s 9 ("(1) Subject to subsection (2), the council must have at least 3 and not more than 7 members. (2) If the strata plan has fewer than 4 strata lots or the strata corporation has fewer than 4 owners, all the owners are on the council.").

484. See *ibid*, Schedule of Standard Bylaws, s 11.

485. See *ibid*, Schedule of Standard Bylaws, s 12.

the council member for the remainder of the term.”⁴⁸⁶ If “a council member resigns or is unwilling or unable to act for a period of 2 or more months,” then the standard bylaw provides that “the remaining members of the council may appoint a replacement council member for the remainder of the term.”⁴⁸⁷ There is no provision in the act or the standard bylaws for holding a council election at a special general meeting to fill places left unoccupied after the election held at the annual general meeting.

Should the act be amended to give strata corporations more power to elect council members at special general meetings?

Discussion of options for reform

The advantage of liberalizing the act on this issue is that it would provide strata corporations with an added bit of flexibility. Strata corporations might prefer to have more options for choosing when council members are elected. Amending the act would support these options. It might also serve to clarify the law. Now much of that law is found in the standard bylaws, which strata corporations may amend. Amending the act to make it clear that a strata-council member may be elected at a special general meeting would add certainty to the practice and ensure that it couldn't be attacked as an irregularity.

There would likely be downsides to amending the act. For one, it would make the act somewhat more complex. In addition, it isn't clear that the current law is causing many problems. Since much of that law is contained in standard bylaws, an argument could be made that it is already flexible enough to allow strata corporations to accomplish what they wish in this area, so long as they amend their bylaws.

The committee's recommendation for reform

The committee favoured giving strata corporations the flexibility to elect additional council members at a special general meeting. Such a reform would solve some problems. For example, a strata corporation's bylaws might provide that it must have four council members, but due to an oversight or confusion at the annual general meeting the strata corporation might have only elected only three council members. Having the option to elect council members at a special general meeting would give the strata corporation a way to fix this problem.

The committee is aware that the proposed reform would make it somewhat harder to identify council members for, for example, the purposes of client identification

486. *Ibid*, Schedule of Standard Bylaws, s 11 (2).

487. *Ibid*, Schedule of Standard Bylaws, s 12 (1).

(for lawyers) and lending transactions. Proper identification would require producing minutes of any special general meeting, in addition to minutes of the last annual general meeting. In the committee's view, the advantages of the proposal outweigh its disadvantages.

A strong majority of consultation respondents agreed with the committee's proposal.

The committee recommends:

61. The Strata Property Act should provide that additional strata-council members may be elected at a special general meeting.

Issues for Reform—Agenda and Meeting Minutes

Should the order of agenda items for annual and special general meetings be amended?

Brief description of the issue

Section 28 of the Schedule of Standard Bylaws provides that the “order of business at annual and special general meetings” of the strata corporation must be as follows:

- certify proxies and corporate representatives and issue voting cards;
- determine that there is a quorum;
- elect a person to chair the meeting, if necessary;
- present to the meeting proof of notice of meeting or waiver of notice;
- approve the agenda;
- approve minutes from the last annual or special general meeting;
- deal with unfinished business;
- receive reports of council activities and decisions since the previous annual general meeting, including reports of committees, if the meeting is an annual general meeting;
- ratify any new rules made by the strata corporation under section 125 of the Act;
- report on insurance coverage in accordance with section 154 of the Act, if the meeting is an annual general meeting;
- approve the budget for the coming year in accordance with section 103 of the Act, if the meeting is an annual general meeting;
- deal with new business, including any matters about which notice has been given under section 45 of the Act;

- elect a council, if the meeting is an annual general meeting;
- terminate the meeting.⁴⁸⁸

As there may be concerns about the contents and order of this list, is there a need to amend any part of it?

Discussion of options for reform

This is potentially an open-ended issue, but at first glance it comes down to a straightforward yes-or-no question: should section 28 of the standard bylaws be amended? The answer to this question turns on whether amendments would provide practical benefits for general meetings.

The committee's recommendation for reform

The committee reviewed section 28 in detail and found it to be in need of improvement. In the committee's view, the section can be improved by amending its wording and its sequencing.

The common term that is used to describe the order of business at an annual or special general meeting is *agenda*. While the bylaw includes the approval of the agenda, the agenda is referred to as the order of business, which is a sequence of procedures strata corporations are required to follow, unless they have amended the bylaw. In the committee's view, this point should be clarified by referring in the bylaw to *agenda*.

The committee is also of the view that re-ordering the sequence of agenda items will better reflect best practices for general meetings.

Consultation respondents agreed with the committee's tentative recommendation by a wide margin.

The committee recommends:

62. Section 28 of the Schedule of Standard Bylaws should be amended so that the agenda at an annual general meeting or a special general meeting is as follows: (a) register eligible voters and issue voting cards; (b) call the meeting to order; (c) elect a person to chair the meeting, if necessary; (d) certify proxies; (e) determine that there is a quorum; (f) present proof of notice of meeting; (g) approve the order of the agenda; (h) approve the minutes of the most recent general meeting or waiver of

488. *Ibid*, Schedule of Standard Bylaws, s 28.

notice of meeting; (i) deal with any unfinished business; (j) if the meeting is an annual general meeting, receive reports of council activities and decisions since the previous annual general meeting; (k) ratify any new rules made by the strata corporation under section 125 of the act, including any new user fees; (l) if the meeting is an annual general meeting, report on insurance coverage in accordance with section 154 of the act, including the certificate of insurance prepared by the insurance brokerage and the date of the most recent appraisal; (m) if the meeting is an annual general meeting, approve the budget for the coming year in accordance with section 103 of the act; (n) deal with matters under section 46 of the act or about which notice has been given under section 45 of the act; (o) if the meeting is an annual general meeting, elect a council; (p) if the meeting is a special general meeting, elect a council member if necessary; (q) terminate the meeting.

Should the Strata Property Act require circulation of general-meeting minutes?

Brief description of the issue

While there is a provision in the Schedule of Standard Bylaws that calls for distribution of the minutes of strata-council meetings,⁴⁸⁹ no equivalent requirement exists in the act or the standard bylaws for minutes of general meetings.⁴⁹⁰ Should the act be amended to make it clear that there is a requirement to circulate general-meeting minutes?

Discussion of options for reform

There are essentially two options for this issue. Either the act should be amended or it should be left as is.

Making circulation of general-meeting minutes a legislative requirement would support transparency and good governance. It would also address a potential anomaly in which distribution of strata-council meeting minutes is required while no parallel requirement exists for general-meeting minutes.

The potential downside to this option would be that it's possibly not necessary. General-meeting minutes tend to be circulated in most strata corporations. If they were

489. See *ibid*, Schedule of Standard Bylaws, s 19 ("The council must inform owners of the minutes of all council meetings within 2 weeks of the meeting, whether or not the minutes have been approved."). See also, above, at 42–43 (committee's recommendation for reform regarding section 19).

490. See *Michaels v The Owners, Strata Plan NW 526*, 2018 BCCRT 917 at para 15.

not in a given case, then a strata-lot owner would be entitled to require the strata corporation to grant access to them.⁴⁹¹

The committee's recommendation for reform

The committee reviewed a number of points as part of its consideration of this issue.

First, it decided that the terminology of “informing” owners and others of minutes that appears elsewhere in the act⁴⁹² would be too vague and uncertain for what it has in mind here. The committee preferred any provision it proposed to use the term *circulated*. In the committee's view, *circulate* has a broad meaning, which would embrace everything from posting on a website to email to slipping a paper copy of the minutes under a door.

Second, the committee was concerned about the timing requirement. It decided that three weeks would be an appropriate period in which to circulate the meeting minutes. This period would be harmonized with the committee's recommendation for strata-council-meeting minutes.⁴⁹³

Finally, the committee considered whether this requirement should be a standard bylaw or a legislative provision. The committee preferred that the requirement be set out in legislation. One reason for this preference was to ensure that its standard period for circulating minutes wouldn't be varied.

The majority of consultation respondents agreed with the committee's proposal for this issue.

The committee recommends:

63. The Strata Property Act should require circulation of minutes of a general meeting within three weeks of the meeting, whether or not the minutes have been approved.

491. See *Strata Property Act*, *supra* note 4, ss 35 (1) (“[t]he strata corporation must prepare all of the following records: (a) minutes of annual and special general meetings and council meetings, including the results of any votes”), 36 (1) (“On receiving a request, the strata corporation must make the records and documents referred to in section 35 available for inspection by, and provide copies of them to, (a) an owner, (b) a tenant who, under section 147 or 148, has been assigned a landlord's right to inspect and obtain copies of records and documents, or (c) a person authorized in writing by an owner or tenant referred to in paragraph (a) or (b).”).

492. See *ibid*, Schedule of Standard Bylaws, s 19 (“The council must inform owners of the minutes of all council meetings . . .”).

493. See, above, at 42–43.

Should section 106 of the Strata Property Act be amended to provide three weeks in which to inform owners of changes to their strata fees resulting from a new budget?

Brief description of the issue

Section 106 of the act provides that “[w]ithin 2 weeks following the annual or special general meeting at which a budget is passed, the strata corporation must inform owners of any changes to their strata fees resulting from the new budget.”⁴⁹⁴ In light of the preceding discussion, do any aspects of this provision call for changes?

Discussion of options for reform

The options for reform are to harmonize section 106 with the committee’s proposal for circulation of general-meeting minutes or to leave it as is.

The committee’s recommendation for reform

In the committee’s view, section 106 is a straightforward case of needing a consequential amendment. Leaving the section’s current timing rule in place would set up a conflict with the committee’s proposed requirement to distribute general-meeting minutes.

The majority of consultation respondents agreed with the committee’s tentative recommendation.

The committee recommends:

64. Section 106 of the Strata Property Act, which deals with informing owners of changes to strata fees, should be amended by striking out “2 weeks following the annual or special general meeting at which a budget is passed” and replacing it with “3 weeks following the annual or special general meeting at which a budget is passed.”

494. *Supra* note 4, s 106.

Chapter 6. Finances

Background

Background information on strata-corporation finances

The wellspring of most financial issues under the *Strata Property Act*⁴⁹⁵ is the act's allocation to the strata corporation of responsibility "for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners."⁴⁹⁶ As a consequence of this responsibility, the "strata corporation is responsible for the common expenses of the strata corporation."⁴⁹⁷ The act defines *common expenses* broadly to mean expenses

- relating to the common property and common assets of the strata corporation, or
- required to meet any other purpose or obligation of the strata corporation.⁴⁹⁸

As one commentator has plainly said, paying for common expenses means that a strata corporation "spends a lot of money."⁴⁹⁹ And a strata corporation "raises that money mostly through the monthly contributions ('strata fees') paid by its members—'owners.'"⁵⁰⁰

The *Strata Property Act* and the *Strata Property Regulation*⁵⁰¹ contain an array of provisions that govern how a strata corporation collects money from strata-lot owners and how it spends that money.

Scope of this chapter

Part 6 of the *Strata Property Act* deals with "finances," setting out the following divisions:

- operating fund and contingency reserve fund;

495. *Supra* note 4.

496. *Ibid*, s 3.

497. *Ibid*, s 91.

498. *Ibid*, s 1 (1) "common expenses."

499. Fanaken, *supra* note 34 at 67.

500. *Ibid*.

501. *Supra* note 8.

- contribution to expenses;
- budgets;
- special levies and user fees;
- borrowing powers of strata corporation;
- money owing to strata corporation.

Commentators discussing financial issues have tackled subjects such as provisions on a strata corporation's two required funds (operating and contingency reserve), special levies, borrowing, user fees, collection of money owing to a strata corporation, and expense allocation.⁵⁰²

The committee has already paid extensive attention to expense allocation, which was a fundamental part of the committee's *Report on Complex Stratas*, published in 2017.⁵⁰³ Other topics, such as borrowing and user fees, weren't identified as pressing concerns.

Drawing on the committee's assessment of pressing reform issues, this chapter considers the following categories of issues for its discussion of strata-corporation finances:

- operating fund;
- special levies;
- budgets;
- financial statements;
- contracts;
- regulatory provisions on fines and fees;
- limitation period and collections.

502. See *British Columbia Strata Property Practice Manual*, *supra* note 34 at §§ 7.1–7.53; Fanaken, *supra* note 34 at 67–95; Mangan, *supra* note 34 at 167–223.

503. *Supra* note 17.

Issues for Reform—Operating Fund

Introduction

The *Strata Property Act* requires a strata corporation to have at least two funds: an operating fund and a contingency reserve fund.⁵⁰⁴ The act requires each strata corporation to “establish” and each strata-lot owner to “contribute, by means of strata fees,” to this operating fund.⁵⁰⁵ The purpose of the operating fund is to pay for “common expenses that”:

- usually occur either once a year or more often than once a year, or
- are necessary to obtain a depreciation report under section 94.⁵⁰⁶

In other words, the operating fund “is intended to pay for routine expenses of a strata corporation[;] the courts have generally held that extraordinary expenses should be paid out of the contingency reserve fund or a special levy.”⁵⁰⁷ This point is underscored later in the act by a section that provides that a strata corporation “must not spend money from the operating fund unless the expenditure is consistent with the purposes of the fund.”⁵⁰⁸

Should the Strata Property Act adopt some criterion other than the current timing rule as a way to define the purpose of a strata corporation’s operating fund?

Brief description of the issue

The heart of the *Strata Property Act*’s provision on the operating fund is the timing rule that defines the purpose of the fund (to pay for “common expenses that usually occur either once a year or more often than once a year”). This timing rule is also the defining characteristic of what may colloquially be called “operating expenses.” Us-

504. *Supra* note 4, s 92.

505. *Ibid*, s 92.

506. *Ibid*, s 92 (a).

507. *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 7.4.

508. See *supra* note 4, s 97 (“The strata corporation must not spend money from the operating fund unless the expenditure is (a) consistent with the purposes of the fund as set out in section 92 (a), and (b) first approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or authorized (i) in the budget, or (ii) under section 98 or 104 (3).”).

ing a timing rule may not be the best way to define these expenses.⁵⁰⁹ Is there another approach that should be considered?

Discussion of options for reform

A timing rule is one valid criterion for guiding strata corporations on when funds should be paid out of the operating fund or out of the contingency reserve fund. But it isn't the only approach that could be adopted. There is (potentially) a limitless number of criteria that could be adopted.

One way to narrow the field of options to consider is to look at how other Canadian jurisdictions have handled this issue. A comparative examination of strata-property legislation reveals that British Columbia is, in some respects, an outlier in its legislation on the operating fund.

Two qualities make British Columbia's legislation an outlier. First, it is more rigid than other statutes. Second, it's the only statute that relies solely on a timing rule as the criterion for determining when money can be spent from the operating fund.

The *Strata Property Act* is unique in Canada in containing a provision that restricts strata corporations in expending money from the operating fund to only those expenditures that are "consistent with the purposes of the fund." Alberta⁵¹⁰ and Saskatchewan⁵¹¹ do have provisions setting out the purposes of their equivalents to the

509. See e.g. *The Owners, Strata Plan VR 942 v Thompson*, 2018 BCCRT 4; *Perry v The Owners, Strata Plan LMS 180*, 2017 BCCRT 135 (recent decisions involving, in part, characterization of expenses).

510. See *Condominium Property Act*, *supra* note 24, s 39 (1): "In addition to its other powers under this Act, the powers of a corporation include the following: (a) to establish a fund for administrative expenses sufficient, in the opinion of the corporation, for the control, management and administration of the common property, for the payment of any premiums of insurance and for the discharge of any other obligation of the corporation"). See also *Condominium Property Amendment Act, 2014*, *supra* note 29, s 30 ("Section 39 is repealed and the following is substituted: 38.1 Subject to the regulations, a corporation shall, from funds levied under section 39(1)(a) or (b), establish and maintain an operating account to be used to provide sufficient funds for (a) the control, management and administration of the real and personal property of the corporation, the common property and managed property, and (b) the payment of any other obligation of the corporation, that are not required to be paid out of the reserve fund." [not in force]).

511. See *The Condominium Property Act, 1993*, *supra* note 24, s 55 ("(1) The corporation shall establish the following funds for the purposes set out in subsections (2) and (3): (a) a common expenses fund; . . . (2) A common expenses fund is established for the purpose of providing for the payment of the following expenses, other than expenses that are to be paid out of the reserve fund: (a) expenses incurred in the control, management and administration of the common property, common facilities and services units, enforcement of the bylaws of the corporation and

operating fund that are analogous to British Columbia's provision, but those provinces don't go the extra step of requiring expenditures to be consistent with those purposes. This arguably constitutes their versions of the operating fund as the strata-corporation's residual fund, which is available to pay for all expenses that aren't funded out of their equivalents of the contingency reserve fund. And this approach is more clearly the one adopted by most of the other provinces and territories.⁵¹² Their legislation simply requires a strata corporation to have an operating fund.⁵¹³ Legislative purposes are only applied to the contingency reserve fund.⁵¹⁴ So by default the operating fund is the residual fund under these statutes, in the sense that it can be

addition of additional common property, common facilities and services units; (a.1) expenses incurred in the control, management and administration of any units or portions of units designated in any bylaw passed pursuant to clauses 47(1)(f.1) and (i.1) [bylaws respecting sectors]; (b) premiums of insurance; and (c) expenses incurred in the discharge of any other obligation of the corporation.”).

512. The exceptions are New Brunswick and Prince Edward Island. New Brunswick's legislation only contains a simple enabling provision, clearing the way for a strata corporation to have a contingency reserve fund, if it wants one. See *Condominium Property Act*, *supra* note 24, s 41 (“A corporation may establish a contingency fund to be used for the purposes specified in the by-laws.”). Prince Edward Island's *Condominium Act*, *supra* note 24, doesn't have any provisions dealing with a strata corporation's funds.

513. See Manitoba: *The Condominium Act*, *supra* note 24, s 138 (2) (“The condominium corporation must establish and maintain a fund for the payment of common expenses, referred to as the ‘common expenses fund.’ ”); Ontario: *Condominium Act, 1998*, *supra* note 24, s 115 (2) (“A corporation shall maintain one or more accounts in its name designated as general accounts and one or more accounts in its name designated as reserve fund accounts.”), *Protecting Condominium Owners Act, 2015*, *supra* note 29, Sched 1, s 101 (2) (amends s 115 (2)—not in force); Québec: art 1064 CCQ (“Each co-owner contributes in proportion to the relative value of his fraction to the expenses arising from the co-ownership and from the operation of the immovable and the contingency fund established under article 1071”); Nova Scotia: *Condominium Act*, *supra* note 24, s 31 (1) (“The corporation (a) shall establish an operating fund for the payment of the common expenses to which fund the owners shall contribute in proportions specified in the declaration”); Newfoundland and Labrador: *Condominium Act, 2009*, *supra* note 24, s 48 (“The corporation (a) shall establish an operating fund for the payment of the common expenses and the owners shall contribute to that fund in proportions specified in the declaration”); Yukon: *Condominium Act*, *supra* note 24, s 14 (1): “The corporation shall (a) establish a fund for the payment of common expenses, to which fund owners shall contribute in proportions specified in the declaration”); Northwest Territories and Nunavut: *Condominium Act*, *supra* note 24, s 19.9 (1) (“A corporation (a) shall establish and maintain funds for the payment of the common expenses to which the owners shall contribute in the proportions specified in the declaration”).

514. See Manitoba: *The Condominium Act*, *supra* note 24, s 143; Ontario: *Condominium Act, 1998*, *supra* note 24, s 93 (2), *Protecting Condominium Owners Act, 2015*, *supra* note 29, Sched 1, s 84 (1) (repeals s 93 (2) and replaces it with a new provision—not in force); Québec: art 1071 CCQ; Nova Scotia: *Condominium Act*, *supra* note 24, s 31 (1A); Newfoundland and Labrador: *Condominium Act, 2009*, *supra* note 513, s 49 (1); Northwest Territories and Nunavut: *Condominium Act*, *supra* note 24, s 19.10 (2).

used for all expenses of the strata corporation, except for those expressly earmarked for payment out of the contingency reserve fund.

British Columbia is also unique in applying a timing rule to the operating fund. Other provinces do adopt a similar timing rule (based on whether the expense arises more often than once a year), but they use it in a different way. In these provinces, the timing rule is part of a series of criteria that define the purposes of the contingency reserve fund.⁵¹⁵ Indeed, the bulk of the rest of Canada is consistent in using two elements to define that fund: (1) a qualitative criterion is adopted, limiting the use of the contingency reserve fund for major repairs, and (2) the legislation sets out a list of building components illustrating the type of repairs that presumptively could be considered “major repairs.”

For an example of this approach, with a timing rule, here is Manitoba’s legislation:

The types of repairs and replacements that may be funded by the reserve fund are ones that may reasonably be expected to be necessary over time but that are *not normally required on an annual basis*. The following are examples of such repairs and replacements:

- (a) major repairs to the roof or its replacement;
- (b) major repairs to, or replacement of, the structure or exterior of a building on the property;
- (c) major repairs to, or replacement of, the heating, air conditioning, electrical or plumbing systems;
- (d) major repairs to, or replacement of, an elevator;
- (e) major repairs to, or replacement of, the laundry, recreational or parking facilities;
- (f) major repairs to, or replacement of, the sidewalks or roads;
- (g) major repairs to, or replacement of, the sewer system or utility service connection to the property.⁵¹⁶

And, as an example of this approach without the timing rule, here is Newfoundland and Labrador’s provision:

The corporation shall establish and maintain a reserve fund for major repair and replacement of the common elements and assets of the corporation including, where ap-

515. See Alberta: *Condominium Property Act*, *supra* note 24, s 38 (1); Saskatchewan: *The Condominium Property Act*, 1993, *supra* note 24, s 55 (3); Manitoba: *The Condominium Act*, *supra* note 24, s 143.

516. See *ibid*, s 143 (2) [emphasis added].

plicable, roofs, exteriors of buildings, roads, sidewalks, sewers, heating, electrical and plumbing systems, elevators, laundry, recreational and parking facilities.⁵¹⁷

Does this legislation provide any guidance for reforms in British Columbia? The legislation may have some advantages that are lacking in the *Strata Property Act*'s provisions.

First, identifying the operating fund as a residual fund—or, to put it in the negative terms used in most Canadian statutes, not placing a restriction on how the operating fund may be used—could help strata corporations that are struggling with borderline cases. A leading practice guide has noted some litigation over whether money was paid out of the operating fund for expenses that were consistent with the fund's statutory purpose.⁵¹⁸ These borderline cases have involved legal expenses⁵¹⁹ and water leaks.⁵²⁰ If the operating fund were clearly identified as the strata corporation's residual fund, then there wouldn't be cases of expenses falling into gaps between the operating fund and contingency reserve fund. This would likely help to address any confusion over whether an expense should be paid for out of the operating fund or the contingency reserve fund.

Another advantage of the approach used elsewhere in Canada is that it may provide more guidance for strata corporations. Although legislation elsewhere in Canada tends to be wordier and therefore more complex on this issue, the additional details found in this legislation might help strata corporations in determining whether an expense should be paid for out of the contingency reserve fund. The legislation is often wordier because it provides concrete examples, which may be an effective aid to understanding the provision.

There may also be downsides to this approach. Its implementation would result in a more complicated legislative provision. This approach also retains an element of judgment in its application, as strata corporations would have to determine whether a repair qualified as a "major" repair. These qualities open the question whether re-

517. See *Condominium Act, 2009*, *supra* note 24, s 49 (1).

518. See *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 7.4.

519. See *Dockside Brewing Co v The Owners, Strata Plan LMS 3837*, 2005 BCSC 1209 at para 42, Edwards J ("Section 97(a) of the SPA provides that a strata corporation must not spend money from the operating fund unless it is consistent with the purposes of the fund set out in s. 92(a). Payment of extraordinary legal fees like litigation expense incurred at the behest of the Strata Council is not such a purpose."), *aff'd* 2007 BCCA 183, leave to appeal to SCC refused, [2007] SCCA No 262 (QL).

520. See *Strata Corp LMS 509 v Andresen*, 2001 BCSC 201 at para 51, Skipp J; *Nicolson v Section 1 of the Owners Strata Plan VIS 1098*, 2003 BCSC 1108.

forming the legislation on operating funds would, in the end, amount to much of a gain for strata corporations. It isn't clear that there is a pressing problem with the current provision; at least, there appears to be no commentary suggesting that it needs reform. Changing the current legislation would create a learning curve for strata corporations, which, at the end of it, might leave them wondering whether reform was worthwhile.

The committee's recommendation for reform

The committee was aware of some concerns about interpreting and applying the legislation dealing with the strata corporation's operating fund.

In the committee's view, one of the cons of the proposed reforms had particular salience. This was the idea that a new provision would bring with it a learning curve for strata corporations. This weighed significantly against considering a legislative solution to a problem that the committee views with ambivalence.

A strong majority of consultation respondents agreed with the committee's approach to this issue.

The committee recommends:

65. The Strata Property Act should not be amended to change the purpose of and criteria for using funds in a strata corporation's operating fund.

Issues for Reform—Special Levies

Introduction

The act allows a strata corporation to "raise money from the owners by means of a special levy."⁵²¹ In the usual case, a special levy must be approved by a resolution passed by a 3/4 vote.⁵²² In one exceptional circumstance—in which a strata corporation wants to adopt a method of calculating each strata lot's share of the levy by some formula that differs from the default formula based on unit entitlement⁵²³—the levy must be approved by a resolution passed by a unanimous vote.⁵²⁴ In both

521. *Supra* note 4, s 108 (1).

522. See *ibid*, s 108 (2) (a).

523. See *ibid*, ss 99, 100, 195.

524. See *ibid*, s 108 (2) (b).

cases, the resolution to approve the special levy must disclose a detailed set of information about the levy.⁵²⁵

The act also sets some ground rules for managing the money collected⁵²⁶ on a special levy. These ground rules cover issues that include accounting for, investing, and using the money collected.⁵²⁷ One of these ground rules, concerning money collected in excess of the amount needed to complete the task paid for by the special levy, is the only issue for reform identified for this part of the chapter.

Should section 108 of the Strata Property Act be amended to allow a strata corporation to deposit in its contingency reserve fund any money collected in excess of the amount required?

Brief description of the issue

“If the money collected exceeds the amount required, or for any other reason is not fully used for the purpose set out in the resolution,” then section 108 of the act directs, “the strata corporation must pay to each owner of a strata lot the portion of the unused amount of the special levy that is proportional to the contribution made to the special levy in respect of that strata lot.”⁵²⁸ There is an exception to this provision. “[I]f no owner is entitled to receive more than \$100 in total,” then “the strata corporation may deposit the excess in the contingency reserve fund.”⁵²⁹

This one-size-fits-all provision could be seen as being too rigid. Should the act be amended to give strata corporations another option—namely, depositing the excess

525. See *ibid*, s 108 (3) (“The resolution to approve a special levy must set out all of the following: (a) the purpose of the levy; (b) the total amount of the levy; (c) the method used to determine each strata lot’s share of the levy; (d) the amount of each strata lot’s share of the levy; (e) the date by which the levy is to be paid or, if the levy is payable in instalments, the dates by which the instalments are to be paid.”).

526. This is a defined term. See *ibid*, s 108 (7) (“In subsections (4) and (5), ‘**money collected**’ means the money collected on a special levy and includes any interest or income earned on that money.” [emphasis in original]).

527. See *ibid*, s 108 (4) (The strata corporation must (a) account for the money collected separately from other money of the strata corporation, (b) invest all of the money collected in one or both of the following: (i) investments permitted by the regulations; (ii) insured accounts with savings institutions in British Columbia, (c) use the money collected for the purpose set out in the resolution, and (d) inform owners about the expenditure of the money collected.”).

528. See *ibid*, s 108 (5).

529. See *ibid*, s 108 (6).

into their contingency reserve funds—for dealing with an excess of money collected?

Discussion of options for reform

Reforming the act would have a few advantages. If a strata corporation could place any excess money collected on a special levy in its contingency reserve fund, then this would give the strata corporation greater flexibility in dealing with that money. It would also streamline administration of special levies in some cases. Finally, although most other Canadian jurisdictions don't have legislation specifically directing the strata corporation on what to do with excess money collected on a special levy, Alberta's recent reforms to its legislation include a provision directing strata corporations in these cases to pay the money into the contingency reserve fund.⁵³⁰ This is an indication that another jurisdiction has considered the issue and concluded that transferring excess money collected on a special levy to the contingency reserve fund is an acceptable policy outcome.

But there may also be disadvantages to this proposal. Strata-lot owners could feel that it takes something away from their basket of individual rights in the corporation. The possibility that excess money collected might not be refunded to the owners could make it marginally harder to pass a resolution authorizing a special levy in the first place.

The committee's recommendation for reform

The committee viewed the current limit of \$100 as archaic. It preferred to address concerns about this provision by raising the limit. In the committee's view, the figure should be prescribed by regulation, which would allow for it to be more-easily updated to keep pace with changing times. It favoured having the regulation set the figure initially at \$500.

The committee was aware of the need to strike the right balance on this issue. Setting too high a figure or going even further and taking away the prospect of a refund might lead strata corporations to reject needed special levies. The majority of consultation respondents agreed with the committee's tentative recommendation for reform.

530. See *Condominium Property Amendment Act, 2014*, *supra* note 29, s 30 (adding new section 39.1 (5) to the *Condominium Property Act*, *supra* note 24, which reads: "If the amount collected exceeds the amount required or for any other reason is not fully used for the purpose set out in the resolution referred to in subsection (1), the corporation must pay the money into the reserve fund." [not in force]).

The committee recommends:

66. *The Strata Property Act should require, if the money collected on a special levy exceeds the amount required, or for any other reason is not fully used for the purpose set out in the resolution, the strata corporation to pay to each owner of a strata lot the portion of the unused amount of the special levy that is proportional to the contribution made to the special levy in respect of that strata lot, unless no owner would be entitled to receive more than an amount prescribed by regulation (which should initially be set at \$500) in total, in which case the strata corporation may deposit the excess in its contingency reserve fund.*

Issues for Reform—Budgets

Introduction

A strata corporation must have an annual budget.⁵³¹ Among other things, the budget guides a strata corporation's spending in the upcoming fiscal year. It also sets out the total contribution to the strata corporation's operating fund and contingency reserve fund, and lists each strata lot's monthly contribution to those funds.⁵³²

In order to take effect, a strata corporation's budget must be approved by the strata-lot owners, by a resolution passed by a majority vote. (This is another instance in which British Columbia's legislation stands apart from strata-property legislation in the rest of Canada. Outside British Columbia, approving a budget and dealing with financial matters such as setting strata fees is, as a recent Saskatchewan case put it, "a task for the board, not the association as a whole.")⁵³³ The act contemplates that this approval take place at each annual general meeting.⁵³⁴ The act's provision for approval at an annual general meeting generates the sole issue for this part of the chapter.

531. See *Strata Property Act*, *supra* note 4, s 103 (1).

532. See *Strata Property Regulation*, *supra* note 8, s 6.6.

533. *Smooke v Rosemont Estate Condo Corp 101222494*, 2017 SKQB 201 at para 39, Danyliuk J ("The plain words of ss. 57 and 58 show that the determination of condominium fees is a task for the board, not the association as a whole."). But note that Québec's legislation calls on a syndicate's board of directors to set fees "after consultation with the general meeting of the co-owners." See art 1072 CCQ.

534. See *supra* note 4, s 103 (1).

Should the Strata Property Act authorize a strata corporation to initiate the budget-approval process or amend a budget at a special general meeting?

Brief description of the issue

“The strata corporation must prepare a budget for the coming fiscal year,” according to section 103 of the act, “for approval by a resolution to be passed by a majority vote at each annual general meeting.”⁵³⁵ This provision appears to set a rigid requirement that the budget can only be passed at an annual general meeting.

In fact, the act already gives strata corporations some leeway to deal with the budget at a special general meeting. Most notably, if the strata corporation fails to pass a budget at an annual general meeting, then “the strata corporation must within 30 days, or such longer period as approved by a resolution passed by a 3/4 vote at the meeting, prepare a new budget and place it before a special general meeting for approval by a resolution passed by a majority vote.”⁵³⁶ And there is nothing in the act that appears to prevent a strata corporation from amending its budget at a special general meeting, a practice that some strata corporations have apparently adopted from time to time.⁵³⁷ The only procedure that appears to be offside the act would be to begin the process of approving a budget at a general meeting that wasn’t an annual general meeting. Should the act give strata corporations this additional leeway, allowing them to initiate the budget-approval process at a special general meeting?

Discussion of options for reform

Amending the act to allow strata corporations to seek, for the first time, approval of an annual budget at a special general meeting would give strata corporations some added flexibility in managing their financial affairs. Even though most strata corporations would prefer not to incur the expense of holding two general meetings in a year, some strata corporations might favour splitting budget approval off from the other topics that must be considered in an annual general meeting. There is remarkable diversity among British Columbia’s strata corporations, and, for some of them, holding a special general meeting to approve a budget might make administrative sense. For example, the requirement to pass a budget at an annual general meeting effectively ties the timing of that meeting to a strata corporation’s fiscal year end.

535. *Ibid*, s 103 (1).

536. *Ibid*, s 104 (1).

537. See *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 7.7 (“Some strata corporation convene special general meetings to amend the operating budget during the fiscal year.”).

Some strata corporations might prefer to have the option to hold a special general meeting, focused on the budget, in conjunction with the fiscal year end, and to hold the annual general meeting at some other time during the year.

That said, there may also be disadvantages to amending the act. Building more options and greater flexibility into the act will also have the side effect of making the act more complex. This complexity could confuse some strata corporations. It could potentially lead to some erosion of the fiscal discipline that the act instills in strata corporations by its budget-approval provisions. Finally, it isn't clear that many people see a problem with the current legislation or are calling for this change to it.

The committee's recommendations for reform

The committee was concerned about detaching approval of a budget from the required financial reporting at an annual general meeting. For this reason, it favoured the existing provisions, which require the budget-approval process to (at least) begin at the annual general meeting.

A strong majority of consultation respondents agreed with the committee's tentative recommendation.

The committee recommends:

67. The Strata Property Act should continue to require strata corporations to initiate the budget-approval process only at an annual general meeting.

The committee wasn't in favour of having the act expressly address whether a budget could be amended at a special general meeting. In its view, an express provision could end up acting like a green light to some strata corporations to amend their budgets repeatedly throughout the financial year. Having the act remain silent on this point struck the committee as the best outcome.

While the majority of consultation respondents favoured the committee's approach to this issue, a significant minority preferred legislative reform to expressly address this issue.

The committee recommends:

68. The Strata Property Act should not be amended to permit budgets to be amended at a special general meeting.

Issues for Reform—Financial Statements

Introduction

A strata corporation must distribute a financial statement with the “notice of the annual general meeting.”⁵³⁸ The requirements for putting together this financial statement are found in the *Strata Property Regulation*.⁵³⁹

Should the Strata Property Regulation be amended to provide a prescribed form for financial statements?

Brief description of the issue

The act provides that a budget and financial statement “must contain the information required by the regulations.”⁵⁴⁰ For financial statements, the centrepiece of the regulation’s requirements is the following list of information that a strata corporation’s annual financial statements must contain:

- the opening balance in the operating fund and the current balance;
- the opening balance in the contingency reserve fund and the current balance;
- the details of the strata corporation’s income from all sources, except special levies;
- the details of expenditures out of the operating fund, including details of any unapproved expenditures under section 98 of the Act;
- the details of expenditures out of the contingency reserve fund, including details of any unapproved expenditures under section 98 of the Act;
- income and expenditures, if any, by special levy under section 108 of the Act.⁵⁴¹

(A parallel list exists in the regulation for budgets.)⁵⁴²

The act also provides that the budget and financial statements “may be in the form set out in the regulations.”⁵⁴³ But as a leading practice guide has noted, “[a]t the pre-

538. *Strata Property Act*, *supra* note 4, s 103 (2).

539. See *Strata Property Regulation*, *supra* note 8, s 6.7.

540. *Strata Property Act*, *supra* note 4, s 103 (3) (a).

541. *Supra* note 8, s 6.7 (1).

542. See *ibid*, s 6.6 (1).

543. *Supra* note 4, s 103 (3) (b).

sent time, there is no specific form set out in the Regulation.”⁵⁴⁴ Should the power enabled by this provision be exercised by creating a prescribed form for strata-corporation financial statements?

Discussion of options for reform

Creating a prescribed form for financial statements could help strata corporations in meeting their obligations under section 103 of the act. At least one commentator has noted some concerns about strata corporations’ meeting their obligations under the regulation to include specific information in financial statements.⁵⁴⁵ A prescribed form could help to combat this problem. One of the functions of the form could be to guide or educate strata corporations on the information that must be included in financial statements. This, in turn, could lead to greater understanding by strata-lot owners. Standardizing the format of financial statements could also make it easier to compare the finances of multiple strata corporations.

But there would be downsides to creating a prescribed form. Under the current law, as a leading practice guide observed, “a strata corporation has much flexibility in the layout of [required] information for presentation to the strata lot owners.”⁵⁴⁶ Creating a prescribed form would rob strata corporations of this flexibility. A prescribed form is inevitably going to be a one-size-fits-all solution to this issue. Given the diversity of strata corporations in British Columbia, this could mean that some strata corporations will have to force their financial reporting into a format that might make little sense for them. In addition to concerns about rigidity, creating a prescribed form is likely to be a difficult drafting exercise.

These two reasons likely explain why the power to create a prescribed form that is found in the *Strata Property Act* hasn’t been exercised. They also likely explain why strata-property legislation elsewhere in Canada shies away from creating a prescribed form for financial statements. When that body of legislation addresses the issue of financial statements, it tends to do so in a way that is similar to the current approach of the *Strata Property Act*, which is to set out a list of requirements in the

544. *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 7.6.

545. See Fanaken, *supra* note 34 at 82–83. See also *Link v The Owners, Strata Plan KAS 828*, 2017 BCCRT 128 at paras 28–37 (example of strata corporation failing to comply with the act and the regulation in the preparation of its financial statements).

546. *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 7.6.

regulations.⁵⁴⁷ British Columbia and federal corporate-law legislation also take this approach to financial statements.⁵⁴⁸

Finally, creating a prescribed form would raise the consequential issue of what to do about breaches of the form. Use of the form could be strictly enforced, but this would result in questions about the validity of financial statements that might contain formal irregularities. On the other hand, the form could be made an optional form, but this could call the whole reform effort into question. Exerting the effort needed to create a prescribed form that strata corporations weren't required to use could be seen as resulting in little improvement to the law, which already spells out in detail the information that is required for financial statements.

The committee's recommendation for reform

The committee wasn't in favour of creating a prescribed form of financial statements. In the committee's view, this proposed reform would take too rigid an approach to financial reporting.

While a sizable minority of consultation respondents disagreed with the committee and favoured the creation of prescribed financial statements, the majority of respondents did side with the committee on this issue.

547. See Alberta: *Condominium Property Act*, *supra* note 24, s 30 (3) (a); *Condominium Property Amendment Act, 2014*, *supra* note 29, s 21 (amending section 30 and adding a power to list requirements for financial statements in the regulations—not in force); Saskatchewan: *The Condominium Property Act, 1993*, *supra* note 24, s 39 (2); *The Condominium Property Regulations, 2001*, *supra* note 449, s 53.1 (b) (“financial statements must be prepared in accordance with generally accepted accounting principles published by Chartered Professional Accountants of Canada, as amended from time to time”); Manitoba: *The Condominium Act*, *supra* note 24, s 150 (1); *Condominium Regulation*, Man Reg 164/2014, ss 31–32 (additional disclosure required for financial statements); Ontario: *Condominium Act, 1998*, *supra* note 24, s 66; *General Regulation*, *supra* note 477, s 16 (3); *Protecting Condominium Owners Act, 2015*, *supra* note 29, s 59 (3) (amending section 66—not in force); Québec: art 1087 CCQ; New Brunswick: *Condominium Property Act*, *supra* note 24, s 34 (1); *General Regulation*, NB Reg 2009-169, s 21; Nova Scotia: *Condominium Act*, *supra* note 24, s 24A; *Condominium Regulations*, NS Reg 60/71, s 72B; Newfoundland and Labrador: *Condominium Act, 2009*, *supra* note 24, s 37 (1); Northwest Territories and Nunavut: *Condominium Regulations*, NWT Reg 098-2008, s 6 (2). Prince Edward Island and Yukon don't have any provisions addressing financial statements.

548. See *Business Corporations Act*, *supra* note 296, s 198 (4); *Business Corporations Regulation*, BC Reg 65/2004, s 21 (1); *Cooperative Association Act*, *supra* note 353, s 153 (1) (a); *Societies Act*, *supra* note 296, s 35 (3). See also *Canada Business Corporations Act*, *supra* note 296, s 155 (1) (a); *Canada Business Corporations Regulations, 2001*, *supra* note 462, s 72; *Canada Not-for-profit Corporations Act*, *supra* note 336, s 172 (1) (a); *Canada Not-for-profit Corporations Regulations*, *supra* note 337, s 79 (1).

The committee recommends:

69. *The Strata Property Regulation should not contain a prescribed form for strata-corporation financial statements.*

Issues for Reform—Contracts

Introduction

The *Strata Property Act* has little to say about the power of a strata corporation to enter into contracts. The act confirms that “a strata corporation has the power and capacity of a natural person of full capacity.”⁵⁴⁹ This includes the power and capacity to enter into a contract.

There is one area where the act has placed a restriction on a strata corporation’s contracting powers. This restriction applies during the early life of a strata corporation, when the owner-developer is effectively able to dominate it.

The relevant provision prevents the strata corporation, before its first annual general meeting, from entering into a contract with the owner-developer or a person who isn’t operating at arm’s length from the owner-developer.⁵⁵⁰ But the owners do retain the ability to ratify any such contract, by a resolution passed by a unanimous vote at a special general meeting.

The rationale for this restriction is a concern over what one commentator has called “sweetheart deals.”⁵⁵¹ These are contracts that contain favourable provisions for the owner-developer and the other contracting party but that aren’t in the long-term interests of the strata corporation.

Another special area of concern is strata-management contracts. The act has two provisions that apply to these kinds of contracts. Both provisions have the effect of giving the strata corporation an enhanced power to terminate the contract.

549. *Strata Property Act*, *supra* note 4, s 2 (2).

550. *Ibid*, s 10 (“In the period after the first conveyance of a strata lot to a purchaser but before the first annual general meeting, no contract or transaction may be entered into by or on behalf of the strata corporation with either the owner developer or a person who is not at arm’s length to the owner developer, unless the contract or transaction is approved by a resolution passed by a unanimous vote at a special general meeting.”).

551. Fanaken, *supra* note 34 at 19.

The first provision concerns a strata-management contract that was “entered into before the first annual general meeting.”⁵⁵² It’s described in more detail below as part of the options for reform for the first issue in this part of the chapter. The second provision has a general application to the issue of cancelling a strata-management contract.⁵⁵³ This provision is discussed in connection with the second issue in this part of the chapter.

Should the Strata Property Act give a strata corporation the enhanced power to terminate any contract entered into before its first annual general meeting?

Brief description of the issue

Owner-developers have effective control over a strata corporation from its inception to the time when 50 percent of the strata lots have been sold off to purchasers. During this time, they may cause the strata corporation to enter into all kinds of contracts. An argument could be made that contracts with the owner-developer or with non-arm’s length parties and strata-management contracts aren’t the only contracts in which strata corporations might fall prey to sweetheart deals orchestrated by the owner-developer. Should the act give strata corporations an enhanced power to terminate such contracts?

Discussion of options for reform

Two provinces have enacted legislation that gives a strata corporation enhanced powers to terminate a contract entered into when the owner-developer dominates the strata corporation. This legislation may provide some options to consider.

Manitoba has legislation in force that allows a strata corporation, “within 12 months after the turn-over meeting, [to] terminate, without penalty” any of a series of listed contracts.⁵⁵⁴ (A “turn-over meeting” is a meeting that “must be called by the declar-

552. *Strata Property Act*, *supra* note 4, s 24 (1).

553. See *ibid*, s 39.

554. *The Condominium Act*, *supra* note 24, s 82 (“(1) A condominium corporation may, within 12 months after the turn-over meeting, terminate, without penalty, any of the following agreements entered into by the corporation before the turn-over meeting: (a) an agreement to provide goods and services to the condominium corporation on a continuing basis; (b) an agreement to provide facilities to the condominium corporation on a for-profit basis; (c) a commercial lease for parts of the common elements; (d) an insurance trust agreement. (2) Subsection (1) applies despite any term to the contrary in the agreement to be terminated. (3) To terminate an agreement referred to in subsection (1), the condominium corporation must give written notice of the

ant's [the rough equivalent of a British Columbia owner-developer] board no later than six months after the declarant ceases to be the owner of a majority of the existing units" at which the "declarant's board" [the equivalent to a strata council] is replaced with "a new board of the condominium corporation elected by unit owners" and must turn over condominium records to that new board.)⁵⁵⁵

Alberta has recently implemented a similar provision. The Alberta provision is broader in scope than the Manitoba provision. Instead of applying to a listed set of contracts, it will apply to "an agreement" entered into during the relevant time. This time is "within 12 months after the time at which its board first consists of directors who were elected when persons who were at arm's length from the developer owned or held units representing more than 50% of the total unit factors [the Alberta equivalent of British Columbia's unit entitlement] for all the units."⁵⁵⁶

There isn't much difference between these two options. It could be argued that Alberta's approach gives strata corporations the greatest flexibility, while Manitoba's legislation is more focused on specific kinds of contracts that may pose the greatest concerns. The main downside of both approaches is that they suspend normal contract law on termination and may create uncertainty for parties contracting with strata corporations during the early period of their existence.

Another option to consider is adapting an existing provision in the *Strata Property Act*. Section 24 applies to the cancellation of strata-management contracts "entered into before the first annual general meeting."⁵⁵⁷ Under section 24, such a strata-

termination date to the other party to the agreement at least 30 days, or any shorter period specified in the agreement, before that date. (4) Nothing in this section permits the termination of an easement created by an agreement except in accordance with that agreement. (5) This section does not apply to a mutual use agreement.").

555. *Ibid*, s 75.

556. *Condominium Property Amendment Act, 2014*, *supra* note 29, s 12 (adding new s 17.1 to the *Condominium Property Act*, *supra* note 24: "(1) Except as otherwise provided in section 17 and the regulations, a corporation may terminate an agreement within 12 months after the time at which its board first consists of directors who were elected when persons who were at arm's length from the developer owned or held units representing more than 50% of the total unit factors for all the units. (2) Subsection (1) applies despite any term to the contrary in the agreement to be terminated. (3) To terminate an agreement under this section, the corporation must give written notice of the termination date to the other party to the agreement at least 60 days, or any shorter period specified in the agreement, before the termination date. (4) Where a corporation terminates an agreement under this section, the corporation is not liable to the other party to the agreement by reason only of the termination of the agreement under this section.").

557. *Supra* note 4, s 24 (1).

management contract ends “regardless of any provision of the contract to the contrary, on the earlier of”:

- the date that is 4 weeks after the date of the second annual general meeting,
- the termination date contained in the contract or agreed to by the parties, and
- the cancellation date established in accordance with section 39.⁵⁵⁸

(Section 39 sets out a procedure for cancelling strata-management contracts on two months’ notice.)

Although the contract is presumptively terminated, the legislation allows a strata corporation to sustain it in force “by a resolution passed by a majority vote at the second annual general meeting.”⁵⁵⁹

This existing provision of the act could be expanded to cover other types of contracts—or even all contracts—that a strata corporation enters into within its effective time (“before the first annual general meeting”). The advantage of this option is its familiarity; strata corporations would already be used to applying this procedure for strata-management contracts. The downside is that it could, in practice, prove to be a cumbersome procedure. The strata corporation’s second annual general meeting could be taken up with reviewing many contracts, involving the broad mass of the ownership in making financial judgments.

Finally, another option to consider is retaining the status quo. This option would have the advantage of affirming ordinary contractual principles on termination, which would benefit parties contracting with strata corporations and may also benefit strata corporations by making it easier to enter into contracts during their early existence. But it would also leave strata corporations vulnerable to sweetheart deals.

The committee’s recommendation for reform

The committee acknowledged that some contracts are tilted in favour of the owner-developer. But giving strata corporations a liberal power to terminate them would cause a whole host of other problems, including problems that would impair the operation of a strata corporation in its early life.

558. *Ibid*, s 24 (1).

559. *Ibid*, s 24 (2).

The majority of consultation respondents agreed with the committee's cautious approach to this issue. But a significant minority did favour legislative reform to address the concerns raised here.

The committee recommends:

70. The Strata Property Act should not be amended to provide any new enhanced termination power to a strata corporation for contracts it enters into before its first annual general meeting.

Should section 39 of the Strata Property Act contain a time limit on a 3/4 vote resolution authorizing cancellation of a strata-management contract?

Brief description of the issue

Section 39 (1) of the *Strata Property Act* sets out a procedure for cancelling a strata-management contract.⁵⁶⁰ Section 39 (2) establishes the scope of this procedure: it applies in cases other than those in which a strata-management contract is terminated "in accordance with its terms" or when the agreement "expires."⁵⁶¹ A key component of this procedure is the requirement that the cancellation be "first approved by a resolution passed by a 3/4 vote at an annual or special general meeting."⁵⁶²

In correspondence drawing this issue to the committee's attention, an emerging trend was noted in which strata councils are "proposing to have a 3/4 vote resolution to terminate the strata management contract on every AGM agenda." The effect of such a resolution would be that "council will perpetually have the power to terminate the contract at any time throughout the year."⁵⁶³ This practice raises the concern that the decision to terminate a strata-management agreement may be effectively taken out of the owners' hands and placed at the discretion of the strata coun-

560. *Ibid*, s 39 (1) ("A contract entered into by or on behalf of the strata corporation for the provision of strata management services to the strata corporation may be cancelled, without liability or penalty, despite any provision of the contract to the contrary, (a) by the strata corporation on 2 months' notice if the cancellation is first approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or (b) by the other party to the contract on 2 months' notice.").

561. *Ibid*, s 39 (2) ("The strata corporation does not need any prior approval to cancel the contract in accordance with its terms or to refuse to renew the contract when it expires.").

562. *Ibid*, s 39 (1) (a).

563. Allen Regan, email message to Strata Property Law (Phase Two) Project Committee, 17 February 2017.

cil. To combat this concern, should the act be amended to place a time limit on the owners' authorization to cancel a strata-management contract?

Discussion of options for reform

Amending the act to provide a time limit on a resolution authorizing cancellation of a strata-management contract could help to support one of the purposes of section 39. That purpose is requiring owner scrutiny of a decision to terminate a strata-management contract that is taken within the scope of section 39 (1). If this decision becomes a routine item at annual general meetings, then that purpose may be eroded. A time limit would serve to shore up this aspect of section 39 (1). It would help to ensure that any decisions taken under the provision involve the owners and focus on actual issues with a strata-management contract and not a routine transfer of power to the strata council.

There are likely few drawbacks to amending the act and instituting a time limit. The only significant downside to this proposal is that it could be said that the time is not yet ripe to pursue it. It isn't clear how widespread the trend to routinely adopting a resolution under section 39 (1) is. It could be argued that more study is needed before proposing to amend the legislation.

The committee's recommendation for reform

The committee noted that there are examples in which a strata corporation passes a resolution to terminate a strata-management contract and it just stays there, as an implied threat to the strata-management company. The committee decided that the act should be amended to address this issue.

A strong majority of consultation respondents agreed with the committee's tentative recommendation for reform.

The committee recommends:

71. The Strata Property Act should provide that a strata corporation must act on a resolution authorizing the cancellation of a strata-management contract and provide notice of the cancellation within 90 days.

Issues for Reform—Regulatory Provisions on Fines and Fees

Introduction

The *Strata Property Regulation* contains a handful of provisions that set the monetary limits on fines for bylaw or rule contraventions and fees that the strata corporation may charge for certificates it must provide or copies of records it must retain. These provisions cover the following issues:

- maximum fees for records;⁵⁶⁴
- maximum fee for an Information Certificate (Form B);⁵⁶⁵
- maximum fee for a Certificate of Payment (Form F);⁵⁶⁶
- maximum fines.⁵⁶⁷

Should the Strata Property Regulation be amended to increase the maximum fines?

Brief description of the issue

The act holds that “[t]he strata corporation must set out in its bylaws the maximum amount it may fine an owner or tenant for each contravention of a bylaw or rule.”⁵⁶⁸ But this maximum amount can’t exceed the maximum provided for in the regulation.⁵⁶⁹

The regulation generally sets the maximum fines at the following levels:

- \$200 for each contravention of a bylaw, and
- \$50 for each contravention of a rule.⁵⁷⁰

564. *Strata Property Regulation*, *supra* note 8, s 4.2.

565. *Ibid*, s 4.4.

566. *Ibid*, s 6.10.

567. *Ibid*, s 7.1.

568. *Strata Property Act*, *supra* note 4, s 132 (1).

569. *Strata Property Act*, *ibid*, s 132 (3).

570. *Supra* note 8, s 7.1 (1).

A special maximum level applies to one specific case. If the fine is for “the rental of a residential strata lot in contravention of a bylaw that prohibits or limits rentals,” then “the maximum amount that a strata corporation may set out in its bylaws as a fine . . . is \$500 for each contravention of the bylaw.”⁵⁷¹

Discussion of options for reform

These maximums haven’t changed since the advent of the *Strata Property Act* in July 2000. An argument could be made that, after 17 years, the maximum levels have failed to keep pace with inflation and are now set too low. This could erode the deterrent effect of fines and hamper strata corporations in dealing with bylaw contraventions.

But there could also be drawbacks to raising the maximum fines. Complaints are frequent about strata councils harshly using their bylaw-enforcement powers to fine owners repeatedly at the maximum levels. Commentators⁵⁷² and courts⁵⁷³ have often called for restraint in these circumstances. Raising the maximum fines could exacerbate concerns over enforcement of bylaws.

The committee’s recommendation for reform

The committee decided that the current maximum fines continue to be acceptable, with one exception. In the committee’s view, the maximum fine for a contravention of a rental-restriction bylaw should be raised. This would address concerns that the deterrent value of this fine has significantly eroded in the face of a tight rental market.

Consultation respondents agreed with the committee’s proposed changes by a wide margin.

571. *Ibid*, s 7.1 (2).

572. See Mangan, *supra* note 34 at 351 (“Where bylaws and rules establish a maximum fine, a strata council should consider all the factors involved, including both aggravating and mitigating factors. Instead of starting with a maximum fine, the better approach is to consider what fine is the least amount necessary to reasonably sanction the behaviour in question and deter the individual, as well as others, from breaching the bylaw or rule in the future.”). See also Fanaken, *supra* note 34 at 105.

573. See *Drummond v Strata Plan NW2654*, 2004 BCSC 1405 at paras 15, 39, McKinnon J. See also *Condominium Corporation No 072 9313 (Trails of Mill Creek) v Schultz*, 2016 ABQB 338 at para 33, Master Schlosser.

The committee recommends:

72. The Strata Property Regulation should be amended to set the maximum fines at: (a) \$200 for each contravention of a bylaw; (b) \$50 for each contravention of a rule; and (c) \$2000 for each contravention of a rental-restriction bylaw.

Should the Strata Property Regulation be amended to increase the maximum fees for an Information Certificate (Form B) and a Certificate of Payment (Form F)?

Brief description of the issue

The regulation sets the maximum fee a strata corporation may charge for an Information Certificate at “\$35 plus the cost of photocopying, or other means of reproduction, up to 25 cents per page.”⁵⁷⁴ The maximum fee for a Certificate of Payment is \$15.⁵⁷⁵ These figures have remained the same since the advent of the *Strata Property Act* in 2000. Should they be revised upward?

Discussion of options for reform

This issue presented the committee with a similar decision as was called for in the previous issue. An argument could be made that, after more than 17 years at the same level, the time is right to raise the fees for the two forms to a level that accounts for inflation. On the other hand, it could be argued that the current fees continue to reflect a reasonable fee for official documents that are essentially a required element of strata-lot conveyances and that aren’t intended to be a source of profit.

The committee’s recommendation for reform

In the consultation paper, the committee proposed that these maximums should be increased. An increase hasn’t been implemented since the act was brought into force, during which time the strata-property sector has grown significantly larger and more complex.

While a majority of consultation respondents supported this tentative recommendation, a significant minority disagreed with the committee’s proposal. In view of their comments, the committee gave further thought to the maximum fees that it wished to recommend. The committee focused its attention on both the base fee for an In-

574. *Supra* note 8, s 4.4.

575. See *ibid*, s 6.10.

formation Certificate (Form B) and the fees for copies of records provided by electronic means.

The committee noted that several consultation respondents had made the point that the base fee for the Information Certificate should strictly adhere to the actual costs of preparing the certificate. While the committee accepted this point, in its view the maximum fee it had proposed in the consultation paper (\$300) does meet this ideal. The costs of preparing the certificate will, of course, vary with the circumstances of the strata corporation. There will always be some level of arbitrariness in whatever figure is chosen as the maximum fee. But, that said, in the committee's view compiling the information for the certificate has increasingly become a complex task.

On the other hand, the committee decided upon further reflection that there is a reasonable case to be made for setting the maximum fee for copies of records provided by electronic means at a lower level than the maximum fee for copies provided by other means. In the committee's view, a maximum fee of \$0.15 per page (as opposed to \$0.25) would better reflect the realities of providing copies of records by electronic means.

The committee recommends:

73. The Strata Property Regulation should be amended (a) to raise the maximum fee that a strata corporation may charge for an Information Certificate to \$300 plus (i) up to \$0.25 per page, for the cost of copies of records provided by any means other than electronic means, or (ii) up to \$0.15 per page, for the cost of copies of records provided by electronic means and (b) to raise the maximum fee for a Certificate of Payment to \$50.

Should the Strata Property Regulation provide for a fee for the inspection of strata-corporation records?

Brief description of the issue

Section 36 of the *Strata Property Act* creates a right of access to strata-corporation records for

- an owner,
- a tenant who, under section 147 or 148, has been assigned a landlord's right to inspect and obtain copies of records and documents, or

- a person authorized in writing by an owner or tenant referred to [in the two bullet points above].⁵⁷⁶

The regulation provides that “[n]o fee may be charged to an owner, a tenant or a person authorized by an owner or tenant for the inspection of a record or document under section 36 of the Act.”⁵⁷⁷ Frequently, a strata corporation will authorize someone to supervise an inspection of records under section 36. A strata corporation may incur other costs in these circumstances. In light of these costs, should the strata corporation be able to apply a fee to the inspection of records?

Discussion of options for reform

There are two approaches that may be taken to this issue. The first is to note that the *Strata Property Regulation* is out of step with British Columbia’s other corporate laws on this point. Both the *Business Corporations Regulation*⁵⁷⁸ and the *Societies Regulation*⁵⁷⁹ allow charging a fee of up to ten dollars per day for inspection of corporate records. These regulations recognize that granting access to records imposes a cost on a company or society. Since strata corporations are similar to companies and societies, an argument may be made that they should be treated consistently on this score.

A downside of the first approach is that it really only authorizes a nominal fee for inspection of corporate records. The actual cost of supervising an inspection would far exceed this amount. This point gives rise to the second approach, which would be to set the maximum fee at a level that approximates (or at least moves in the direction of approximating) the actual cost. The rationale for this approach would be to cause

576. *Supra* note 4, s 36 (1). See also s 36.1 (*ibid*) for a parallel right for former owners and former tenants.

577. *Supra* note 8, s 4.2 (2). A strata corporation may charge 25 cents per page for copies of records (*ibid*, s 4.2 (1)).

578. See *Business Corporations Regulation*, *supra* note 548, s 12 (“The fee prescribed under section 46 (5) of the Act for the inspection of records is \$10 per day.”). See also *Business Corporations Act*, *supra* note 296, s 46 (4) (allowing anyone to inspect “without charge” the records of the following kinds of companies: “a public company, a community contribution company, a financial institution or a pre-existing reporting company”).

579. See *Societies Regulation*, *supra* note 383, s 4 (“The maximum fee that a society may charge for an inspection under section 24 (5) [*inspection of records*] of the Act is \$10 per day, regardless of the number of records inspected.”).

the person requesting access to bear the burden (or some of the burden) of the cost of facilitating that access.⁵⁸⁰

Finally, it is also worthwhile considering whether to retain the status quo. An argument could be made that free and open access to inspecting records makes sense for strata corporations, and the policy should be continued. Strata corporations could be seen as being closer to government bodies, which do not charge for an in-person viewing of records,⁵⁸¹ than private corporations like companies or societies.

The committee's recommendation for reform

The committee observed that inspections of strata-corporation records come up infrequently. This area doesn't seem to have witnessed many abuses. The committee also believes that requests for in-person inspections will decline, as more and more people come to favour electronic access to records. In light of these points, the committee decided not to propose a new fee for this method of access to records.

A strong majority of consultation respondents agreed with the committee's tentative recommendation.

The committee recommends:

74. The Strata Property Regulation should continue to provide that a strata corporation may not charge a fee for the inspection of a record or document under section 36 of the Strata Property Act.

580. Ontario has taken a version of this approach in recently amended regulation. See *General Regulation*, *supra* note 477, s 13.3 (8) 5 ("If the request is to examine a copy of a core record, the corporation shall not charge any fee for the request if it makes a copy of the record available for examination in paper form, other than a fee for the actual labour costs that the corporation incurs during the examination and the printing and photocopying charges established under paragraph 3").

581. But see *Freedom of Information and Protection of Privacy Regulation*, BC Reg 155/2012, s 13, Schedule 1 (authorizing and listing "management fees" for government bodies, some of which aren't available to private corporations).

Should the Strata Property Regulation provide for a fee for accessing records electronically?

Brief description of the issue

A strata corporation is allowed to charge a fee for paper copies of its records.⁵⁸² No similar authorization exists for accessing records electronically. Since people are increasingly demanding electronic access to records, should the regulation be amended to allow a strata corporation to charge for that access?

Discussion of options for reform

As was the case for the previous issue, this issue presents an example in which the fees set out in the *Strata Property Regulation* may have fallen behind the fees applicable in similar situations for other kinds of corporations. In this case, it's worthwhile considering the *Societies Regulation*, which was developed in 2015. Under this regulation, the maximum fee that a society may charge for a copy of a record to which it is required to provide access is "\$0.10 per page for a copy provided by email."⁵⁸³ (The maximum fee societies may charge for copies provided by any means other than email is \$0.50 per page.)⁵⁸⁴ This fee allows not-for-profit societies some recovery for providing copies of records in electronic form. It also reflects the lower cost of providing copies by email as opposed to another method. Similar considerations could easily be seen to apply to strata corporations.

That said, there could be an argument that strata corporations are sufficiently different from societies to call for a different approach. Strata corporations could be seen as having something more of a governmental or public character than societies. This character could justify continuing free electronic access to strata-corporation records. Of note on this point is that Ontario has recently revised its strata-corporation regulations. Ontario's new regulation provides that "[i]f the request is to examine or obtain a copy of a core record, the corporation shall not charge any fee for the request if it delivers the copy to the requester in electronic form."⁵⁸⁵

582. See *Strata Property Regulation*, *supra* note 8, s 4.2 (1) ("The maximum fee that the strata corporation may charge for a copy of a record or document provided under section 36 of the Act is 25 cents per page.").

583. *Supra* note 579, s 5 (b).

584. See *ibid*, s 5 (a).

585. See *General Regulation*, *supra* note 477, s 13.3 (8) 4.

The committee's recommendations for reform

The committee proposed making the fees for electronic access parallel to the fees for other kinds of access to records. If a person inspects strata-corporation records by electronic means, then it should be free. If that person requests an electronic copy of a record—say, in Portable Document Format (PDF)—then it should be provided subject to a charge. The committee also decided that a financial incentive isn't needed to steer people toward electronic copies. Most people already prefer the convenience of electronic copies.

A majority of consultation respondents agreed with the committee's approach to this issue.

The committee recommends:

75. The Strata Property Regulation should not allow a strata corporation to charge a fee for an inspection of a record or document under section 36 of the Strata Property Act by electronic means.

While a majority of consultation respondents agreed with the committee's tentative recommendation to set the maximum fee for copies of records provided by electronic means at \$0.25 per page, a significant minority disagreed. The committee gave further thought to the figure in view of comments on its proposal and decided that a maximum fee of \$0.15 would be a better choice. This maximum fee corresponds to the maximum fee that the committee has recommended for copies of records provided by electronic means that accompany an Information Certificate (Form B).⁵⁸⁶

The committee recommends:

76. The Strata Property Regulation should allow a strata corporation to charge a fee of up to \$0.15 per page for a copy of a record or document provided under section 36 of the Strata Property Act by electronic means.

Issues for Reform—Limitation Period and Collections

Introduction

When a strata corporation has money owing to it from a strata-lot owner it must take steps to collect that money. Given the range of a strata corporation's responsi-

586. See, above, at 191–192.

bilities, it is critical that it doesn't find itself in arrears due to a failure of owners to pay required sums.

The *Strata Property Act* gives strata corporations a number of tools with which to collect money owing to it. A commentator has helpfully pulled these tools together into a useful list.

Depending on the circumstances, a strata corporation may enforce payment of money due to the corporation by:

- interest on arrears,
- fines for late payments,
- demand notices,
- liens against the title of a strata lot,
- withholding a Certificate of Payment (Form F),
- court actions [or applications to the Civil Resolution Tribunal], or
- arbitration.⁵⁸⁷

This report doesn't examine collections issues in comprehensive detail. It's only interested in one issue, which involves the interaction of collections with limitation periods.

A limitation period is "[a] statutory period after which a lawsuit or prosecution cannot be brought in court."⁵⁸⁸ In other words, it is a statutory rule that may result, by the mere passage of time, in a person being barred from enforcing an otherwise-valid claim for money or some other remedy.

There is a vast array of limitation periods distributed throughout British Columbia's statutes. For the purposes of this report, relevant claims are those involving proceedings by or against a strata corporation. In particular, the focus is on claims in which a strata corporation is trying to collect money owing to it. The *Strata Property Act* has nothing to say about limitation periods applicable to these kinds of claims.⁵⁸⁹

587. Mangan, *supra* note 34 at 200.

588. *Black's Law Dictionary*, *supra* note 173 *sub verbo* "limitation."

589. See *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 10.26 ("The [Strata Property] Act does not set out any specific limitation periods applying to claims by or against a strata corporation. As a result, the limitation period applies that is related to the relevant type of cause of action as set out in the *Limitation Act* or other applicable legislation.").

So to grasp the applicable limitation period for them it's necessary to turn to British Columbia's general limitations statute, the *Limitation Act*.⁵⁹⁰

The *Limitation Act* sets out the following basic limitation period: "a court proceeding in respect of a claim must not be commenced more than 2 years after the day on which the claim is discovered."⁵⁹¹ This basic limitation period applies to any claim that a strata corporation has for money owing to it from a strata-lot owner.

Should the Strata Property Act provide strata corporations with a limitation period that is longer than the basic limitation period of two years in which to enforce claims for money owing from a strata-lot owner to the strata corporation?

Brief description of the issue

British Columbia's limitation law was recently overhauled, with a new *Limitation Act* coming into force on 1 June 2013. The effect of this change for strata corporations was explained in commentary from a leading practice guide:

On June 1, 2013, the *Limitation Act*, S.B.C. 2012, c. 13, came into force, changing the limitation period for an action in debt from six years to two years (s. 6). There are transitional provisions that make all debts owing up to and including May 31, 2013, subject to the six-year limitation period (s. 30). All debts that accrue on or after June 1, 2013 are subject to the new two-year limitation period. As a result, strata corporations will have to be proactive in collecting amounts owing under the Certificate of Lien to avoid expiry of the limitation period.⁵⁹²

The main concern with the new, shorter limitation period is pointed to at the end of this passage, which calls on strata corporations to be "proactive in collecting amounts owing." And, while the passage refers expressly to a strata corporation's Certificate of Lien, it is also clear that similar considerations would apply to money owing that couldn't be secured by the statutory lien.⁵⁹³ The practical concern is that a two-year limitation period may be too short for strata corporations, significantly

590. SBC 2012, c 13.

591. *Ibid*, s 6 (1). The act defines *claim* to mean "a claim to remedy an injury, loss or damage that occurred as a result of an act or omission" (*ibid*, s 1 "claim"). See also *Civil Resolution Tribunal Act*, *supra* note 42, s 13 (*Limitation Act* applies to claim before Civil Resolution Tribunal).

592. *British Columbia Strata Property Practice Manual*, *supra* note 34 at § 8.10.

593. See *ibid* at § 8.11 ("If the strata corporation fails to commence an action to collect non-lienable amounts within the limitation period, the strata corporation will be barred from recovering the debt.").

curtailing their flexibility in dealing with money owing from strata-lot owners. (And note that, while limitations law is focused on court proceedings, the new act also has the effect of barring “self-help remedies” that strata corporations often employ in collection cases.)⁵⁹⁴ Should the *Strata Property Act* create a special, longer limitation period for these cases?

Discussion of options for reform

This issue presents readers first with a yes-or-no question. If the answer to this question is “yes, the *Strata Property Act* should create a special limitation period,” then a follow-up question emerges. This question concerns the length of that limitation period. It’s a question that is much more open-ended, as potentially any number could be provided as an answer.

On the basic question, the case for a special limitation period would have to be based on characteristics of the strata corporation and strata-lot owner relationship that set it apart from other creditor-debtor relationships. It could be argued that, unlike most creditor-debtor cases, the parties involved in a strata case will usually carry on their relationship after the debt is settled. Most strata-corporation debt claims don’t end with the forced sale of the debtor’s strata lot. This means that the debtor will remain an owner in a collective residential or commercial property. An argument may be made that the legislative framework should carefully balance the needs of the debt-collection process with the goal of fostering at least a semblance of long-term harmony between owners and strata corporations. This balancing act may call for a longer limitation period, which would give the strata corporation added flexibility to deal with debts and not compel it to take early enforcement action, which could be seen as aggressive, to avoid its claim becoming statute-barred.

The difficulty with these arguments is that there may not be enough special characteristics in the strata corporation and strata-lot owner relationship, which would warrant special treatment under limitation law. After all, most creditors would prefer to have the benefit of more time and flexibility. Most creditors would also prefer not to have their options curtailed because their claims are coming up against the limitation period. The *Limitation Act* is relatively new. It’s unlikely that the govern-

594. Matthew D Fischer, “Strata Corporation Lien and Collection Issues,” in Continuing Legal Education Society of British Columbia, ed, *Strata Property—2013 Update: Materials prepared for the Continuing Legal Education seminar, Strata Property 2013 Update, held in Vancouver, B.C., on April 18, 2013* (Vancouver: Continuing Legal Education Society of British Columbia, 2013) 6.1 at 6.13 (“Importantly for strata corporations, s. 27 of the new *Limitation Act* clarifies that the expiry of the basic limitation period will bar court actions to recover debts, as well as self-help remedies—preventing the placement of a strata lien, or the withholding of a Form F Certificate of Payment by the strata corporation with respect to expired unpaid amounts.”).

ment would be inclined to revisit it to start making exceptions for certain creditors, unless particularly strong evidence could be marshalled to prove that changes need to be made. It isn't clear that this evidence is in place for strata corporations. After a small burst of commentary in anticipation of the coming into force of the new *Limitation Act*, this subject has largely disappeared from published writing on strata-property issues. This could mean that strata corporations are managing to live with the new limitation period.

If the *Strata Property Act* should contain a special limitation period, then the next question that arises is how long that limitation period should be. There is potentially a wide range of numbers that could be considered here.

In selecting a limitation period, it's necessary to bear in mind the purposes of limitation law. Its purposes include promoting certainty and finality and restraining the adjudication of stale claims. The longer the limitation period, the greater the likelihood that stale claims will come before a court. Claims go stale through fading memories and lost or disposed-of records. Further, a longer limitation period brings with it the risk of losing evidence. Changing membership in strata councils, problems with accuracy of meeting minutes, and changing strata managers all increase the risk that receivables will not be collected. These concerns may arise with longer limitation periods, but they may not come to the fore in shorter limitation periods.

The committee's recommendation for reform

The committee grappled with this issue over an extended time. On the one hand, it accepts the general points of the importance of consistency to limitations law and the need to give a relatively new act some time to be considered in practice. On the other, it was aware of problems being caused by the new, shorter limitation period.

Concerns over the effect of limitation law on strata-corporation administration can cut in two directions. A longer limitation period can increase the risk of lost evidence. It can also lead to a slackening of debt-collection practices.

But the two-year limitation period does create a real hardship for strata corporations. Financially, it doesn't make sense for a strata corporation to move quickly to commence court proceedings to enforce a claim against an owner. In most cases the debt is small early on (but it often piles up over time), and the up-front costs of enforcement are high. Because the indebtedness tends to increase as time goes on, it makes financial sense for strata corporations to wait before beginning court proceedings.

Further, the relationship between a strata corporation and a delinquent owner is significantly different from the standard creditor-debtor relationship. When one owner fails to pay strata fees or other amounts due to the strata corporation, the harm ultimately falls on other owners, who must pick up the slack or see the value of their own strata lots decline.

The committee examined many ways to adjust the current law to reflect these two points. In the end, the simplest and best way in its view would be to create a special, longer limitation period in the *Strata Property Act*. The committee also decided that this limitation period should have a restricted application to just those debts that may be made the subject of a lien under section 116 of the act.

While a majority of consultation respondents (in both the full and summary consultations) agreed with the committee's tentative recommendation on this issue, a sizable minority disagreed. Comments from consultation respondents showed there was a split on the reasons for disagreeing with the tentative recommendation. Some respondents disagreed because they favoured the current two-year limitation period. Others expressed a preference for a longer limitation period—or even no limitation period—in these circumstances.

The committee recommends:

77. The Strata Property Act should provide for a special limitation period for claims of money, capable of being subject to a lien under section 116, owing from a strata-lot owner to a strata corporation, of four years.

Chapter 7. Notices and Communications

Background

The act's general notice provisions

The *Strata Property Act* often requires or authorizes a strata corporation or another person to give a notice, record, or document to someone else. The act and its regulations contain a large number of references to the word *notice*.⁵⁹⁵

The *Strata Property Act* doesn't contain a definition of *notice*. But the act does have a dedicated division, with six sections describing how a notice, record, or document is to be given in certain circumstances or to certain persons.⁵⁹⁶

For the purposes of general background, the two most important sections in this division concern the mechanics of giving a notice, record, or document that apply to the strata corporation and that apply when someone else wants to give a notice, record, or document to the strata corporation.⁵⁹⁷

First, here are the act's detailed provisions applying to a notice, record, or document given by the strata corporation:

Notice given by strata corporation

- 61** (1) A notice or other record or document that the strata corporation is required or permitted to give to a person under this Act, the bylaws or the rules must be given to the person,
- (a) if the person has provided the strata corporation with an address outside the strata plan for receiving notices and other records or documents,
- (i) by leaving it with the person, or
- (ii) by mailing it to the address provided, or

595. See *Strata Property Act*, *supra* note 4, ss 16, 17, 21, 24, 39, 42, 43, 45, 46, 47, 51, 54, 59, 60, 61, 63, 64, 65, 76, 83, 84, 85, 103, 112, 113, 114, 135, 137, 138, 145, 146, 147, 148, 173, 178.1, 179, 182, 193, 210, 212, 234, 235, 292; Schedule of Standard Bylaws, ss 7, 14, 28. See also *Bare Land Strata Plan Cancellation Regulation*, *supra* note 235, ss 2, 2.1; Form BL-A; *Strata Property Regulation*, *supra* note 8, ss 4.1, 6.7, 14.12; Form B, Form C, Form K, Form L, Form M, Form N, Form Y.

596. See *supra* note 4, ss 60–65 (part 4, division 7).

597. The other sections in the division deal with the following topics: notice to mortgagee (section 60); address of strata corporation (section 62); legal service on strata corporation (section 64); informing resident owners and tenants (section 65).

- (b) if the person has not provided the strata corporation with an address outside the strata plan for receiving notices and other records or documents,
 - (i) by leaving it with the person,
 - (ii) by leaving it with an adult occupant of the person's strata lot,
 - (iii) by putting it under the door of the person's strata lot,
 - (iv) by mailing it to the person at the address of the strata lot,
 - (v) by putting it through a mail slot or in a mail box used by the person for receiving mail,
 - (vi) by faxing it to a fax number provided by the person, or
 - (vii) by emailing it to an email address provided by the person for the purpose of receiving the notice, record or document.
- (2) The notice, record or document may be addressed to the person by name, or to the person as owner or tenant.
- (3) A notice or other record or document that is given to a person under subsection (1) (a) (ii) or (b) (ii) to (vii) is conclusively deemed to have been given 4 days after it is left with an adult occupant, put under the door, mailed, put through the mail slot or in the mail box, faxed or emailed.⁵⁹⁸

Second, here are the provisions that apply when a notice, record, or document is given to the strata corporation:

Notice given to strata corporation

- 63** (1) A notice or other record or document that is required or permitted under this Act, the bylaws or the rules to be given to the strata corporation must be given to the strata corporation
- (a) by leaving it with a council member,
 - (b) by mailing it to the strata corporation at its most recent mailing address on file in the land title office,
 - (c) by faxing it or emailing it to
 - (i) the strata corporation using the strata corporation's fax number or email address, or
 - (ii) a fax number or email address provided by a council member for the purpose of receiving the notice, record or document, or

598. *Supra* note 4, s 61.

(d) by putting it through the mail slot, or in the mail box, used by the strata corporation for receiving notices, records and documents.

(2) A notice or other record or document that is given to the strata corporation under subsection (1) (b) to (d) is conclusively deemed to be given 4 days after it is mailed, faxed, emailed or put through the mail slot or in the mail box.⁵⁹⁹

Both sections have features in common. They begin by setting out their reach. The sections apply to a notice, record,⁶⁰⁰ or document that is required or permitted to be given either by the strata corporation or to the strata corporation:

- under the *Strata Property Act*—including its regulations;⁶⁰¹
- under the strata corporation's bylaws; or
- under the strata corporation's rules.

Then, the sections list the means by which such a notice, record, or document may be given:

- by leaving it with the recipient—this is effectively personal service;
- by leaving it with someone who can be trusted to give it to the recipient;
- by mailing it to a specified address;
- by faxing or emailing it to a specified fax number or email address;
- by variously placing it in a designated mail slot or under the recipient's door.

Finally, the sections end with something known as a “deemed-notice” provision. To understand the purpose of this provision, begin by thinking about the one method of giving a notice, record, or document to someone to which it doesn't apply. This method is “leaving” a notice, record, or document with the recipient. In this case, there is a direct transmission of the notice, record, or document from the sender to

599. *Ibid*, s 63.

600. See *Interpretation Act*, *supra* note 235, s 29 “record” (“includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise”).

601. See *Interpretation Act*, *ibid*, s 33 (6) (“If an enactment refers to a matter ‘under’ a named or unnamed Act, an Act in that reference includes regulations enacted under the authority of that Act.”).

the recipient. The sender just hands it over. It's a simple matter to establish actual notice in these circumstances.

All the other methods either rely on an intermediary to convey the notice, record, or document from sender to recipient (mail, fax, email, leaving it with someone else to give to the recipient) or allow for some time to elapse between sending and receipt (placing it in a mail slot or under a door). If there is a dispute over notice, then these situations create the potential for a thorny evidentiary problem that can make it difficult to establish actual notice.

Consider a notice, record, or document sent by mail, for example. In a dispute, a sender will say that the notice, record, or document was placed in a mailbox and a recipient will say the notice, record, or document was never received (or was received at such a time as to place it offside the notice period). The party bearing the burden of proving notice must provide some evidence of what occurred during transmission. But, given both the volume of mail and the lack of distinguishing features for any individual piece of mail, this evidence will be virtually impossible to obtain.

This is where the deemed-notice provision comes into play. It relieves the sender from having to prove actual notice by “conclusively deeming” that notice occurs a specific number of days (four) after the notice, record, or document is sent.⁶⁰²

While these two sections deal with scope, method of giving a notice, record, or document, and deemed notice, they don't address one component of effective notice: the time in which a person has to give a notice, record, or document. To determine this, it's necessary to look at a specific section of the act that authorizes the giving of a notice, record, or document.

Taking as an example a provision that comes up frequently in practice, here is the part of the act's general notice section for annual and special general meetings that deals with timing:

602. See Sullivan, *supra* note 233 at § 4.114 (“**Use of ‘deem’ (or ‘consider’) to create presumptions.** The purpose of a presumption is to establish something as a fact without the benefit of evidence. Presumptions are rebutted by tendering evidence that tends to show that the presumption is false. If a presumption is not rebuttable in this way, it is indistinguishable from a legal fiction.” [footnote omitted; emphasis in original]). Using *conclusively* to modify *deemed* will be interpreted by the courts as evidence of a legislature's intention to create a presumption that can't be rebutted. See *Skalbania (Trustee of) v Wedgewood Village Estates Ltd* (1989), 60 DLR (4th) 43, 37 BCLR (2d) 88 at para 80 (CA), Wallace JA, dissenting, leave to appeal to SCC refused, [1989] SCCA No 274 (QL).

Notice requirements for annual or special general meeting

- 45 (1) Subject to subsection (1.1), the strata corporation must give *at least 2 weeks' written notice* of an annual or special general meeting to all of 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 under section 60;
 - (c) every tenant who has been assigned a landlord's right to vote under section 147 or 148, if the strata corporation has received notice of the assignment.
- (1.1) The strata corporation must give *at least 4 weeks' written notice* under subsection (1) of an annual or special general meeting at which a winding-up resolution will be considered.⁶⁰³

These two provisions give readers a notice period—two weeks in subsection (1) and four weeks in subsection (1.1)—but they don't contain a formula for calculating that period. This is a deliberate drafting choice. The government has created standardized provisions for calculating time, which apply by default to “an enactment and to a deed, conveyance or other legal instrument.”⁶⁰⁴

The *Interpretation Act's* default provision for calculating time is “the first day must be excluded and the last day included.”⁶⁰⁵ But many enactments contain language that engages a special provision in the *Interpretation Act*:

603. *Supra* note 4, s 45 (1)–(1.1) [emphasis added].

604. *Interpretation Act*, *supra* note 235, s 25 (1). These standardized provisions are only displaced by express language in the enactment or other instrument. As the *Interpretation Act* puts it, its provisions apply “unless specifically provided otherwise in the deed, conveyance or other legal instrument” (*ibid*, s 25 (1)). But note that, on a date to be set by regulation of the Lieutenant Governor in Council, section 25 will be repealed and replaced with a new section 25 and sections 25.1–25.5. See *Miscellaneous Statutes Amendment Act, 2018*, SBC 2018, c 5, s 3 (enacting new section 25 (2), which will provide “[t]his section and sections 25.1 to 25.5 also apply to a deed, conveyance or other legal instrument unless specifically provided otherwise in the deed, conveyance or other legal instrument”—not in force).

605. *Interpretation Act*, *supra* note 235, s 25 (5). See also *Miscellaneous Statutes Amendment Act, 2018*, *supra* note 604, s 3 (enacting new section 25 (1), which will define *reference day* as meaning “any of the following by reference to which the beginning or end of a period of time must be determined: (a) a specified or implied day; (b) a day on which a specified or implied event or act occurs; (c) a day on which a different period begins or ends,” and new section 25.2 (2), which will provide “[s]ubject to subsection (3), the beginning or end of a period of one day or consecutive days or of one week or consecutive weeks, expressed in relation to a reference day, is to be

- (4) In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days, weeks, months or years, the first and last days must be excluded.⁶⁰⁶

Section 45 of the *Strata Property Act* (quoted above) is an example of such an enactment, as it refers to giving “at least” two weeks’ or four weeks’ written notice. Many notice provisions in the *Strata Property Act* use the words *at least*, effectively giving the recipient the benefit of an extra day in calculating the notice period.

Finally, the *Interpretation Act* provides “[i]f the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.”⁶⁰⁷ The *Interpretation Act* defines *holiday* to include all of the following:

- (a) Sunday, Christmas Day, Good Friday and Easter Monday,
- (b) Canada Day, Victoria Day, British Columbia Day, Labour Day, Remembrance Day, Family Day and New Year’s Day,
- (c) December 26, and
- (d) a day set by the Parliament of Canada or by the Legislature, or appointed by proclamation of the Governor General or the Lieutenant Governor, to be observed as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday.⁶⁰⁸

So if a notice period ends on one of these days, then that period is extended to the next day that isn’t a holiday.

determined as follows: (a) if the reference day is before the period, by counting forward from and including the day after the reference day; (b) if the reference day is after the period, by counting backward from and including the day before the reference day”—not in force).

606. *Interpretation Act*, *supra* note 235, s 25 (4). See also *Miscellaneous Statutes Amendment Act, 2018*, *supra* note 604, s 3 (enacting new section 25.2 (3), which will provide “[i]f a period described in subsection (2) is expressed as ‘clear’ days or weeks or ‘at least’ or ‘not less than’ a number of days or weeks, (a) the beginning or end of the period, as determined under subsection (2) (a), is one day later, and (b) the beginning or end of the period, as determined under subsection (2) (b), is one day earlier”—not in force).

607. *Interpretation Act*, *supra* note 235, s 25 (2). See also *Miscellaneous Statutes Amendment Act, 2018*, *supra* note 604, s 3 (enacting new section 25.5 (1), which will provide “[i]f a day that is specified for doing an act falls on a holiday, the day falls on the next day that is not a holiday”—not in force).

608. *Interpretation Act*, *supra* note 235, s 29 “holiday.”

Scope of this chapter

The committee considered this general background and other aspects of notices and communications for stratas in determining the issues for reform for this chapter. It decided to focus its attention on two issues: (1) the act's provisions for informing resident owners and tenants; and (2) specific notice periods.

Issues for Reform

Should section 65 of the Strata Property Act be amended?

Brief description of the issue

Section 65 sets out an exception to the general notice provisions discussed in the previous pages. This exception may be colloquially understood as the bulletin-board exception, even though it's actually a little broader in scope. The section allows a strata corporation to "inform resident owners and tenants by one or more of the following methods or by any other method: (a) leaving a document containing the information at a location designated by the strata corporation for the distribution of such information; (b) posting a document containing the information in a part of the common property designated by the strata corporation for the posting of such information."⁶⁰⁹

This exceptional method of notice may only be used to inform *resident* owners and tenants about unapproved expenditures,⁶¹⁰ changes to strata fees brought in by a new budget,⁶¹¹ expenditure of money collected by special levy,⁶¹² the adoption of new rules,⁶¹³ amendments to bylaws,⁶¹⁴ a lawsuit against the strata corporation,⁶¹⁵ or under "any regulations that require the strata corporation to inform owners or tenants of certain matters."⁶¹⁶

Should this exceptional provision for notice be amended?

609. *Supra* note 4, s 65.

610. See *ibid*, s 98 (6).

611. See *ibid*, s 106.

612. See *ibid*, s 108 (4).

613. See *ibid*, s 125 (4).

614. See *ibid*, s 128 (4).

615. See *ibid*, s 167 (1).

616. *Ibid*, s 65.

Discussion of options for reform

This issue is rather open ended. The committee focused its attention on one of its qualities: its reliance on a low-tech means of providing notice. This approach may have made some sense in the 1990s, when this provision was being developed, but do its assumptions continue to hold true today?

There are privacy and other concerns about posting information in the manner considered by section 65. It's also possible to consider the section's relevance. People may now be more accustomed to receiving information online, causing a decline in this section's bulletin-board approach.

On the other hand, the section is primarily an enabling provision. Even if only a small number of strata corporations rely on it, it may still be providing a benefit to those strata corporations without imposing any burdens on other strata corporations.

The committee's recommendation for reform

The committee wrestled with this issue, which has implications that are not readily apparent at first sight. The committee was struck by the seeming anachronism of the section's approach to giving notices. But as it looked for ways to modernize the section, it continually ran into hurdles that prevented its easy extension to modern means of communication. For example, the committee was concerned about effectively imposing an onus on owners, tenants, and other to regularly check a strata-corporation website to be notified about developments.⁶¹⁷ This onus would be particularly heavy on those who, for whatever reason, don't have in-home access to the Internet.

In the end, the committee decided that the nature of the section, as an enabling provision, was reason enough to propose leaving it as is. In addition, while the committee isn't opposed in practice to distributing notices via websites (where appropriate), it didn't think it was necessary at this time to provide a legislative framework for this practice. The committee is interested in public comment on both dimensions of this issue—that is, the continued utility of section 65 and the possible need for legislation regarding notices via a website.

617. See *The Owners, Strata Plan LMS 2706 v Morrell*, 2018 BCCRT 28 at paras 11–14 (example of distribution of notices by “property management company’s web portal” in dispute over missed notice).

A majority of consultation respondents agreed with the committee's tentative recommendation.

The committee recommends:

78. Section 65 of the Strata Property Act should not be amended.

Should any of the Strata Property Act's notice periods be revised?

Brief description of the issue

The act provides for a wide array of notice provisions. Are any of them in need of updating?

Discussion of options for reform

The committee reviewed notice provisions in general and decided to focus its attention on one aspect of the legal framework. This was the impact of the deemed-notice provision found in section 61.⁶¹⁸

As discussed earlier, the deemed-notice provision has been included in the legislation to deal with evidentiary issues around the giving of notice. But application of the provision may also have the effect of shortening some notice periods to the point where it becomes onerous for a strata corporation to comply with them.

The committee's recommendations for reform

While the deemed-notice provision does serve a useful purpose, in the committee's view it also has the side-effect of creating an administrative burden for strata corporations. The committee decided to lessen this burden by extending the notice periods for case in which the burden is heaviest. These are provisions calling for notice of a written decision of strata council in response to a hearing⁶¹⁹ or a decision regarding an exemption from a rental-restriction bylaw.⁶²⁰

618. See *supra* note 4, s 61 (4) ("A notice or other record or document that is given to a person under subsection (1) (a) (ii) or (b) (ii) to (vii) is conclusively deemed to have been given 4 days after it is left with an adult occupant, put under the door, mailed, put through the mail slot or in the mailbox, faxed or emailed."). See also, above, at 205–206 (general discussion of the deemed-notice provision).

619. See *Strata Property Act*, *supra* note 4, s 34.1 (3).

620. See *ibid*, s 144 (4) (a).

A strong majority of consultation respondents agreed with the committee's proposals for this issue.

The committee recommends:

79. Section 34.1 (3) of the Strata Property Act should be amended by striking out "one week" and replacing it with "two weeks."

The committee recommends:

80. Section 144 (4) (a) (i) of the Strata Property Act should be amended by striking out "one week" and replacing it with "two weeks."

The committee recommends:

81. Section 144 (4) (a) (ii) of the Strata Property Act should be amended by striking out "two weeks" and replacing it with "three weeks."

Chapter 8. Draft Legislation and Regulations

Draft legislation

Strata Property (Governance Issues) Amendment Act, 2018

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1 *Section 1 (1) of the Strata Property Act, S.B.C. 1998, c. 42, is amended by adding the following definitions:*

“**continuing contravention**” means

- (a) a single continuous act, or
- (b) a succession or repetition of separate acts of the same character;

recommendation no. (39)

Comment: Determining when a breach of a strata corporation’s bylaw amounts to a continuing contravention (as opposed to a disconnected series of discrete violations) has proved to be a challenge for strata councils. This definition is intended to clarify the concept. Its wording is based on court judgments that have considered the expression.

“**rent**” means to pay monetary consideration or other value to occupy a strata lot; .

recommendation no. (41)

Comment: The addition of a definition of *rent* is intended to clarify the application of the act’s rental-restriction provisions (sections 139–148). There have been disputes over whether a person who occupies a strata lot and pays monetary consideration to its owner is actually paying rent, which may trigger the application of a rental restriction bylaw. By defining *rent* broadly, this legislative definition is intended to forestall such disputes.

2 *Section 25 is amended*

(a) by renumbering the section as section 25 (1), and

(b) by adding the following subsections:

- (2) If the number of persons on council is less than the maximum number determined by the bylaws, at a special general meeting the eligible voters who are present in person or by proxy at the meeting may elect a council member or council members up to the maximum.

recommendation no. (61)

Comment: This proposed amendment to section 25 would give strata corporations greater flexibility in electing strata-council members at special general meetings. While some scope already exists to do this, the current legislation only goes so far, potentially frustrating strata corporations in certain cases.

- (3) Each candidate for the council is elected only if the number of ballots cast in favour of the candidate represents a majority of the ballots cast for and against that candidate by the eligible voters who are present in person or by proxy.

recommendation no. (58)

Comment: This proposed subsection, which is modelled on a recent amendment to the *Canada Business Corporations Act*, implements the committee's recommendation requiring that a majority of the ballots cast support the election of each strata-council member. This reform is intended to foster greater individual accountability of council members. It will also strike a blow against the practice of acclaiming a set of council members, which in certain cases may result in the election to council of persons who might not have been elected, had they not been considered part of the group to be acclaimed.

3 *The following section is added to Division 1 of Part 4:*

Delegation of certain powers not permitted

- 27.1** The council may not delegate its powers to determine, based on the facts of a particular case,
- (a) whether a person has contravened a bylaw or rule,
 - (b) whether a person should be fined, and the amount of the fine, or
 - (c) whether a person should be denied access to a recreational facility.

recommendation no. (17)

Comment: This amendment relocates section 20 (4) of the Schedule of Standard By-laws to the body of the *Strata Property Act*. The provision deals with a bedrock governance requirement that shouldn't be subject to a strata corporation's amendment.

- 4** *Section 28 (3) is amended by striking out "a strata corporation may, by by-law, provide that" and by striking out "is entitled to register" substituting "has registered".*

recommendation no. n/a

Comment: The purpose of this amendment is to ensure that section 28 (3) of the act remains consistent with section 53 (2), which the committee has recommended amending (see section 15, below). Even though the two sections deal with separate subjects (eligibility for council, in section 28, and voting rights, in section 53), the committee decided that it is important for the language of the sections to be harmonized, to avoid confusion in practice.

5 *The following sections are added:*

Council members must be qualified

- 29.1** (1) A person must not be a member of the council if the person is not qualified under either section 29.2 or the bylaws to be a council member.
- (2) A member of the council who is not, or who ceases to be, qualified under either section 29.2 or the bylaws to be a council member must promptly resign.

Persons qualified to be council members

- 29.2** (1) A person is qualified to be a member of the council only if the person is an individual who is at least 18 years of age.
- (2) Despite subsection (1), an individual is not qualified to be a member of the council if the individual is
- (a) found by any court, in Canada or elsewhere, to be incapable of managing the individual's own affairs,
- (b) an undischarged bankrupt, or
- (c) convicted in or out of British Columbia of an offence in connection with the promotion, formation or management of a

corporation or unincorporated entity, or of an offence involving fraud, unless

- (i) the Supreme Court orders otherwise,
- (ii) 5 years have elapsed since the last to occur of
 - (A) the expiration of the period set for suspension of the passing of sentence without a sentence having been passed,
 - (B) the imposition of a fine,
 - (C) the conclusion of the term of any imprisonment, and
 - (D) the conclusion of the term of any probation imposed, or
- (iii) a pardon was granted or issued, or a record suspension was ordered, under the *Criminal Records Act* (Canada) and the pardon or record suspension, as the case may be, has not been revoked or ceased to have effect.

recommendation no. (60)

Comment: These proposed sections set out the baseline qualifications that anyone should have to meet in order to become a member of a strata council. The minimum standards set out in these sections would require council members to meet defined standards in terms of age, mental capacity, financial management, and honesty and integrity. The amendment is modelled on similar provisions in the *Societies Act*.

6 *The following section is added:*

Limitation on liability of council member

- 31.1** (1) A council member who acts honestly and in good faith is not personally liable because of anything done or omitted in the exercise or intended exercise of any power or the performance or intended performance of any duty of the council.
- (2) Subsection (1) does not affect a council member's liability, as an owner, for a judgment against the strata corporation.

recommendation no. (18)

Comment: This amendment relocates section 22 of the standard bylaws to the act, placing it beyond amendment by the strata corporation.

7 Section 32 is amended

(a) by renumbering the section as section 32 (1), and

(b) by adding the following subsection:

- (2) The quorum for a council meeting may include a council member who is required to leave the meeting under subsection (1) (e).

recommendation no. (52)

Comment: This proposed section is intended to allow a strata council to overcome a practical problem: sometimes enough council members are required to leave a meeting due to their potential conflicts of interest that the quorum for the meeting is placed in doubt. This provision ensures that the remaining, non-conflicted council members can act in these circumstances. The provision is based on a similar provision found in the *Business Corporations Act*.

8 Section 34.1 (3) is amended by striking out “one week” and substituting “2 weeks”.

recommendation no. (79)

Comment: The purpose of this amendment is to give strata councils a more realistic time frame in which to render a written decision to an issue raised in a council hearing.

9 The following section is added:

Strata corporation to circulate minutes of council meeting

- 34.2** The strata corporation must circulate minutes of council meetings within 3 weeks of the meeting, whether or not the minutes have been approved.

recommendation no. (16)

Comment: This proposed section relocates section 19 of the standard bylaws to the act and makes two changes to the provision. First, it substitutes the word *circulate* for the term currently used in the bylaws, *inform*. *Circulate* is the word typically used in both legal and informal contexts to refer to distribution of the minutes. Second, the proposed section changes the time frame in which minutes are to be circulated from two weeks to three weeks.

- 10 Section 39 (1) (a) is amended by adding** “held no earlier than 90 days before the notice is given” **after** “meeting”.

recommendation no. (71)

Comment: This amendment deals with cancellation of strata-management contracts. Under section 39 as it currently stands, a strata corporation is allowed to give two months’ notice to cancel a strata-management contract “if the cancellation is first approved by a resolution passed by a 3/4 vote at an annual or special general meeting.” There is growing concern that these resolutions are being acted upon only after the passage of a considerable time or that they are being treated as a routine item for each annual general meeting. This creates uncertainty in the relationship between the strata corporation and its strata manager. The amendment would effectively place a time limit on the effectiveness of the resolution, by requiring it to be passed at a meeting held no earlier than 90 days before the notice of cancellation is given.

11 Section 48 is amended

(a) by adding the following subsection:

- (2.1) If a quorum is present at the opening of an annual or special general meeting, the eligible voters present in person or by proxy may, unless otherwise provided in the bylaws, proceed with the business of the meeting, even if a quorum is not present throughout the meeting.

recommendation no. (51)

Comment: The proposed amendment is intended to clarify when a quorum is present at an annual general meeting or a special general meeting. It takes the practical approach of only requiring the assessment of quorum at the start of the meeting. The provision is based on a subsection found in the *Canada Not-for-profit Corporations Act*.

(b) in subsection (3) by striking out “the meeting stands adjourned to the same day in the next week at the same place and time but, if on the day to which the meeting is adjourned a quorum described in subsection (2) is not present within 1/2 hour from the time appointed for the meeting,”
and

recommendation no. (49)

Comment: This proposed amendment revises section 48 (3) to read “Unless otherwise provided in the bylaws, if within 1/2 hour from the time appointed for an annual or special

general meeting a quorum is not present, the eligible voters present in person or by proxy constitute a quorum.” The amendment is intended to allow strata corporations greater efficiencies in conducting their business and to avoid practical problems that have tended to occur following the wake of adjourning a meeting for seven days.

(c) by adding the following subsection:

- (4) Subsection (3) does not apply to a special general meeting called by the voters under section 43.

recommendation no. (50)

Comment: This proposed subsection is a consequential amendment, inserted to make it clear that the new rule regarding quorum does not apply to a meeting requisitioned by voters under section 43 of the act.

12 *The following section is added to Division 4 of Part 4:*

Person to chair meeting

- 49.1**
- (1) Annual and special general meetings must be chaired by the president of the council.
 - (2) If the president of the council is unwilling or unable to act, the meeting must be chaired by the vice president of the council.
 - (3) If neither the president nor the vice president of the council chairs the meeting, a chair must be elected by the eligible voters present in person or by proxy from among those persons who are present at the meeting.

recommendation no. (21)

Comment: This proposed section relocates section 25 of the standard bylaws to the act. It is intended to address a consequence of recommendation no. (47) (see, below, section 16 (c)). That recommendation limits who may serve as a proxy. One limitation is placed on contractors with the strata corporation. Standing alone, the recommendation could have the effect of thwarting a strata corporation’s decision to have a trusted professional (such as a lawyer or strata manager) act as chair of a strata corporation’s general meeting. By specifically stating in the act that a chair “must be elected . . . from among those persons who are present at the meeting,” this proposed section will overcome that problem.

13 Section 50 is amended by adding the following subsections:

- (3) At an annual or special general meeting, voting cards must be issued to eligible voters.
- (4) At an annual or special general meeting a vote is decided on a show of voting cards, unless an eligible voter requests a precise count.
- (5) If a precise count is requested, the chair must decide whether it will be by show of voting cards or by roll call, written ballot or some other method.
- (6) The outcome of each vote, including the number of votes for and against the resolution if a precise count is requested, must be announced by the chair and recorded in the minutes of the meeting.
- (7) Subject to subsection (8), a vote does not need to be held by written ballot, unless the written ballot is authorized by a resolution passed by a majority vote.
- (8) Despite anything in this section, if a vote is for the election of a council member, then it must be held by written ballot.

recommendation nos. (23), (54), (56), and (57)

Comment: These proposed amendments relocate section 27 of the standard bylaws to the body of the act. The provisions deal with the process of voting, setting out procedures that shouldn't be subject to amendment. Subsection (5), which provides that "[i]f there is a tie vote at an annual or special general meeting, the president, or, if the president is absent or unable or unwilling to vote, the vice president, may break the tie by casting a second, deciding vote," isn't carried forward into the legislation in view of the committee's recommendation to do away with this concept of a casting vote at general meetings. Subsections (7) and (8) contain amendments to one aspect of section 27. They eliminate the requirement to hold a secret ballot on the request of as little as one eligible voter. The courts have interpreted this requirement as requiring a level of secrecy and formality that places too great a burden on strata corporations. Under the proposed amendment, the references to *secret ballot* are changed to references to *written ballot*. Further, a meeting chair may only be compelled to hold a vote by written ballot if a resolution is passed by a majority vote, subject to one exception. The exception concerns strata-council elections, which must be held by written ballot.

14 The following section is added:

Strata corporation to circulate minutes of general meeting

- 52.1** The strata corporation must circulate minutes of annual and special general meetings within 3 weeks of the meeting, whether or not the minutes have been approved.

recommendation no. (63)

Comment: This proposed section creates a requirement for the strata corporation to circulate minutes of an annual general meeting or a special general meeting. It parallels a requirement to circulate minutes of a strata-council meeting. In both cases, the draft legislation requires circulation within three weeks of the meeting.

15 Section 53 is amended

(a) by repealing subsection (2) and substituting the following:

- (2) Despite subsection (1), the vote for a strata lot may not be exercised, except on matters requiring an 80% vote or unanimous vote, if the strata corporation has registered a lien against that strata lot under section 116 (1).;

(b) in subsection (3) by striking out “a bylaw passed under”;

recommendation no. (35)

Comment: Section 53 (2) of the *Strata Property Act* currently provides, “[d]espite subsection (1), a strata corporation may, by bylaw, provide that the vote for a strata lot may not be exercised, except on matters requiring an 80% vote or unanimous vote, if the strata corporation is entitled to register a lien against that strata lot under section 116 (1).” The proposed new subsection changes two aspects of this subsection, with the intent of clarifying its application in practice. First, it does away with the requirement that the subsection be enabled by a bylaw amendment. Second, it requires that a lien already be registered against a strata lot before that strata-lot owner’s voting rights are suspended. The current provision allows suspension of voting rights when the strata corporation is “entitled” to register a lien, creating a situation in which the application of the provision turns on a judgment call. The provision will be simpler to apply when that judgment call is eliminated. The proposed revision to subsection (3) is needed as a consequence of the change proposed for subsection (2).

(c) by repealing subsection (4) and substituting the following:

- (4) Despite any other provision in the act, regulations or bylaws, a chair of an annual or special general meeting may not break a tie in voting on a resolution by casting a second, deciding vote.

recommendation no. (54)

Comment: This proposed section would eliminate the use of the chair's casting vote at a strata corporation's annual general meeting or special general meeting. The casting vote is rarely used in practice and has caused confusion when it is asserted in contested circumstances. The section doesn't address strata-council meetings. By implication, the casting vote could be used in those meetings (so long as a strata corporation's bylaws didn't take its use away). Strata-council meetings are invariably composed of smaller groups of individuals and are thereby more prone to deadlock. The casting vote may have some value for them.

16 Section 56 is amended

(a) by adding the following paragraph to subsection (2):

- (a.1) must be in the prescribed form,,

(b) by adding the following subsection:

- (2.1) A document appointing a proxy that is not in the prescribed form is invalid., **and**

recommendation nos. (44) and (45)

Comment: These two amendments allow for the creation of a prescribed form of proxy appointment and make use of that form mandatory. A prescribed, mandatory form should help to combat the abuse and misuse of proxy appointments by clarifying the terms of the proxy relationship.

(c) by repealing subsection (3) and substituting the following:

- (3) Subject to subsection (3.1) and the regulations, any person may be a proxy.
- (3.1) The following persons may not be a proxy for an eligible voter who is not an owner developer:
- (a) an employee, agent or contractor of the strata corporation;
 - (b) an owner developer or employee or agent of an owner developer or a person who does not deal with the owner developer at arm's length;

- (c) a person who provides strata management services to the strata corporation or that person's employee or agent.

recommendation no. (47)

Comment: This amended provision spells out the categories of people who may not be a proxy. It expands on the current provision by listing employees and agents of the strata corporation, owner-developers and their employees and agents, people who don't deal at arm's length with an owner-developer, and employees and agents of strata managers among the categories of people who can't be proxies. This presents a more complete picture of who might potentially be in a conflict of interest as a proxy and who therefore shouldn't be allowed to play that role. The amended provision is based on a provision in the *The Condominium Act* of Manitoba.

17 The following section is added to Division 7 of Part 4:

Inform strata corporation

- 64.1** (1) Within 2 weeks of becoming an owner, an owner must inform the strata corporation of the owner's name, strata lot number and mailing address outside the strata plan, if any.

recommendation no. (5)

Comment: This proposed section relocates section 4 (1) of the schedule of standard by-laws to the body of the act.

- (2) If the owner has a representative, as defined in the regulations, then the representative must inform the strata corporation of the number of the strata lot that the representative is representing and the representative's contact information, by the later to occur of the following:
 - (a) within 2 weeks of the owner becoming an owner;
 - (b) within 2 weeks of the representative becoming the owner's representative.

recommendation no. (6)

Comment: This proposed subsection deals with an emerging issue in strata-property law. As the population ages, it's becoming increasingly common to encounter strata-lot owners who have appointed representatives to deal with their property. An example of such a representative is an attorney appointed under an enduring power of attorney. If an owner has such a representative, then this section obligates the representative to ad-

vises the strata corporation of the strata-lot number that the representative is representing (to ensure clarity on this point) and the representative's contact information (to facilitate communication with the owner's representative).

18 *The following section is added to Division 1 of Part 5:*

Use of property

- 66.1** An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that
- (a) causes a nuisance or hazard to another person,
 - (b) causes unreasonable noise,
 - (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,
 - (d) is illegal, or
 - (e) is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan.

recommendation no. (3)

Comment: This proposed section relocates section 3 (1) of the standard bylaws to the body of the act.

19 *The following sections are added:*

Obtain approval before altering a strata lot

- 70.1** (1) An owner must obtain the written approval of the strata corporation before making an alteration to a strata lot that involves any of the following:
- (a) the structure of a building;
 - (b) the exterior of a building;
 - (c) chimneys, stairs, balconies or other things attached to the exterior of a building;
 - (d) doors, windows or skylights on the exterior of a building, or that front on the common property;
 - (e) fences, railings or similar structures that enclose a patio, balcony or yard;

- (f) common property located within the boundaries of a strata lot;
 - (g) those parts of the strata lot which the strata corporation must insure under section 149.
- (2) The strata corporation must not unreasonably withhold its approval under subsection (1), but may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.

recommendation no. (8)

Comment: This proposed section relocates section 5 (1) and (2) of the standard bylaws to the body of the act. Current subsection (3), which provides “[t]his section does not apply to a strata lot in a bare land strata plan,” isn’t brought forward.

Permit entry to strata lot

- 70.2** (1) An owner, tenant, occupant or visitor must allow a person authorized by the strata corporation to enter the strata lot
- (a) in an emergency, without notice, to ensure safety or prevent significant loss or damage, and
 - (b) at a reasonable time, on 48 hours’ written notice, to inspect, repair or maintain common property, common assets and any portions of a strata lot that are the responsibility of the strata corporation to repair and maintain under these by-laws or insure under section 149.
- (2) The notice referred to in subsection (1) (b) must include the date and approximate time of entry, and the reason for entry.

recommendation no. (11)

Comment: This proposed section relocates section 7 of the standard bylaws to the body of the act.

20 The following section is added:

Obtain approval before altering common property

- 71.1** (1) An owner must obtain the written approval of the strata corporation before making an alteration to common property, including limited common property, or common assets.

- (2) The strata corporation may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.

recommendation no. (10)

Comment: This proposed section relocates section 6 of the standard bylaws to the body of the act.

21 Section 72 is amended

(a) by repealing subsection (2) and substituting the following:

- (2) The strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of limited common property that the owner has a right to use and that is not an item of limited common property listed in subsection (3) (c).

(b) by adding the following subsection:

- (3) The strata corporation must repair and maintain all of the following:
- (a) common assets of the strata corporation;
 - (b) common property that has not been designated as limited common property;
 - (c) limited common property, but the duty to repair and maintain it is restricted to
 - (i) repair and maintenance that in the ordinary course of events occurs less often than once a year, and
 - (ii) the following, no matter how often the repair or maintenance ordinarily occurs:
 - (A) the structure of a building;
 - (B) the exterior of a building;
 - (C) chimneys, stairs, balconies and other things attached to the exterior of a building;
 - (D) patios;
 - (E) doors, windows and skylights on the exterior of a building or that front on the common property;

- (F) fences, railings and similar structures that enclose patios, balconies and yards;
 - (d) a strata lot in a strata plan that is not a bare land strata plan, but the duty to repair and maintain it is restricted to
 - (i) the structure of a building,
 - (ii) the exterior of a building,
 - (iii) chimneys, stairs, balconies and other things attached to the exterior of a building,
 - (iv) doors, windows and skylights on the exterior of a building or that front on the common property, and
 - (v) fences, railings and similar structures that enclose patios, balconies and yards. , **and**
- (c) by renumbering subsection (3) as subsection (4) and adding “Despite subsection (3), the” before “strata corporation”.**

recommendation nos. (12), (13), and (14)

Comment: The proposed amendment in paragraph (b) relocates section 8 of the standard bylaws to become part of section 72 of the act, with one change in wording. This change is the addition of *patios* to the provision (in clause (3) (c) (ii) (D)). The addition of this term is intended to clarify the scope of the new provision. The proposed amendments in paragraphs (a) and (c) are essentially consequential amendments that are needed to ensure the seamless integration section 8 of the standard bylaws into section 72 of the act. Paragraph (b) contains two changes to section 72 (2). First, it clarifies that the limited common property that a strata corporation may, by bylaw, make a strata-lot owner responsible for must not include an item of limited common property listed in new subsection (3) (c). Without this clarification, subsection (2) could be read as inviting a strata corporation to adopt a bylaw that purports to make an owner responsible for the repair and maintenance of such an item of property. But such a bylaw would invariably be unenforceable because it is inconsistent with a provision of the act. Second, the amendment effectively repeals existing section 72 (2) (b) by not carrying it forward into the proposed new subsection (2). The existing provision holds that a “strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of . . . common property other than limited common property only if identified in the regulations and subject to prescribed restrictions.” Since the enabling regulations for this provision have never been adopted, it is essentially a dead letter. Section 72 would be clearer if it this provision ceased to exist. The proposed amendment in paragraph (c) is intended to clarify the relationship between the proposed new subsection (3) and what will become subsection (4).

22 *Section 106 is amended by striking out “2 weeks” and substituting “3 weeks”.*

recommendation no. (64)

Comment: Section 106 deals with informing strata-lot owners of an increase in strata fees (“[w]ithin 2 weeks following the annual or special general meeting at which a budget is passed, the strata corporation must inform owners of any changes to their strata fees resulting from the new budget”). The proposed amendment changes the time frame that the strata corporation has in which to inform owners from two weeks to three weeks. This change will make the section consistent with proposed changes dealing with the circulation of minutes of strata-council meetings and general meetings.

23 *Section 108 (6) is amended by striking out “\$100” and substituting “the prescribed amount”.*

recommendation no. (66)

Comment: Section 108 of the *Strata Property Act* sets out the mechanics for a strata corporation to raise funds by special levy. Subsections (5) and (6) describe what must happen when a strata corporation raises more funds than are ultimately needed to complete an identified project. In these cases (that is, when “the money collected exceeds the amount required, or for any other reason is not fully used for the purpose set out in the resolution” authorizing the special levy), the general rule is that “the strata corporation must pay to each owner of a strata lot the portion of the unused amount of the special levy that is proportional to the contribution made to the special levy in respect of that strata lot.” This general rule is subject to the exception spelled out in subsection (6), which allows the strata corporation to “deposit the excess [funds] in the contingency reserve fund,” so long as “no owner is entitled to receive more than \$100 in total.” The proposed amendment replaces the pat reference to \$100 with a reference to an amount that is prescribed by regulation. Since the process for changing regulations is simpler and less time-consuming than the process for changing legislation, it is common to see legislation allowing things like dollar values to be spelled out in a regulation. Using this approach would make sense for section 108, which has seen inflation erode the \$100 amount that was established when the act came into force nearly 20 years ago. It is necessary to strike a balance in selecting the dollar figure for this provision. A better balance between the needs of strata-lot owners and the administrative demands on the strata corporation would be struck by raising this figure to \$500.

24 *Section 116 (1) is amended by adding the following paragraph:*

- (e) a charge back for an insurance deductible or expense incurred due to damage which is less than an insurance de-

ductible, if the charge back has been found valid by a court, an arbitrator or the Civil Resolution Tribunal.

recommendation no. (31)

Comment: Section 116 of the act sets out the provisions governing the strata corporation's lien, which is a statutory security interest in an owner's strata lot that the strata corporation may benefit from in the circumstances described in section 116. One of these circumstances limits the scope of the lien to securing certain kinds of debts. These debts are listed in subsection (1), which provides that the strata corporation may only register (in the land title office) a lien against a strata lot if its "owner fails to pay the strata corporation any of the following with respect to that strata lot: (a) strata fees; (b) a special levy; (c) a reimbursement of the cost of work referred to in section 85; (d) the strata lot's share of a judgment against the strata corporation." The proposed amendment adds a new item to this list, relating to insurance deductibles. The change is part of a series of reforms—set out in this report and in the committee's separate work on insurance issues—that is intended to improve the operation of section 158 of the act.

25 The following section is added to Division 6 of Part 6:

Limitation period

116.1 A proceeding by a strata corporation in respect of a claim for money that is capable of being subject to a lien under section 116 must not be commenced later than 4 years after the claim is discovered.

recommendation no. (77)

Comment: In the absence of a special limitation period set out in the *Strata Property Act*, suits by a strata corporation are subject to the general two-year limitation period found in the *Limitation Act*. A strong case can be made that some claims by a strata corporation have enough differences from typical debt claims to justify a longer limitation period. This proposed section creates that special, longer limitation period for claims by a strata corporation that are capable of being subject to the strata corporation's lien under section 116 of the *Strata Property Act*. Discoverability is a concept used in limitations law. A claim is discovered in accordance with the rules set out in sections 8–11 of the *Limitation Act*.

26 Section 121 (1) is amended

- (a) in paragraph (b) by striking out "or" the second time it appears,**
- (b) in paragraph (c) by striking out "in the strata lot." and substituting "in the strata lot, or", and**

(c) by adding the following paragraph:

- (d) reassigns money paid by an owner to the strata corporation that was intended for the purposes of
 - (i) strata fees,
 - (ii) a special levy,
 - (iii) a reimbursement of the cost of work referred to in section 85, or
 - (iv) the strata lot's share of a judgment against the strata corporation.

recommendation no. (36)

Comment: This proposed amendment adds a new paragraph to section 121 (1) to address the phenomenon of strata corporations adopting bylaws that purport to reassign funds received from strata-lot owners based on the rule in *Clayton's Case*. Section 121 of the *Strata Property Act* sets out the circumstances in which a strata corporation's bylaw isn't enforceable. The rule in *Clayton's Case* is a rule, typically applied in banking law, which can be summarized as "first in, first out." Some strata corporations have relied on this rule when they are in disputes with strata-lot owners over payments for fines. The owner may dispute the fine and continue regularly paying strata fees. On the strength of a bylaw adopting the rule in *Clayton's Case*, the strata corporation may then reassign the payment on account of strata fees first against the older outstanding item (the disputed fine), leaving a deficit in the payment of strata fees. The significance of this is that while an amount owing on account of a fine isn't within the scope of the strata corporation's statutory lien, an amount owing for strata fees is, which gives the strata corporation significantly increased leverage in the dispute. The proposed amendment is aimed at stamping out this practice, by making it clear that such a bylaw is unenforceable.

27 Section 132 is amended

(a) in the heading by adding "and continuing contraventions" after "Maximum fines",

(b) by repealing subsection (2) and substituting the following:

- (2) The strata corporation may set out in its bylaws different maximum amounts of fines for different bylaws and rules. ,

(c) in subsection (3) by striking out "and the maximum frequency of imposition of fines",

(d) by adding the following subsection:

- (4) If an activity or lack of activity that constitutes a contravention of a bylaw or rule continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days.

recommendation no. (20)

Comment: Paragraph (d) of the proposed amendment relocates section 24 of the standard bylaws to become a part of section 132 of the *Strata Property Act*. Paragraphs (a) to (c) are consequential amendments, which are needed to integrate the relocated bylaw within the section. Paragraph (a) clarifies the section's subjects by making it clear in the heading that the section deals with both maximum fines and continuing contraventions. Paragraphs (b) and (c) remove references to a strata corporation setting in its bylaws "the frequency at which fines may be imposed for a continuing contravention of a bylaw or rule," so long as the frequency doesn't exceed the maximum frequency found in the regulations. These references will be inappropriate once section 24 of the standard bylaws is relocated to the act. A bylaw that purports to depart from the new legislative provision would be unenforceable. And a regulation setting out a maximum frequency for such bylaws is no longer necessary, and so may be repealed.

28 Section 143 is amended

(a) in subsection (1) by striking out "subsection" and substituting "subsections (1.1) and",

(b) by adding the following subsection:

(1.1) Subject to subsection (4), if the strata corporation has an existing bylaw that prohibits or limits rentals and that bylaw is amended, then the amended bylaw applies as follows:

- (a) the amended bylaw does not apply to a strata lot that was validly rented under the bylaw that existed immediately prior to the amendment until the later of
 - (i) one year after a tenant who is occupying the strata lot at the time the amended bylaw is passed ceases to occupy it as a tenant, and
 - (ii) one year after the amended bylaw is passed;
- (b) in any other case, the amended bylaw applies upon the bylaw taking effect in accordance with this act. ,

(c) in subsection (2) by striking out "subsection (1)" and substituting "subsections (1) and (1.1)", and

(d) in subsection (4) by striking out “Subsection (1) (b)” and substituting “Subsections (1) (b) and (1.1) (a) (ii)”.

recommendation no. (38)

Comment: This proposed amendment makes a limited change to the *Strata Property Act*’s provisions on rental-restriction bylaws. The change relates to the so-called grace period, which strata-lot owners benefit from when a strata corporation adopts a rental-restriction bylaw. The provision generally provides that the rental restrictions don’t take effect “until the later of (a) one year after a tenant who is occupying the strata lot at the time the bylaw is passed ceases to occupy it as a tenant, and (b) one year after the bylaw is passed.” These provisions are necessary when a strata lot is validly rented under a rental-restriction bylaw or when a strata corporation is bringing in rental restrictions for the first time. What the proposed amendment does is to make it clear that the grace period won’t apply to a strata lot that wasn’t validly rented under an existing rental restriction bylaw. There is no rationale for giving the owner of such a strata lot a grace period in which to rent it out, simply because the strata corporation has made some changes to an existing rental-restriction bylaw.

29 Section 144 (4) (a) is amended

(a) in subparagraph (i) by striking out “one week” and substituting “2 weeks”, and

(b) in subparagraph (ii) by striking out “2 weeks” and substituting “3 weeks”.

recommendation nos. (80) and (81)

Comment: These proposed amendments give the strata corporation the benefit of more time in which to render a decision in writing on a strata-lot owner’s application for an exemption from a rental-restriction bylaw.

30 The Schedule of Standard Bylaws is repealed and the following substituted:

SCHEDULE OF STANDARD BYLAWS

Division 1 — Duties of Owners, Tenants, Occupants and Visitors

Payment of strata fees and special levies

- 1** (1) An owner must pay strata fees on or before the first day of the month to which the strata fees relate.

- (2) An owner must pay a special levy as approved by the strata corporation.

recommendation no. (1)

Comment: Subsection (1) carries forward existing section 1 of the standard bylaws. Subsection (2) is new. It is intended to make it clear that a strata-lot owner must pay a special levy, just as an owner is obligated to pay strata fees.

Repair and maintenance of property by owner

- 2** (1) An owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.
- (2) An owner who has the use of limited common property must repair and maintain it, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.

recommendation no. (2)

Comment: This section carries forward section 2 of the standard bylaws, without changes.

Use of property

- 3** (1) An owner, tenant, occupant or visitor must not cause damage, other than reasonable wear and tear, to the common property, common assets or those parts of a strata lot which the strata corporation must repair and maintain under these bylaws or insure under section 149 of the Act.
- (2) An owner, tenant, occupant or visitor must ensure that all animals are leashed or otherwise secured when on the common property or on land that is a common asset.
- (3) An owner, tenant or occupant must not keep any pets on a strata lot other than one or more of the following:
- (a) a reasonable number of fish or other small aquarium animals;
 - (b) a reasonable number of small caged mammals;
 - (c) up to 2 caged birds;
 - (d) one dog or one cat.

recommendation no. (4)

Comment: The section carries forward section 3 (2) to (4) of the standard bylaws, without changes. Section 3 (1) will be relocated to the body of the *Strata Property Act*; see, above, at section 18 of this draft amending act.

Tenant must inform strata corporation

- 4 On request by the strata corporation, a tenant must inform the strata corporation of his or her name.

recommendation no. (7)

Comment: The section carries forward section 4 (2) of the standard bylaws, without changes. Section 4 (1) will be relocated to the body of the *Strata Property Act*; see, above, at section 17 of this draft amending act.

Division 2 — Council

Council size

- 5 (1) Subject to subsection (2), the council must have at least 3 and not more than 7 members.
- (2) If the strata plan has fewer than 4 strata lots or the strata corporation has fewer than 4 owners, all the owners are on the council.

Council members' terms

- 6 (1) The term of office of a council member ends at the end of the annual general meeting at which the new council is elected.
- (2) A person whose term as council member is ending is eligible for reelection.

Removing council member

- 7 (1) Unless all the owners are on the council, the strata corporation may, by a resolution passed by a majority vote at an annual or special general meeting, remove one or more council members.
- (2) After removing a council member, the strata corporation must hold an election at the same annual or special general meeting to replace the council member for the remainder of the term.

Replacing council member

- 8**
- (1) If a council member resigns or is unwilling or unable to act for a period of 2 or more months, the remaining members of the council may appoint a replacement council member for the remainder of the term.
 - (2) A replacement council member may be appointed from any person eligible to sit on the council.
 - (3) The council may appoint a council member under this section even if the absence of the member being replaced leaves the council without a quorum.
 - (4) If all the members of the council resign or are unwilling or unable to act for a period of 2 or more months, persons holding at least 25% of the strata corporation's votes may hold a special general meeting to elect a new council by complying with the provisions of the Act, the regulations and the bylaws respecting the calling and holding of meetings.

Officers

- 9**
- (1) At the first meeting of the council held after each annual general meeting of the strata corporation, the council must elect, from among its members, a president, a vice president, a secretary and a treasurer.
 - (2) A person may hold more than one office at a time, other than the offices of president and vice president.
 - (3) The vice president has the powers and duties of the president
 - (a) while the president is absent or is unwilling or unable to act, or
 - (b) for the remainder of the president's term if the president ceases to hold office.
 - (4) If an officer other than the president is unwilling or unable to act for a period of 2 or more months, the council members may appoint a replacement officer from among themselves for the remainder of the term.

Calling council meetings

- 10**
- (1) Any council member may call a council meeting by giving the other council members at least one week's notice of the meeting, specifying the reason for calling the meeting.
 - (2) The notice does not have to be in writing.

- (3) A council meeting may be held on less than one week's notice if
 - (a) all council members consent in advance of the meeting, or
 - (b) the meeting is required to deal with an emergency situation, and all council members either
 - (i) consent in advance of the meeting, or
 - (ii) are unavailable to provide consent after reasonable attempts to contact them.
- (4) The council must inform owners about a council meeting as soon as feasible after the meeting has been called.

Quorum of council

- 11** (1) A quorum of the council is
- (a) 1, if the council consists of one member,
 - (b) 2, if the council consists of 2, 3 or 4 members,
 - (c) 3, if the council consists of 5 or 6 members, and
 - (d) 4, if the council consists of 7 members.
- (2) Council members must be present in person at the council meeting to be counted in establishing quorum.

Council meetings

- 12** (1) At the option of the council, council meetings may be held by electronic means, so long as all council members and other participants can communicate with each other.
- (2) If a council meeting is held by electronic means, council members are deemed to be present in person.
- (3) Owners may attend council meetings as observers.
- (4) Despite subsection (3), no observers may attend those portions of council meetings that deal with any of the following:
- (a) bylaw contravention hearings under section 135 of the Act;
 - (b) rental restriction bylaw exemption hearings under section 144 of the Act;
 - (c) any other matters if the presence of observers would, in the council's opinion, unreasonably interfere with an individual's privacy.

Voting at council meetings

- 13** (1) At council meetings, decisions must be made by a majority of council members present in person at the meeting and who have not abstained from voting.
- (2) Unless there are only 2 strata lots in the strata plan, if there is a tie vote at a council meeting, the president may break the tie by casting a second, deciding vote.
- (3) The results of all votes at a council meeting must be recorded in the council meeting minutes.

recommendation no. (53)

Comment: This provision includes a change from its original source, what is now section 18 of the standard bylaws. In subsection (1) the words “and who have not abstained from voting” have been added to clarify the implications of abstaining from a vote at a council meeting. In this case, an abstention is treated in the same way as an eligible voter’s abstention on a vote at an annual general meeting or a special general meeting.

Delegation of council’s powers and duties

- 14** (1) Subject to subsections (2) and (3), the council may delegate some or all of its powers and duties to one or more council members or persons who are not members of the council, and may revoke the delegation.
- (2) The council may delegate its spending powers or duties, but only by a resolution that
- (a) delegates the authority to make an expenditure of a specific amount for a specific purpose, or
 - (b) delegates the general authority to make expenditures in accordance with subsection (3).
- (3) A delegation of a general authority to make expenditures must
- (a) set a maximum amount that may be spent, and
 - (b) indicate the purposes for which, or the conditions under which, the money may be spent.

Spending restrictions

- 15** (1) A person may not spend the strata corporation's money unless the person has been delegated the power to do so in accordance with these bylaws.
- (2) Despite subsection (1), a council member may spend the strata corporation's money to repair or replace common property or common assets if the repair or replacement is immediately required to ensure safety or prevent significant loss or damage.

recommendation no. (15)

Comment: These sections carry forward what is currently division 3 of the standard bylaw (with only the slight change noted in the comment after section 13), with the exception of sections 19, 20 (4), and 22, which are relocated to the body of the *Strata Property Act* (see, above, at sections 4, 6, and 9 of this draft amending act).

Division 3 — Enforcement of Bylaws and Rules

Maximum fine

- 16** The strata corporation may fine an owner or tenant a maximum of
- (a) \$50 for each contravention of a bylaw, and
 - (b) \$10 for each contravention of a rule.

recommendation no. (19)

Comment: This section carries forward section 23 of the standard bylaws, without changes.

Division 4 — Annual and Special General Meetings

Participation by other than eligible voters

- 17** (1) Tenants and occupants may attend annual and special general meetings, whether or not they are eligible to vote.
- (2) Persons who are not eligible to vote, including tenants and occupants, may participate in the discussion at the meeting, but only if permitted to do so by the chair of the meeting.
- (3) Persons who are not eligible to vote, including tenants and occupants, must leave the meeting if requested to do so by a resolution passed by a majority vote at the meeting.

Comment: This section carries forward section 26 of the standard bylaws, without changes.

Order of business

- 18** The order of business at annual and special general meetings is as follows:
- (a) register eligible voters and issue voting cards;
 - (b) call the meeting to order;
 - (c) elect a person to chair the meeting, if necessary;
 - (d) certify proxies;
 - (e) determine that there is a quorum;
 - (f) present proof of notice of meeting;
 - (g) approve the order of the agenda;
 - (h) approve the minutes of the most recent general meeting or waiver of notice of meeting;
 - (i) deal with any unfinished business;
 - (j) if the meeting is an annual general meeting, receive reports of council activities and decisions since the previous annual general meeting;
 - (k) ratify any new rules made by the strata corporation under section 125 of the act, including any new user fees;
 - (l) if the meeting is an annual general meeting, report on insurance coverage in accordance with section 154 of the act, including the certificate of insurance prepared by the insurance brokerage and the date of the most recent appraisal;
 - (m) if the meeting is an annual general meeting, approve the budget for the coming year in accordance with section 103 of the act;
 - (n) deal with matters under section 46 of the act or about which notice has been given under section 45 of the act;
 - (o) if the meeting is an annual general meeting, elect a council;
 - (p) if the meeting is a special general meeting, elect a council member if necessary;

(q) terminate the meeting.

recommendation nos. (24) and (62)

Comment: This section carries forward section 28 of the standard bylaws, and substantially revises it. The revisions are intended to provide a clearer and more logical picture of the order of business at a general meeting.

Division 5 — Legal Proceedings

Authorization to proceed under Small Claims Act

- 19 The authority required in section 171 (2) of the act is not required for a proceeding under the *Small Claims Act* against an owner or other person to collect money owing to the strata corporation, including money owing as a fine.

recommendation no. (27)

Comment: This section creates a new section for the standard bylaws. This section is linked to section 171 (4) of the act, which reads “[t]he authorization referred to in subsection (2) is not required for a proceeding under the *Small Claims Act* against an owner or other person to collect money owing to the strata corporation, including money owing as a fine, if the strata corporation has passed a bylaw dispensing with the need for authorization, and the terms and conditions of that bylaw are met.” The “authorization referred to in subsection (2)” involves authorizing legal proceedings “by a resolution passed by a 3/4 vote at an annual or special general meeting.” The proposed new bylaw will, by default, give strata corporations the authority to launch proceedings under the *Small Claims Act* in collections matters without obtaining a resolution passed by a 3/4 vote. A strata corporation could change this by amending or repealing this proposed standard bylaw.

Division 6 — Marketing Activities by Owner Developer

Display lot

- 20 (1) An owner developer who has an unsold strata lot may carry on sales functions that relate to its sale, including the posting of signs.
- (2) An owner developer may use a strata lot, that the owner developer owns or rents, as a display lot for the sale of other strata lots in the strata plan.

recommendation no. (26)

Comment: This section carries forward section 30 of the standard bylaws, without changes.

Commencement

- 31** This Act comes into force by regulation of the Lieutenant Governor in Council.

recommendation no. n/a

Comment: This is a standard provision found in British Columbia legislation. It gives the cabinet (formally designated as the “Lieutenant Governor in Council”) the power to control the timing of when the legislation comes into force. A transitional period would help to ensure that people in the strata sector are prepared for the changes that this legislation will bring.

Draft regulations

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the Strata Property Regulation, B.C. Reg. 43/2000, is amended as set out in the attached schedule.

SCHEDULE

1 *Section 4.2 (1) of the Strata Property Regulation, B.C. Reg. 43/2000, is repealed and following substituted:*

- (1) The maximum fee that the strata corporation may charge for a copy of a record or document provided under section 36 of the Act is
 - (a) \$0.25 per page, other than for a copy provided by electronic means, or
 - (b) \$0.15 per page for a copy provided by electronic means.

recommendation no. (76)

Comment: This proposed amendment creates two classes of maximum fees for copies of records that a strata corporation must retain. It preserves the existing fee for copies of records (\$0.25 per page) provided by any means other than electronic. Records provided by electronic means are subject to a new, lower maximum fee (\$0.15 per page).

2 *Section 4.4 is amended by striking out “\$35” and substituting “\$300” and by striking out “25 cents per page” and substituting the following:*

- (a) \$0.25 per page, other than for a copy provided by electronic means, or
- (b) \$0.15 per page for a copy provided by electronic means.

recommendation no. (73)

Comment: The proposed amendment makes two changes to the fees that may be charged for an Information Certificate (Form B). First, it raises the maximum for the base fee from \$35 to \$300. Second, it creates two classes of maximum fees for copies of records, which are consistent with the two classes created in the previous section.

3 *The following section is added to Part 4:*

- 4.6** For the purposes of section 64.1 (2) of the Act, “**representative**” means, in relation to a strata lot owner,
- (a) a person granted power over financial affairs under the *Patients Property Act*,
 - (b) an attorney acting under an enduring power of attorney as described in Part 2 of the *Power of Attorney Act*,
 - (c) a representative acting under a representation agreement made under section 7 (1) (b) of the *Representation Agreement Act*,
 - (d) a personal representative acting under the *Wills, Estates and Succession Act*, or
 - (e) a person authorized in writing by the owner.

recommendation no. (6)

Comment: This proposed amendment defines the term *representative* for the proposed new section 64.1 (see, above, section 17 (2) of the draft amending act). A representative will be required under that new provision to inform a strata corporation of the strata-lot number that is being represented and the representative’s contact information.

4 *The following section is added to Part 6:*

- 6.09** For the purposes of section 108 (6) of the Act, the prescribed amount is \$500.

recommendation no. (66)

Comment: This proposed amendment will establish when a strata corporation is entitled to deposit any excess money collected on a special levy in the contingency reserve fund. Under this provision and proposed amendments to section 108 (6) of the act, so long as no owner is entitled to receive more than \$500 in total as a refund of the unused amount of the special levy that is proportional to the contribution made to the special levy in respect of that strata lot, then the strata corporation may deposit the excess money collected in the contingency reserve fund. This represents an increase from the current statutory figure of \$100. See, above, at section 23 of the draft legislation for the proposed amendment to section 108 (6) of the act.

5 *Section 6.10 is amended by striking out “\$15” and substituting “\$50”.*

recommendation no. (73)

Comment: This proposed amendment raises the maximum fee payable for a Certificate of Payment (Form F) from \$15 to \$50.

6 *Section 7.1 is amended*

***(a) in subsection (2) by striking out “\$500” and substituting “\$2 000”, and
(b) by repealing subsection (3).***

recommendation nos. (20) and (72)

Comment: This proposed amendment changes the regulation governing maximum fines for a bylaw contravention in two ways. First, it raises the maximum fine for contravention of a bylaw that prohibits or limits rentals from \$500 to \$2000. Second, the amendment repeals current section 7.1 (3), which reads “[f]or the purposes of section 132 of the Act, the maximum frequency that a strata corporation may set out in its bylaws for the imposition of a fine for a continuing contravention of a bylaw or rule is every 7 days.” This provision is repealed as a consequence of the decision to relocate section 24 of the standard bylaws (which deals with the frequency that a strata corporation may set for the imposition of a fine for a continuing contravention of a bylaw or rule) to the body of the *Strata Property Act*.

Chapter 9. Conclusion

In the committee's view, implementing the recommendations contained in this report would represent a considerable advance in promoting clarity and accountability within strata corporations. While these recommendations don't fundamentally rewrite the framework for governance found in the *Strata Property Act* and the *Strata Property Regulation*, they do significantly reform many important aspects of that framework.

This report contains a top-to-bottom review of the Schedule of Standard Bylaws. It recommends that 13 standard bylaws (or parts of standard bylaws) should be relocated to the *Strata Property Act*. Doing so will place these former bylaws beyond the reach of amendment by a strata corporation. As a result, important governance issues touching on responsibility for repairs, use of property, and certain meeting procedures will be capable of being analyzed with greater certainty. The report also contains recommendations to enhance enforcement of the strata corporation's bylaws.

The report's recommendations include new statutory definitions, which should lend clarity in applying important provisions of the act. The report also clarifies the major aspects of meeting procedure: proxies, quorum, voting, elections, agendas, and meeting minutes.

Finally, this report contains recommendations that address financial considerations for strata corporations.

The committee's recommendations in this report don't yet have the force of law. This will only occur when the Legislative Assembly of British Columbia passes new legislation or when the executive council adopts new regulations. The committee calls on these bodies to act and to implement this report's recommendations, thereby setting a course for the improvement of strata governance.

APPENDIX A

List of Recommendations

Bylaws and rules—relocating provisions from the standard bylaws to the act

1. Section 1 of the Schedule of Standard Bylaws should remain a part of the standard bylaws and should be amended to read as follows:

Payment of strata fees and special levies

- 1** *(1) An owner must pay strata fees on or before the first day of the month to which the strata fees relate.*
- (2) An owner must pay a special levy as approved by the strata corporation. (33–34)*

2. Section 2 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. (34–35)

3. Section 3 (1) of the Schedule of Standard Bylaws should be relocated to part 5 of the Strata Property Act. (35–36)

4. Section 3 (2)–(4) of the Schedule of Standard Bylaws should remain a part of the standard bylaws. (35–36)

5. Section 4 (1) of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. (36–37)

6. Upon relocation of section 4 (1) of the Schedule of Standard Bylaws to the Strata Property Act the provision should be amended to require that within two weeks of becoming an owner’s representative with respect to the strata lot, as defined in the regulations, an owner’s representative must inform the strata corporation of the number of the strata lot that the representative is representing and the representative’s contact information. (36–37)

7. Section 4 (2) of the Schedule of Standard Bylaws should remain a part of the standard bylaws. (36–38)

8. *Section 5 (1) and (2) of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. (38)*
9. *Section 5 (3) of the Schedule of Standard Bylaws should be repealed. (38–39)*
10. *Section 6 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. (39)*
11. *Section 7 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. (39–40)*
12. *Section 8 of the Schedule of Standard Bylaws should be relocated to become new section 72 (3) of the Strata Property Act. (40–41)*
13. *When section 8 of the Schedule of Standard Bylaws is relocated to become new section 72 (3) of the Strata Property Act, “patios” should be added to the list of limited common property that the strata corporation has the duty to repair and maintain no matter how often the repair or maintenance ordinarily occurs. (40–41)*
14. *Existing section 72 (3) of the Strata Property Act should be renumbered as subsection (4) and should apply despite new subsection (3) (previously section 8 of the Schedule of Standard Bylaws). (40–42)*
15. *With the exception of sections 19, 20 (4), and 22, all of division 3 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. (43)*
16. *Section 19 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act and revised to read “The strata corporation must circulate minutes of strata-council meetings within three weeks of the meeting, whether or not the minutes have been approved.” (43–44)*
17. *Section 20 (4) of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. (44)*
18. *Section 22 of the Schedule of Standard Bylaws should be relocated to become part of section 31 of the Strata Property Act. (45)*
19. *Section 23 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. (45–46)*

20. Section 24 of the Schedule of Standard Bylaws should be relocated to form part of section 132 of the Strata Property Act and section 7.1 (3) of the Strata Property Regulation should be repealed. **(46–47)**

21. Section 25 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. **(47–48)**

22. Section 26 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. **(48)**

23. Section 27 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. **(49)**

24. Section 28 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. **(49–50)**

25. Section 29 of the Schedule of Standard Bylaws should be repealed. **(50–51)**

26. Section 30 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. **(51)**

27. The following should be adopted as a new standard bylaw: “The authority required in section 171 (2) of the act is not required for a proceeding under the Small Claims Act against an owner or other person to collect money owing to the strata corporation, including money owing as a fine.” **(52–53)**

Bylaws and rules—enforcement: expanding the lien

28. The Strata Property Act should continue not to enable a strata corporation to register a lien on an owner’s strata lot for amounts owing with respect to fines. **(54–55)**

29. The Strata Property Act should not enable a strata corporation to register a lien on an owner’s strata lot for amounts owing with respect a fine, even if the fine has been found valid by a court or the Civil Resolution Tribunal. **(55–56)**

30. The Strata Property Act should continue not to enable a strata corporation to register a lien on an owner’s strata lot for amounts owing with respect to an insurance deductible or expenses incurred due to damage which are less than an insurance deductible. **(56–57)**

31. *The Strata Property Act should enable a strata corporation to register a lien on an owner's strata lot for amounts owing with respect to a charge back for an insurance deductible or expenses incurred due to damage which are less than an insurance deductible, if the charge back has been found valid by a court, an arbitrator, or the Civil Resolution Tribunal. (58–59)*

Bylaws and rules—other enforcement tools

32. *The Strata Property Act should not be amended to add either a provision requiring compliance with a strata corporation's bylaws and rules (which would give the court a wide range of discretionary remedies that may be ordered in cases of non-compliance) or a provision that creates an offence of non-compliance with a strata corporation's bylaws and rules. (60–64)*

33. *The Strata Property Act should not make failure to pay strata fees subject to an immediate fine without the need to comply with the procedures set out in section 135. (64–65)*

34. *The Strata Property Act should continue to allow a strata corporation both to apply a fine and to charge interest if a strata-lot owner fails to pay strata fees. (65–67)*

35. *Section 53 (2) of the Strata Property Act should be amended to read “Despite subsection (1), the vote for a strata lot may not be exercised, except on matters requiring an 80% vote or unanimous vote, if the strata corporation has registered a lien against that strata lot under section 116 (1).” (67–69)*

36. *Section 121 of the Strata Property Act should be amended to provide that a bylaw is not enforceable to the extent that it reassigns money intended for the purposes of (a) strata fees, (b) a special levy, (c) a reimbursement of the cost of work referred to in section 85, or (d) the strata lot's share of a judgment against the strata corporation. (69–72)*

37. *The Strata Property Act should continue to be silent on whether a strata corporation may fine an owner for failure to pay a special levy. (72–74)*

Bylaws and rules—other issues

38. *The Strata Property Act should be amended to provide that, when a strata corporation amends a bylaw that restricts the rental of strata lots, then (a) in the case of a strata lot that was validly rented under the rental-restriction bylaw that existed immediately prior to the amendment, the new rental-restriction bylaw does not apply to the strata lot until the later of one year after a tenant who is occupying the strata lot*

at the time the bylaw is passed ceases to occupy it as a tenant, and one year after the bylaw is passed; and (b) in the case of any other strata lot, the new rental-restriction bylaw applies upon the bylaw taking effect in accordance with the act. (74–78)

Statutory definitions

39. The Strata Property Act should define “continuing contravention” to mean “(a) a single continuous act, or (b) a succession or repetition of separate acts of the same character.” (80–83)

40. The Strata Property Act should not be amended to add a definition of “strata manager.” (83–86)

41. The Strata Property Act should be amended to define “rent” as “means to pay monetary consideration or other value to occupy a strata lot.” (86–89)

42. The Strata Property Act’s definition of “residential strata lot” should not be amended. (90–94)

43. The Strata Property Act should not contain a definition of “nonresidential strata lot.” (94–96)

General meetings and strata-council meetings—proxies

44. The Strata Property Act should require the appointment of a proxy to be made using a standard form with the following features: (a) a warning that the strata corporation has no obligation to ensure that the proxy votes in accordance with any instructions set out in this proxy appointment; (b) a space to record either the grantor’s strata-lot number or unit number and street address; (c) check boxes to indicate whether the proxy appointment is a general appointment or an appointment for a specific meeting; (d) a space to record the date on which the proxy appointment is signed; (e) a signature block; (f) a space to record any voting instructions, labelled “optional.” (104–108)

45. Section 56 (2) of the Strata Property Act should be amended to provide that (a) a document appointing a proxy must be in the prescribed form, and (b) a document appointing a proxy that is not in the prescribed form is invalid. (109–111)

46. The Strata Property Act should not limit the number of proxy appointments that may be held for a general meeting. (111–115)

47. *Section 56 (3) of the Strata Property Act should be amended to provide that the following persons may not be proxies for an eligible voter who is not an owner-developer: (a) an employee, an agent, or a contractor of the strata corporation; (b) an owner-developer or an employee or agent of the owner-developer or a person who does not deal with the owner-developer at arm's length; (c) a person who provides strata management services to the strata corporation or that person's employee or agent. (115–118)*

General meetings and strata-council meetings—conduct of meetings

48. *The Strata Property Act should not prescribe a comprehensive set of rules of order for strata-corporation general meetings. (120–123)*

General meetings and strata-council meetings—quorum

49. *Section 48 (3) of the Strata Property Act should be amended by striking out the words “the meeting stands adjourned to the same day in the next week at the same place and time but, if on the day to which the meeting is adjourned a quorum described in subsection (2) is not present within 1/2 hour from the time appointed for the meeting.” (124–126)*

50. *Section 48 of the Strata Property Act should be amended by adding a new subsection that reads “Subsection (3) does not apply to a special general meeting called by voters under section 43.” (124–126)*

51. *The Strata Property Act should provide that if a quorum is present at the opening of an annual general meeting or a special general meeting, the eligible voters present may, unless the bylaws otherwise provide, proceed with the business of the meeting, even if a quorum is not present throughout the meeting. (127–129)*

52. *The Strata Property Act should provide that a strata-council member who has a direct or indirect interest in (a) a contract or transaction with the strata corporation, or (b) a matter that is or is to be the subject of consideration by the council, if that interest could result in the creation of a duty or interest that materially conflicts with that council member's duty or interest as a council member, and who is present at a council meeting in which the contract, transaction, or matter is considered for approval may be counted in the quorum at the meeting even if the council member leaves the council meeting while the contract, transaction, or matter is discussed and while the council votes on the contract, transaction, or matter. (129–130)*

General meetings and strata-council meetings—voting

53. *Section 18 (1) of the Schedule of Standard Bylaws should be amended by adding “and who have not abstained from voting” after “majority of council members present in person at the meeting.” (132–133)*

54. *The Strata Property Act should not allow any person who is chair of an annual general meeting or a special general meeting to break a tie on a resolution at the general meeting by casting a second, deciding vote, but should continue to allow a president (or, if the president is absent or unable or unwilling to vote, the vice president) to break a tie vote at a strata-council meeting by casting a second, deciding vote. (133–136)*

55. *The Strata Property Act should not change the voting threshold for all resolutions requiring passage by a 3/4 vote. (136–140)*

56. *Section 27 of the Schedule of Standard Bylaws should be amended by striking out the word “secret” wherever it appears and replacing it with the word “written.” (140–142)*

57. *Section 27 of the Schedule of Standard Bylaws should be amended to provide that a strata corporation is only required to hold a vote by written ballot if it is authorized to do so by a resolution passed by a majority vote, unless the vote is an election to the strata council. (143–144)*

General meetings and strata-council meetings—strata-council elections

58. *The Strata Property Act should require that each strata-council member must be elected by a majority of the ballots cast. (144–147)*

59. *The Strata Property Act should not be amended to address the number of members that must be elected to council. (147–148)*

60. *The Strata Property Act should require that a strata-council member (a) must be an individual who is at least 18 years of age, and (b) despite item (a), an individual is not qualified to be a strata-council member if the individual is (i) found by any court, in Canada or elsewhere, to be incapable of managing the individual’s own affairs, (ii) an undischarged bankrupt, or (iii) convicted in or out of British Columbia of an offence in connection with the promotion, formation, or management of a corporation or unincorporated entity, or of an offence involving fraud. (149–152)*

61. *The Strata Property Act should provide that additional strata-council members may be elected at a special general meeting. (152–154)*

General meetings and strata-council meetings—agenda and meeting minutes

62. *Section 28 of the Schedule of Standard Bylaws should be amended so that the agenda at an annual general meeting or a special general meeting is as follows: (a) register eligible voters and issue voting cards; (b) call the meeting to order; (c) elect a person to chair the meeting, if necessary; (d) certify proxies; (e) determine that there is a quorum; (f) present proof of notice of meeting; (g) approve the order of the agenda; (h) approve the minutes of the most recent general meeting or waiver of notice of meeting; (i) deal with any unfinished business; (j) if the meeting is an annual general meeting, receive reports of council activities and decisions since the previous annual general meeting; (k) ratify any new rules made by the strata corporation under section 125 of the act, including any new user fees; (l) if the meeting is an annual general meeting, report on insurance coverage in accordance with section 154 of the act, including the certificate of insurance prepared by the insurance brokerage and the date of the most recent appraisal; (m) if the meeting is an annual general meeting, approve the budget for the coming year in accordance with section 103 of the act; (n) deal with matters under section 46 of the act or about which notice has been given under section 45 of the act; (o) if the meeting is an annual general meeting, elect a council; (p) if the meeting is a special general meeting, elect a council member if necessary; (q) terminate the meeting. (154–156)*

63. *The Strata Property Act should require circulation of minutes of a general meeting within three weeks of the meeting, whether or not the minutes have been approved. (156–157)*

64. *Section 106 of the Strata Property Act, which deals with informing owners of changes to strata fees, should be amended by striking out “2 weeks following the annual or special general meeting at which a budget is passed” and replacing it with “3 weeks following the annual or special general meeting at which a budget is passed.” (158)*

Finances—operating fund

65. *The Strata Property Act should not be amended to change the purpose of and criteria for using funds in a strata corporation’s operating fund. (161–166)*

Finances—special levies

66. *The Strata Property Act should require, if the money collected on a special levy exceeds the amount required, or for any other reason is not fully used for the purpose set out in the resolution, the strata corporation to pay to each owner of a strata lot the portion of the unused amount of the special levy that is proportional to the contribution made to the special levy in respect of that strata lot, unless no owner would be entitled to receive more than an amount prescribed by regulation (which should initially be set at \$500) in total, in which case the strata corporation may deposit the excess in its contingency reserve fund.* **(167–169)**

Finances—budgets

67. *The Strata Property Act should continue to require strata corporations to initiate the budget-approval process only at an annual general meeting.* **(170–171)**

68. *The Strata Property Act should not be amended to permit budgets to be amended at a special general meeting.* **(170–171)**

Finances—financial statements

69. *The Strata Property Regulation should not contain a prescribed form for strata-corporation financial statements.* **(172–175)**

Finances—contracts

70. *The Strata Property Act should not be amended to provide any new enhanced termination power to a strata corporation for contracts it enters into before its first annual general meeting.* **(176–179)**

71. *The Strata Property Act should provide that a strata corporation must act on a resolution authorizing the cancellation of a strata-management contract and provide notice of the cancellation within 90 days.* **(179–180)**

Finances—regulatory provisions on fines and fees

72. *The Strata Property Regulation should be amended to set the maximum fines at: (a) \$200 for each contravention of a bylaw; (b) \$50 for each contravention of a rule; and (c) \$2000 for each contravention of a rental-restriction bylaw.* **(181–183)**

73. *The Strata Property Regulation should be amended (a) to raise the maximum fee that a strata corporation may charge for an Information Certificate to \$300 plus (i) up*

to \$0.25 per page, for the cost of copies of records provided by any means other than electronic means, or (ii) up to \$0.15 per page, for the cost of copies of records provided by electronic means and (b) to raise the maximum fee for a Certificate of Payment to \$50. (183–184)

74. The Strata Property Regulation should continue to provide that a strata corporation may not charge a fee for the inspection of a record or document under section 36 of the Strata Property Act. (184–186)

75. The Strata Property Regulation should not allow a strata corporation to charge a fee for an inspection of a record or document under section 36 of the Strata Property Act by electronic means. (187–188)

76. The Strata Property Regulation should allow a strata corporation to charge a fee of up to \$0.15 per page for a copy of a record or document provided under section 36 of the Strata Property Act by electronic means. (187–188)

Finances—limitation period and collections

77. The Strata Property Act should provide for a special limitation period for claims of money, capable of being subject to a lien under section 116, owing from a strata-lot owner to a strata corporation, of four years. (190–193)

Notices and communications

78. Section 65 of the Strata Property Act should not be amended. (201–203)

79. Section 34.1 (3) of the Strata Property Act should be amended by striking out “one week” and replacing it with “two weeks.” (203–204)

80. Section 144 (4) (a) (i) of the Strata Property Act should be amended by striking out “one week” and replacing it with “two weeks.” (203–204)

81. Section 144 (4) (a) (ii) of the Strata Property Act should be amended by striking out “two weeks” and replacing it with “three weeks.” (203–204)

APPENDIX B

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 focuses 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.

Veronica Barlee (committee member July 2014–present) is a senior policy advisor with the provincial government's Office of Housing and Construction Standards. For the past seven years, Veronica has worked on strata legislation, regulations, policies, and issues. Strata housing is a vital economic driver and a key housing choice in British Columbia, providing almost 25% of the province's housing stock. Veronica's professional background includes extensive policy-development and management experience in the private, public, and not-for-profit sectors, including small business, fundraising, forest-fire fighting, and community services. Her MBA from the University of Alberta is augmented by ongoing professional development in policy development, stakeholder consultation, public engagement, and information management.

Larry Buttress (committee member October 2013–June 2016) 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 the 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 development 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 recently retired 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), a consumer association in British Columbia with over 200 000 members comprising strata corporations, owners, and business members who serve the strata industry. Tony is the weekly Condo Smarts columnist for *The Province*, *The Times Colonist*, and *24 Hours Vancouver*. Since 2002, Tony has written over 1000 columns and information bulletins dedicated to strata living and

is the co-author of *A Practical Guide to Bylaws: The Strata Property Act*, and *Understanding Governance: Strata Rules of order and procedures in British Columbia*. Tony has served as a director/committee member for the Homeowner Protection Office, BC Building Envelope Council, Canadian Standards Association, the Real Estate Council of British Columbia, and continues to play an active role in research and development of building standards, legislation for strata corporations, and consumer protection.

With offices in New Westminster, Victoria, and Kelowna, CHOA provides service to its members throughout the province, promoting an understanding of strata living, and the interests of strata-property owners. On average the association fields 300 inquiries a day from owners, strata-council members, managers and agents, and delivers over 100 seminars annually on a variety of strata-related topics including governance, operations, and administration.

Ian Holt (committee member October 2016–April 2017) started his career in real-estate sales in 1993. He is currently a real-estate agent with Re/Max Real Estate Services in Vancouver. Ian specializes and has sold many strata properties throughout his career. Ian 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. Ian has been an MLS Medallion Club member for 19 years with the Real Estate Board of Greater Vancouver. From 2006 to 2008, Ian was a Vancouver Westside Division board member of the Real Estate Board of Greater Vancouver. From 2008 to the present, Ian has been an active member of the Government Relations Committee at the Real Estate Board of Greater Vancouver.

Tim Jowett started with the Vancouver land title office in 1988 and has progressed through the years from an examiner of title into his current position of senior manager, E-business and deputy registrar with the New Westminster land title office at the Land Title and Survey Authority of British Columbia.

Tim currently oversees the E-business team, a group of specialist examiners who are responsible for the published practices, statutory procedures and functionality related to the electronic filing system. The team's work involves various enhancements, changes, and updates to the systems and processes that are being done in an effort to support the needs of stakeholders.

His role also entails answering questions from a variety of stakeholders, primarily lawyers, notaries, land surveyors, and employees with local governments. Tim has presented and is a key participant at various meetings and conferences on land-title issues with these stakeholders.

Alex Longson (committee member July 2016–present) started his career in real estate in 2005, shortly after emigrating from the United Kingdom, where he had 20 years' experience in the automotive-engineering industry working as a test engineer for Ford Motor Company. He became licensed for strata management in 2006 with a brokerage in the Okanagan, and subsequently became licensed for rental management and as a managing broker in 2009. In 2012, he joined the staff of the Real Estate Council of British Columbia and in his role as senior compliance officer he investigates complaints, advises and educates licensees on the requirements of the legislation, and supports the real estate council's Strata Management Advisory Group. He has also been a guest speaker to the Strata Property Agents of British Columbia and the British Columbia Real Estate Association, and is currently a resource to the Real Estate Council of Alberta for the Condominium Managers Implementation Advisory Committee.

Judith Matheson (committee member October 2013–October 2016) 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 a founding member of the law firm Wilson McCormack Law Group. 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, resolutions, 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.

Susan Mercer (committee member September 2016–present) started her career as a notary public in 1986 in Sidney, BC. During her years of practice, she specialized in real-estate transactions, which included many strata properties. As a result, she is very aware of various issues faced by strata-property owners, as well as by strata-property managers. She has also been involved in strata-property development.

Susan has served various community and professional boards and foundations. She also served on the BCLI Real Property Reform Project Committee from 2008–12.

In 1986, Susan received her certification as a notary public from the University of British Columbia. At that time, she became the first recipient of the annual Bernard Hoeter Award for highest marks achieved on the BC Notary statutory exams. She is also a graduate of the UBC Urban Land Economics Diploma Program (2002), receiving two bursaries recognizing her excellent marks upon completion of the program.

Doug Page (committee member October 2013–July 2014) 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.

Garrett Robinson (committee member April 2017–present) started his career in real-estate sales in 1993. He is currently a realtor with Re/Max Crest Realty Westside in Vancouver. Garrett 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. Garrett has previously been a subcommittee member of

the 2009 *Strata Property Act* Review that was headed by Adrienne Murray. Garrett has been an MLS Medallion Club member for 18 years with the Real Estate Board of Greater Vancouver. Garrett is a past director (three terms) for the Vancouver Westside Division of the Real Estate Board of Greater Vancouver. Garrett is a strata-property owner and active in day-to-day strata-council activity.

Stan Rule (committee member October 2013–September 2016) 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 45 years.

She has been a director of VISOA since 2007 and has led the association as president for the past seven years, during which time it has grown significantly both in membership and in visibility. Sandy currently edits the VISOA Bulletin, a quarterly newsmagazine distributed to nearly 10 000 VISOA members, and leads VISOA’s workshop group, providing educational full-day workshops on strata best practices. She is also part of the Civil Resolution Tribunal staff.

Previously, Sandy was a member of the Civil Resolution Tribunal Working Group (a committee working on procedural matters for the CRT) and a volunteer on 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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- Association of British Columbia Land Surveyors
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- Condominium Home Owners Association
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