



# British Columbia Law Institute

## A Report on Year Two

### About the British Columbia Law Institute

#### Our Mission

The British Columbia Law Institute was created in January 1997 by incorporation under the Provincial *Society Act*. The purposes of the Institute are to work toward the improvement and modernization of the law and the administration of, and access to, justice. It does this through researching the law and developing recommendations about the ways in which the law of the province should be changed.

### BRITISH COLUMBIA LAW INSTITUTE

#### Constitution

2. The purposes of the society are to:
  - (a) promote the clarification and simplification of the law and its adaptation to modern social needs,
  - (b) promote improvement of the administration of justice and respect for the rule of law, and
  - (c) promote and carry out scholarly legal research.



**Gregory K. Steele**  
Institute Chair

#### Highlights: 1998/99

The past year saw the Institute move from a “start-up phase” into a “growth phase.” This is reflected in a number of initiatives that were launched and are in progress at the time this Report is published. These include:

- Exploratory discussions with The University of British Columbia to relocate the Institute’s premises to space adjacent to the Faculty of Law
- Embarking on a formal fundraising campaign to secure the financial sustainability of the Institute
- Formalizing and broadening the consultation process for the development of the Institute’s program
- Increasing the diversity of Board membership

The project work of the Institute has continued. The Program Committees continue to be productive and a major Report on Recognition of Spousal and Family Status was submitted to the Attorney General.

Our relationships with other law reform organizations have continued to strengthen and prosper. Of particular significance has been links between the Institute with the Uniform Law Conference of Canada and Law Commission of Canada.

Finally, the past year saw the first, of what we hope will be many, enactments implementing recommendations emanating from the British Columbia Law Institute.

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## Background to the Creation of the Institute

The Institute was created in response to a decision by the Ministry of Attorney General to withdraw program funding from the Law Reform Commission of British Columbia after the end of March 1997. The disappearance of the Commission, without replacement, had the potential to create a serious vacuum in the legal resources available to the people of British Columbia and carried a significant risk that the tangible and intellectual assets of the Commission would become dissipated and irretrievably lost

After some consultation to test the support for maintaining an institutional law reform presence in British Columbia, the founding members incorporated the Institute as a successor body to the Commission. They had two hopes. The first was that the Ministry of Attorney General would permit a "rollover" of the assets and program of the Commission into this new body. The second was that sufficient financial support could be found to enable the Institute to continue, at least in part, the work of the Commission and to carry out a useful law reform program. Both of these hopes have been realized.

## How to Reach Us

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The Institute's elected executive members are:

**Gregory Steele** - Chair  
**Ann McLean** - Vice-chair  
**Gordon Turriff** - Treasurer  
**Dean Jamie Cassels** - Secretary

Arthur L. Close, Q.C. is Executive Director.

## Entering A Period of Growth

A catalyst for our focus on institutional change was a one-day planning session in early February. This session had a theme of "planning for growth" and the Board addressed several issues including

- Continuity and diversity of the Institute's membership
- Infrastructure, including staffing and facilities
- Fundraising
- Program methodology and development
- Relations with other bodies

Our discussions and deliberations at this planning session set the course for a vibrant and effective law reform body.



**At the Planning Session**  
Prof. James MacIntyre, Gordon Turriff and Ann McLean

## Premises

Since its creation, the Institute has maintained its offices in space generously provided by the Law Society of British Columbia at no cost to the Institute. We are most grateful to the Law Society for the assistance it has given us in this way. There was one less obstacle to worry about in the process of launching the Institute and making it a “going concern.” The space we occupy, however, is large enough only to contain the Institute at its present level of activity.

Part of the Institute’s long range plan is to add at least one full-time lawyer to its staff in the coming year and, possibly, a second person in the subsequent year. We also want to be able to provide a “working environment” to people who are attached to the Institute for shorter periods of time, either to work on a particular project or as part of a partnership arrangement with some other organization.

Accordingly, we have been exploring alternative accommodation for the Institute. At the moment, the most promising possibility is to relocate the Institute offices to The University of British Columbia in space adjacent to the Faculty of Law. Exploratory discussions are currently under way.

## Fundraising

The main source of operational funding for the Institute has been a grant from the British Columbia Law Foundation. The Institute has also received, from several other sources, grants that assist the Institute to carry out particular projects. In addition to grants, project work has also been funded through contractual arrangements with the provincial government.

Relying as heavily as we do on project funding places severe limitations on the kinds of projects the Institute can undertake. It is preferable if programming decisions are not driven by the question of whether a financial sponsor for a project can be found. The proper criteria are whether a project should be undertaken and whether we are the appropriate body to carry it out.

For this reason, we believe it is necessary to expand our funding base by launching a formal fundraising campaign aimed at the community in general and the legal profession and its institutions in particular. With financial help from the Law Foundation, the Institute has engaged a fundraising consultant and a formal fundraising strategy is being developed. Many recipients of this Annual Report will undoubtedly be contacted as part of the campaign.

## About Our Predecessor The Law Reform Commission of British Columbia

The Law Reform Commission was created in 1969 by an act of the Provincial Legislature and began its operations in 1970. The Commission ceased operations at the end of March 1997 following a decision by the Provincial Government to discontinue funding it.

Over the 27 years of its existence the Commission submitted more than 140 reports on a wide variety of topics.

Most of the Commission’s work remains accessible. Printed copies of many of its reports and other documents are available through the Institute.

## Managing the Legacy of the Law Reform Commission

The Institute has concluded an agreement with the provincial government concerning the legacy of the Law Reform Commission. There are two aspects to this.

First, the tangible assets of the Law Reform Commission have been transferred to the Institute for a token amount. This includes the library, office equipment and furniture, and research files.

Second, the Provincial Government has granted a licence to the Institute to deal with the intellectual property left by the Law Reform Commission, including the contents of its reports and working papers. The Institute is thus enabled to distribute, reissue and sublicense these materials.

## Managing the Legacy of the Law Reform Commission *continued*

Our principal goal for the publications of the Law Reform Commission is to ensure that this body of work continues to remain accessible to the public. Elsewhere in this Report, we describe the steps the Institute has taken to ensure that the work of the Law Reform Commission is accessible through the Internet. The Institute also has an inventory of printed reports and documents which are available for purchase at a nominal charge. Ordering information may be found at our website.

## The Institute and the Internet

The Institute is dedicated to the use of the Internet as a medium for gathering and disseminating relevant legal information. The Institute maintains a site on the World Wide Web (WWW) at the following address:

<http://www.bcli.org>

There are a number of features at the website.

## *Institutional and Project Information*

Visitors to our website will find comprehensive information respecting the Institute and its structure and up-to-date information about the status of its ongoing projects.

## Program Development

Out of the proposed fundraising initiative will emerge a law reform body capable of taking on a wider range of projects and able to respond more flexibly to concerns and project suggestions brought to its attention.

Accordingly, the Institute is developing a structured and wide reaching process of consultation in relation to the contents of its program. In particular, the Institute will canvas the legal profession as well as groups and organizations of a kind that tend to provide an interface between the community and the law. In this way, we expect to build a law reform body that is sensitive and responsive to the needs of the community.

## Project Work: Carried Out Internally

The Institute has used two different approaches to carry out its projects. One is the use of Project Committees, a majority of which work more or less independently of the Institute's Board although each Committee normally has two or more Board members as part of its own membership. The work of these Project Committees is described elsewhere in this report. The second approach is to carry out projects relying largely on the Institute's own internal resources including the work of Board members, the Executive Director and the Research Assistant. Three projects in this group are described next.

## Report on Recognition of Spousal and Family Status

### Background

The Attorney General asked the British Columbia Law Institute to review the statute law of British Columbia and make recommendations for legislative changes necessary to provide legal recognition to the variety of family relationships in the province, and to address the rights and obligations that should attach to those relationships. The request from the Attorney General followed amendments made by the legislature to the *Family Relations Act* in 1997, which recognized certain marriage-like relationships.

The Institute was asked to begin work in March, 1998 and complete it by November 30, 1998.

It was understood that the time available would not allow the Institute an opportunity to consult with stakeholders or the community in general.

### The Principles

The Institute approached its task having regard to the principles embodied in the Constitution of Canada (particularly the *Charter of Rights and Freedoms*), federal and provincial human rights legislation, judicial decisions, and policies accepted by the B.C. legislature in other legislation dealing with family relationships.

These principles include:

- Protection of relationships based upon personal choice
- Non-discrimination in access to social status
- Voluntariness
- Protection of the vulnerable
- Protection of expectations
- Equity in distribution of benefits
- Equality among family relationships
- Protection of privacy

## The Proposals

After an exhaustive examination of the provincial statutes, the Institute concluded that in many cases the statutes draw unsustainable distinctions between persons who are married and those of the same or opposite sex who live in non-traditional marriage-like relationships. The same is true of distinctions between conventional families and non-relatives who choose to live together as a family.

To eliminate these distinctions and provide greater legislative recognition of the variety of family relationships in British Columbia the British Columbia Law Institute made the following proposals:

- The Institute proposed the enactment of a *Family Status Recognition Act (FSRA)* which would define an expanded concept of family relationship and set out rules of general application respecting status, rights and obligations, as well as for determining when such a relationship arises and when it ends.

The *FSRA* would not, directly, create any new rights or obligations. Its function would be to guide the interpretation to be placed on other provincial acts so far as rights and obligations created by those acts are concerned.

In addition to its indirect effect, a schedule to the *FSRA* would expressly amend over 100 other statutes to harmonize their operation with it.

- The Institute proposed the enactment of a *Domestic Partner Act* which would allow two adults to enter into a joint declaration that they are domestic partners and, as such, have status, rights and obligations like those that accrue to people who are married. Domestic partners could be of the same or opposite sex and would not have to be in a conjugal relationship.

The Act would permit, but not require, the registration of the declaration with the Registrar of Vital Statistics. If the declaration were registered, the domestic partners, as between themselves and with respect to any third party, would have, as of the date of the registration, rights and obligations equivalent to those of married people.

If the declaration was not registered it would still be effective, as between the partners themselves, during their joint lifetimes, to confer rights and obligations on each other. An unregistered declaration may also be evidence that the parties were in a “marriage-like relationship” for the purposes of the *FSRA* and this might be relevant in claims involving third parties.

- The Institute proposed the enactment of a new Part 5.1 of the *Family Relations Act*, which would provide for the sharing of family property on the termination of a marriage-like relationship. Rights under the proposed Part 5.1 would arise only where the relationship had existed for 2 years.

The principles that would govern the sharing of property in Part 5.1 are based on “constructive trust” concepts developed by the courts to prevent the unjust enrichment of one person at another’s expense. The proposed legislation would refine the operation of the remedy and make it more available through the removal of certain evidentiary barriers.

### The Institute and the Internet *continued*

#### The Law Reform Database

This is a legal resource unique in the world. It is, in essence, a computerized index to over 6,000 reports, consultation documents and other publications of law reform agencies worldwide. During the past year, we initiated a service under which documents in our collection can be made available to users who would not otherwise have access to them. Details of our document photocopy service can be found at our website.

#### British Columbia Law Reform Commission Publications On-line

The Institute has carried forward the work of the Law Reform Commission in making the publications of that body available through the Internet. During the past year, we completed a project to make all of the final reports of the Law Reform Commission accessible. These reports are now available through the Internet at our website and may be browsed on-line or downloaded in either of the two most popular word processing formats.

The next phase of this task will be to bring selected study papers and consultation papers into the website for access.

#### Division of Pensions on Marriage Breakdown

This Internet resource, originally created by the Law Reform Commission, provides information on the operation of British Columbia’s legislation in relation to pension division on divorce. The Institute continues to support this site and hopes shortly to update it to reflect recent legislative developments.

The Institute and the Internet  
continued

### **Builders Lien Act Materials**

The enactment in 1997 of the *Builders Lien Act* was the culmination of 25 years of work toward the creation of new and modern legislation in this area. The background to the Act included a report issued by the Law Reform Commission in 1972. We were therefore pleased to respond when the Ministry of Employment and Investment invited the Institute to prepare some resource information that would assist users in coming to grips with this new legislation. Pursuant to this arrangement, a printed publication and an Internet website were developed.

At the heart of these materials is a document entitled "Questions and Answers on the New *Builders Lien Act*" which has been published both electronically and in printed format. The printed version, over 150 pages, may be ordered through the Ministry.

The electronic version was heavily coded for easy Internet access and allows the user to move seamlessly between various parts of the publication and the legislation itself. It can be reached through a link at the Institute's WWW site.

### **Limitation Act Case Finder**

The Institute supports a database of cases decided under the *Limitation Act*. The database may be searched interactively through queries based on section numbers or keywords. We hope, during the coming year, to significantly extend and enrich this database.

The Report contained draft legislation with extensive annotations to explain its operation, as well as a table comparing the different forms of spousal status contemplated by the Institute's proposals.

## **Proposals for a Contract Law Reform Act**

A Report on this topic was issued in 1998. Its aim is to bring together, in a single statute, a number of provisions that modify the general law of contract. Some of these provisions are part of the current law and may be found in the *Law and Equity Act* and the *Frustrated Contract Act*. Other provisions are based on as yet unimplemented recommendations of the Law Reform Commission made in its past reports.

The basic purpose of this proposal is to make the law more accessible. Most of the current provisions are buried in a mass of complicated and unrelated provisions in the *Law and Equity Act* and a search for them can be a wasteful and frustrating exercise.

## **Enforcement of Non-money Judgments from Outside the Province**

Whether a judgment made in one Canadian province can be enforced in a second province will depend on the nature of the judgment. Where the payment of money by the defendant to the plaintiff has been ordered, as a general rule the judgment may be enforced in the second province. Where, however, the judgment is for relief other than the payment of money, such as an order that the defendant do or refrain from doing certain acts, the situation is quite different; it is usually necessary for the plaintiff to go to the court of the second province and sue again. This process is inconvenient and unnecessarily expensive for the plaintiff. Moreover, the delay inherent in this rule can be dangerous such as where the purpose of the order is to protect the plaintiff from domestic violence.

The full text of the Report is available through the Institute's website and a printed version of the Report may be ordered from the Institute.

The *Contract Law Reform Act* we propose would have two functions. The first would be the one already described above - to consolidate and make accessible the existing enactments that affect the general law of contract. The second is to provide a suitable vehicle for the implementation of recommendations contained in three Law Reform Commission reports in this area that have not yet been acted on. The Report contains the full text of a draft Act along with a commentary to give some flavour of the operation of its provisions.

The Report may be accessed at our website and printed copies are available from the Institute.

The Uniform Law Conference of Canada has addressed this gap in the law with uniform legislation which would allow out-of-province orders of this kind to be enforced by simple procedures giving them the force of local judgments.

A report on this topic will be issued shortly. It examines the need for legislation in this area and the suitability of the uniform legislation as a model for reform. The report is expected to endorse the enactment in British Columbia of the *Uniform Enforcement of Canadian Judgments and Decrees Act*.

The report will contain the full text of the Uniform Act with commentary and will be available at the Institute's website as soon as it is issued.

## Project Work: Committees

Three current projects are Committee-based and their work has matured to the point where published documents, including final reports, are being issued.

### Project on Modernizing the Trustee Act

The ultimate goal of this project is not merely to redraft the Act in modern language but to make it serve the needs of contemporary trusteeship. Many features of the Act are out of step with present-day business practice and some are significant obstacles to efficient trust administration. This is especially true of the statutory investment powers and requirements relating to registration of securities.

Further, the *Trustee Act* has been a catchall over the years for many kinds of provisions that do not necessarily concern trusts and should now be more properly located in the *Estate Administration Act*, the *Property Law Act* and possibly other statutes.

The essential goals in this project are to:

- identify provisions in the Act that have outlived their usefulness, or are inconsistent with current sound business and financial practices and require revision for this reason, even if there is still a case for retention.
- formulate positions on the issues addressed by those provisions or that are raised by their repeal.
- formulate positions on areas of trust law that may not be specifically addressed in the current *Trustee Act*, but which call for consideration in light of the demands of modern trusteeship.
- once necessary policy decisions have been made, formulate recommendations to implement them.
- draft a new *Trustee Act* in modern language incorporating what needs to be retained from the current Act as well as provisions reflecting new policy.

In the past year, the Project Committee issued two final Reports, with Board endorsement. The first concerned trustee investment powers. The aim of the recommendations in that Report is to free trustees from the “legal list” currently contained in the *Trustee Act* which restricts their investments to those enumerated in that list. The Committee recommends that the list be repealed and replaced with a general duty of prudent investment. This new approach will permit trustees to diversify their investments in accordance with modern portfolio theory. Other recommendations are aimed at abrogating some older rules of law that are inconsistent with the prudent investor approach and to ensure that the *Trustee Act* accommodates modern practices concerning the transfer of securities where they are held in a depository.

The second Committee Report concerns statutory remuneration of trustees and trustees’ accounts. The Committee makes recommendations addressing a number of issues that concern the control of trustee remuneration, limitations on remuneration and the extent and nature of judicial supervision of the process.

Both of the Reports may be accessed at the Institute’s website and printed copies of them may be ordered from the Institute.

The Committee is currently considering the subject of the delegation of trustee powers. A consultation paper on that topic is expected later this year. Future work will include consideration of creditor access to trust assets, exculpation clauses and the “total return” approach to trustee investments.

### Publication List

Here is a list of publications of the British Columbia Law Institute since its creation. Each can be purchased from the Institute for the price noted along with a charge for postage and handling.

#### Reports

1. The Need for Uniform Jurisdiction and Choice of Law Rules in Domestic Property Proceedings \$10
2. Gender-Free Legal Writing \$10
3. A Report on Year One (1997-1998 Annual Report) \$10
4. Proposals for a *Contract Law Reform Act* \$15
5. Recognition of Spousal and Family Status \*N.C.
6. Trustee Investment Powers \$15
7. Statutory Remuneration of Trustees and Trustees’ Accounts \$15

#### Other Publications

1. Consultation Paper on Trustee Investment Powers \$10
2. Consultation Paper on Trustee Remuneration and Trustees’ Accounts \$10
3. Working Paper on Civil Remedies for Sexual Assault \$35

Institute publications may be ordered by mail, telephone or fax, or through the Institute’s website.

\* Distribution policy with respect to this document is subject to change without notice.

## The Institute and the Uniform Law Conference

The Uniform Law Conference of Canada is an inter-provincial organization created for the purpose of promoting uniformity of legislation among the Canadian territories and provinces. It is now in its 81<sup>st</sup> year of operation and a significant number of British Columbia statutes are based on Uniform Acts promulgated by the Conference.

Two people attached to the Institute participate actively in the work of the Uniform Law Conference. Institute Chair, Gregory Steele, is a British Columbia delegate to the Conference, is a member of the Civil Section Steering Committee and participates in a number of the ULCC working groups.

The Institute's Executive Director, Arthur L. Close, Q.C. has, for the past year, served as Chair of the Civil Law Section of the Conference. As such, he has been responsible for

- coordinating the work of the Section
- chairing the Steering Committee
- developing new uniform law projects
- setting the agenda for and ultimately chairing the meeting of the Civil Section in Winnipeg in August 1999

He has also assumed special responsibility for the Conference's commercial law initiative.

In the past year, BCLI members assisted the ULCC by participating in working groups on:

- *Uniform Foreign Judgments Act*
- Uniform legislation in relation to the exigibility of income security assets
- Uniform legislation on unclaimed intangible property

The members of the Project Committee are:

Dr. Donovan Waters, Q.C. (Chair)  
Prof. James MacIntyre, Q.C.  
Margaret Mason  
Kathleen Cunningham  
Arthur L. Close, Q.C.

Gregory R. Blue is Reporter to the Committee.



**The Trustee Act Committee at Work**  
Dr. Donovan Waters and Margaret Mason

## Project on Civil Remedies for Sexual Assault

Civil claims based on sexual harm are a relatively new phenomenon. Their numbers appear to be growing in proportion to society's awareness of the frequency and harms of sexual assault. In August 1997, in response to concerns that a coherent set of legal principles has yet to emerge in this area, the British Columbia Law Institute created the Project Committee on Civil Remedies for Sexual Assault.

In June 1999, the Committee issued a working paper to a select but diverse audience reflecting its research, preliminary consultations and analysis of issues relating to remedies in civil sexual assault actions.

Civil actions for damages are one means by which survivors may seek redress after they have been sexually assaulted.

Other remedies available include criminal proceedings, criminal injuries compensation, human rights complaints, negotiated or unilateral compensation packages, and public and private inquiries. The working paper assumes that actions for damages are an important means of pursuing redress for sexual assault. The courts play a leading role in establishing how our society will compensate claims of sexual assault, and in framing the issues, developing compensatory principles, and influencing other proceedings for dealing with sexual assault. Since this is a relatively new area of the law, this paper analyzes civil sexual assault cases with a view to determining whether reforms to the civil justice system are required to meet the needs of plaintiffs, defendants, and society.

The working paper reviews the law relating to liability for sexual assault as background to a detailed discussion of issues relating to damages, and concludes with examination of several important procedural matters. Some issues are specific to the context of sexual assault cases. Other issues may apply more broadly, but have particular significance in sexual assault cases.

As a starting point, the paper assumes that liability against the defendant(s) has been proved. The principles underlying the working paper are:

- Sexual assault is a serious matter, resulting in inherent harm to survivors. This harm has not yet been fully recognized by the civil justice system.
- The civil justice system, while imperfect, is an important process for recognizing the serious nature of sexual assault, awarding compensation to survivors, changing the behaviour of and deterring defendants, and establishing benchmarks for use in other proceedings.
- It is a reasonable expectation for survivors of sexual assault to look to the civil courts as a means of redress.
- The general purpose of the civil damages system is to restore the plaintiff to the state he or she was in prior to the wrongful conduct. The challenge in sexual assault cases is to recognize and quantify the plaintiff's harm and consequent injuries into a damage award which reflects that restorative principle.
- There must be attention to diversity in the circumstances of survivors, and to differing forms of harm which flow from sexual assault.

- While sexual assault cases raise some issues which are unique, damage awards for sexual assault should, as far as possible, be in line with awards made in other tort cases.
- The potential impact of sexual assault damage awards on non-profit organizations, government, and society more generally is an issue meriting attention.

One of the main goals of the working paper is to inform legal professionals and the wider public about the operation of the law in civil sexual assault cases. It has been circulated for comment to individuals and groups representing survivors and defendants, and to legal professionals.

When consultation is complete, the Project Committee plans to submit a final report for Board consideration.

The full text of the working paper may be browsed or downloaded at the Institute's website. A limited number of copies of the working paper are available for purchase from the Institute.

Members of the Project Committee on Civil Remedies for Sexual Assault at the time the working paper was settled were:

Prof. John McLaren (Chair)  
Professor Christine Boyle  
Dean Jamie Cassels  
Arthur Close, Q.C.  
Megan Ellis  
Kathryn E. Neilson, Q.C.  
now Hon. Madam Justice Neilson  
Etel Swedahl  
Dr. Roy O'Shaughnessy

Jennifer Koshan is the Researcher/Reporter for the Committee.

## The Institute and Other Law Reform Bodies

A priority continues to be establishing and maintaining links with other law reform bodies. Participation in the world wide "community" of law reform bodies is important. It ensures that the work of the Institute is widely exposed and that the Institute is kept up-to-date with the work of other bodies through arrangements for the exchange of documents. Receiving reports and documents from other law reform bodies enables us to keep the Law Reform Database up-to-date.

We also maintain special links with our Canadian counterparts. This is done through active participation in the Federation of Law Reform Agencies of Canada, an umbrella organization covering groups like the Institute and by participating in *ad hoc* gatherings of Canadian law reformers.

A special relationship is evolving with the Law Commission of Canada. We have been honoured by visits from its President, Roderick Macdonald, on several occasions and most recently we were pleased to have Stephen Owen, Q.C., the British Columbia based member of the LCC join us at a Board meeting.

Discussions are currently in progress concerning the way in which the Institute might assist the LCC in carrying out its project on personal relationships between adults. We hope to draw on the experience we gained through the work leading to our Report on Recognition of Spousal and Family Status in doing so.

The Institute's Executive Director has also been active in working with the LCC toward the development of a project on "Federal Security Interests." This project forms part of the commercial law work of the Uniform Law Conference.

**Homeowner  
Protection Act  
S.B.C. 1998, c. 31**

*Statutory protection*

23. (1) A residential builder and a vendor of a new home are both deemed to have agreed with the owner, to the extent of labour, materials and design supplied, used or arranged by the residential builder or vendor, that the new home

- (a) is reasonably fit for habitation,
- (b) has been constructed from materials that are of good quality and reasonably fit for the purpose, and
- (c) has been designed and constructed with ordinary competence, skill and care.

(2) Any term of an agreement that purports to waive, exclude, limit or qualify the protection under subsection (1) is of no effect.

(3) The protection under subsection (1) is for the benefit of whoever is the owner of the new home from time to time until the end of the period within which an action may be brought under subsection (5), and that owner is deemed

- (a) to have given good consideration for the benefit of the protection, and
- (b) to be the only person entitled to recover damages for a breach of the protection.

(4) Despite subsection (3), if the ownership of the new home changes during the course of an action for breach of the protection under subsection (1), the new owner is entitled to be substituted as plaintiff and to enforce all rights that the former owner could have enforced.

(5) [Limitation of actions]

(6) [Other laws]

(7) [Application]

## Project Committee on New Home Warranties

The Project Committee on New Home Warranties was formed in the summer of 1997 to continue a project that had begun under the auspices of the Law Reform Commission of British Columbia on new home warranties and related issues arising from defects in new housing. This area became a matter of public concern during the 1990s when the problem of water penetration in new multi-unit dwelling complexes in the Lower Mainland began to assume epidemic proportions and the inadequacy of existing legal protection for purchasers of new housing units became painfully apparent. The Law Reform Commission of British Columbia had undertaken work in the area at the suggestion of the Court of Appeal expressed in *Strata Plan NW2294 Oak Tree Construction Inc.* which highlighted the difficulties in the current law.

The work of the Project Committee has taken place against a rapidly changing background of developments as the “leaky condo” issue led to a quickening of interest by the Provincial Government and the construction industry in improved protection for new-home buyers.

Late in 1997, the Province’s Ministry of Housing let it be known that it was proceeding with consultations leading to the possibility of introducing legislation in 1998. When this occurred, the focus of the Project Committee’s work shifted to providing input into that consultation process.

In April, that process was overtaken by the creation of the Commission of Inquiry into the Quality of Condominium Construction in British Columbia (the Barrett Commission).

On April 29 a submission was made to the Barrett Commission on behalf of the Project Committee stressing the need for the creation of a regime of statutory warranties to overcome the anomalies in the law highlighted in the *Oak Tree Construction* case.

In June 1998, the Barrett Commission issued its Report, titled “The Renewal of Trust in Residential Construction.”

The Report contained a variety of recommendations including one which adopted, in toto, the recommendations made to the Barrett Commission on behalf of our Project Committee.

The legislature responded swiftly by introducing the *Homeowner Protection Act*<sup>1</sup> which implemented many of the recommendations contained in the Report, including a provision implementing the recommendation made in the Project Committee’s submission (see sidebar).

The enactment of the *Homeowner Protection Act* raised the question of what direction, if any, future work of the Project Committee should take. It was the view of the Project Committee that the *Homeowner Protection Act* did not address all of the problems which it had identified.

The Project Committee will therefore remain in existence to observe the operation of the legislation for a sufficient period to determine its effectiveness. In the meantime, the Project Committee will monitor developments and will be submitting an interim report to the Law Institute relating its activity to the point at which the *Homeowner Protection Act* was enacted.

The members of the Project Committee are:

- Professor Mary-Anne Waldron (Chair)
- Martin Taylor, Q.C.
- Arthur L. Close, Q.C.
- Glen Urquhart, Q.C.
- David Morris
- Derek Neale
- John Fraser

The Reporter to the Committee is Gregory R. Blue.

<sup>1</sup> S.B.C. 1998, c. 31.

## Membership

The bylaws of the Institute initially provided for 13 members, 8 appointed by stakeholder groups and others as “members at large.” Every member is also a director.

In 1999, the bylaws were amended to provide for a fourteenth member. This step was taken to increase the diversity of Board membership by creating a position for a person without legal training or experience. We were pleased when Cathy Moss accepted our invitation to join the Institute as its lay member.

Our members are:

**Thomas G. Anderson**

Member at large

**Prof. Christine Boyle**

U.B.C. Faculty of Law, Dean’s nominee

**Dean Jamie Cassels**

U. Vic Faculty of Law, Dean’s nominee

**Arthur L. Close, Q.C.**

B.C. Law Institute, Member at large

**Sholto Hebenton, Q.C.**

McCarthy Tetrault, Law Society nominee

**Ravi. R. Hira, Q.C.**

Watson Goepel Maledy, A.G. nominee

**Prof. James MacIntyre, Q.C.**

U.B.C., Law Society nominee

**Ann McLean**

Min. of A.G., CBA (BC) nominee

**Cathy Moss**

Member at large

**Douglas Robinson, Q.C.**

Lawson Lundell & Co., CBA (BC) nominee

**Gregory Steele**

Steele Urquhart Payne, Member at large

**Etel R. Swedahl**

Swedahl McPherson, A.G. nominee

**Hon. Martin Taylor, Q.C.**

Davis & Company, Member at large

**Gordon Turriff**

Douglas Symes & Brissenden, Member at large



**The British Columbia Law Institute Board**

James MacIntyre, Martin Taylor, Tom Anderson, Christine Boyle, Ravi Hira  
Gordon Turriff, Arthur Close, Greg Steele, Ann McLean, Sholto Hebenton  
Missing: Jamie Cassels, Cathy Moss, Doug Robinson, Etel Swedahl

## BRITISH COLUMBIA LAW INSTITUTE

### Bylaws

- ...
4. (1) The society shall consist of 14 members as follows:
- (a) two persons appointed by the Attorney General;
  - (b) two persons appointed by the executive committee of the Law Society of British Columbia;
  - (c) two persons appointed by the executive committee of the British Columbia Branch of the Canadian Bar Association;
  - (d) one person appointed by the Dean of the Faculty of Law, University of British Columbia;
  - (e) one person appointed by the Dean of the Faculty of Law, University of Victoria;
  - (f) five persons appointed by the persons appointed under clauses (a) to (e);
  - (g) one person appointed by the persons appointed under clauses (a) to (f).
4. (2) The applicants for incorporation of the society are deemed to be persons appointed under Bylaw 4(1)(f).
- (3) Membership in the society is for a term of 5 years or until successors are appointed, and a member may be reappointed.
- ...
25. The directors of the Society shall be the members of the Society from time to time and
- (a) every person who is appointed as a member under Bylaw 4(1) or is deemed to be appointed as a member under Bylaw 4(2) becomes a director at the time the person is appointed, and
  - (b) every person who becomes a director, ceases to be a director at the time the person ceases to be a member

## BCLI Staff

We wish to acknowledge the important role played by Institute staff in keeping things running smoothly on a day-to-day basis.

- Tracy Lee, Secretary/Receptionist
- Marcus Patz, Librarian/Webmaster

## Students and Research Assistants

The Institute has adopted a policy of attempting, as far as possible to ensure that a student/research assistant, from one of the two Faculties of Law, forms part of our core operation throughout the year. This has been made possible through participation in the University of Victoria, Cooperative Program. The following people have been attached to the Institute in that capacity:

- Reiko West
- Lois Patterson
- John Richardson
- Martin Bauer
- Jesse Gelber
- Talman Rodocker

Our Research Assistants make a significant contribution to our operation and we wish to express our gratitude to them.

## Our Friends and Supporters

Our work to date would not have been possible but for the generous support of our friends, supporters and volunteers.

The contribution of the Law Foundation is particularly noteworthy. Apart from financial support, the Foundation has been a welcome source of advice and assistance on a whole range of issues. Our particular thanks to Azim Dato, Q.C., a Governor of the Foundation with special responsibilities for liaison with the Institute, and Pat Pitsula, the Executive Director of the Foundation.

## Financial Support and Support in Kind

We wish to acknowledge the important support we have received from the Law Society of British Columbia through the provision of the office space where the Institute's verations have been centred. In kind support has also been received from the accounting firm of Ernst & Young and Thorsteinson's, tax lawyers, through the provision of professional services.

## Other Persons

We also wish to thank the British Columbia Branch of the Canadian Bar Association, the Vancouver Bar Association, The Advocate Magazine, The Real Estate Foundation and The Canadian Bankers Association for the generous support they have provided both generally and in relation to particular projects.

We also wish to acknowledge the significant contribution made by the participants in our Project Committees - the members and reporters and particularly those people who have accepted the responsibility of chairing the Committees:

- Dr. Donovan Waters, Q.C.
- Professor John McLaren
- Professor Mary-Anne Waldron