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Consultation Paper on Governance Issues for Stratas

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

March 2018

Supported By:



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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 project as a whole will complete in June 2018.

The members of the committee are:

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Call for Responses

We are interested in your response to this consultation paper. It would be helpful if your response directly addressed the tentative recommendations set out in this consultation paper, but it is not necessary. General comments on reform of strata-corporation governance are also welcome.

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

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

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

If you want your response to be considered by us as we prepare our report on governance issues for stratas, then we must receive it by **15 June 2018**.

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EXECUTIVE SUMMARY

Introduction

This is the third consultation paper 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 consultation papers have considered terminating a strata and complex stratas.

This consultation paper 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 consultation paper's focus is on how the *Strata Property Act* and the *Strata Property Regulation* enable that process through provisions on bylaws and rules, statutory definitions, general meetings and strata-council meetings, finances, and notices and communications.

The consultation paper contains 83 proposals for reform of the *Strata Property Act* and the *Strata Property Regulation*. Readers may give their views on these proposals by a variety of means—filling out all or part of a response booklet, sending a letter to BCLI, or completing an online survey. BCLI will consider reader responses in crafting its final recommendations for reform. For a response to be considered in this process, BCLI must receive it by **15 June 2018**.

Summary and full consultations

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

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

The full consultation paper contains all 83 proposals made on reforming strata governance. It also provides the detailed research that was relied on in making those proposals.

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

Our supporters 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.

Content of the consultation paper

Overview

The consultation paper contains eight 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 consultation paper ends with a brief concluding chapter.

The remaining five chapters form the bulk of the consultation paper. 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 consultation paper's longest chapter, containing 38 tentative 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, 11 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 tentatively recommend—expanding the reach of the strata corporation's lien to encompass defaults in the payment of fines. 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 propose 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 endorse, 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 21 tentative recommendations. It focusses on the following subjects:

- proxies;
- conduct of meetings;
- quorum;

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

The committee is particularly interested in comments on proxies, which have proved to be a fraught issue in strata-corporation governance. On this topic, the committee tentatively 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 propose a limit.

The chapter also contains tentative 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 13 tentative 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 tentatively 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 tentatively 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

The committee encourages responses to its proposals. Comments from readers will be fully considered by the committee, as they play an important part in the process of crafting this project's final recommendations. Those final recommendations will be submitted to the provincial government. The province of British Columbia regularly updates strata legislation.

Chapter 1. Introduction

An Overview of this Consultation Paper'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 consultation paper is a response to one aspect of that call. It contains proposals 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, 288 DLR (4th) 252 [Shaw Cablesystems—BCSC], Leask J (quoting 2475813 *Nova Scotia Ltd v Rodgers*, 2001 NSCA 12 at para 5, 41 RPR (3d) 129 [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, 82 BCLR (4th) 285, Huddart JA (for the court).
 8. BC Reg 43/2000.
 9. See *The Oxford English Dictionary*, 3rd ed, *sub verbo* “governance” (“The manner in which something is governed or regulated; method of management, system of regulation.”).

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 consultation paper. 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 consultation paper is that some significant work is needed to upgrade the act’s set of responses, which is its framework for strata governance. While this consultation paper 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 Public Consultation on Strata Governance

The consultation paper is the key document for BCLI’s public consultation on governance issues for stratas. It sets out all 83 tentative recommendations for reform of the *Strata Property Act* and the *Strata Property Regulation*, for readers to review and to provide their comments. It also contains the research upon which those tentative recommendations are based.

10. *The Owners Strata Plan LMS 2768 v Jordison*, 2013 BCCA 484 at para 25, 52 BCLR (5th) 245, Donald JA (for the court).

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

For readers who prefer a shorter overview of this subject, a summary consultation is available at appendix B to this consultation paper.¹² A freestanding copy of the summary consultation may also be downloaded from <<https://www.bcli.org/>>. The summary consultation presents a high-level discussion of three highlighted issues in strata governance.

The public consultation on governance issues for stratas is open until **15 June 2018**. Readers may submit their responses by a variety of electronic and traditional means.¹³

After the consultation period closes, responses to the consultation paper will be taken into account in preparing a report that will contain the final recommendations on governance issues for stratas. BCLI projects publishing this report in summer 2018.

About the Strata Property Law Project—Phase Two

This *Consultation Paper 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.

The phase-two project builds on BCLI's Strata Property Law Project—Phase One, which was completed in 2012. Over the course of the phase-one project, BCLI carried out initial legal research and focussed consultation with leading experts in the strata-property field. The results of this research and consultation were published in BCLI's *Report on Strata Property Law: Phase One*,¹⁴ 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.

12. See, below, at 209–19.

13. See, above, near the beginning of this consultation paper at the page headed “call for responses” (unnumbered page v).

14. BCLI rep no 70 (Vancouver: The Institute, 2012), online: <<https://www.bcli.org/publication/report-strata-property-law-phase-one>>.

The first subject in the phase-two project was addressed in the project's first two publications, the *Consultation Paper on Terminating a Strata*¹⁵ and the *Report on Terminating a Strata*.¹⁶ The Legislative Assembly of British Columbia implemented this report's recommendations in fall 2015.¹⁷

Complex stratas, the project's second subject, were the focus of the *Consultation Paper on Complex Stratas*¹⁸ and the *Report on Complex Stratas*.¹⁹

While the consultation on strata governance is underway, work on common-property and land-title issues is ongoing, with a publication addressing those subjects projected for 2018.

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 C.²⁰

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15. (Vancouver: The Institute, 2014), online: <<https://www.bcli.org/publication/consultation-paper-on-terminating-a-strata>>.
 16. BCLI rep no 79 (Vancouver: The Institute, 2015), online: <<https://www.bcli.org/publication/79-report-on-terminating-a-strata>>.
 17. See *Natural Gas Development Statutes Amendment Act, 2015*, SBC 2015, c 40, ss 37–55 [in force 28 July 2016].
 18. (Vancouver: The Institute, 2016), online: <<https://www.bcli.org/publication/consultation-paper-on-complex-stratas>>.
 19. BCLI rep no 81 (Vancouver: The Institute, 2017), online: <<https://www.bcli.org/publication/report-on-complex-stratas>>.
 20. See, below, at 221.
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An Overview of this Consultation Paper

Strata-property governance is a vast, potentially unending topic. This consultation paper doesn't purport to exhaust the topic. Instead, it's focussed 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 consultation paper. 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 tentative 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:

- **bylaws and rules:** the chapter opens with a review of each of the standard bylaws,²¹ 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;

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

- **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, proposing 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 proposes 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 proposed new limitation period for money owing to a strata corporation that may be subject to the strata corporation's lien;²²
- **notices and communications:** this chapter contains a brief review of the little-used provision for notice by posting on bulletin board and proposes lengthening specific notice periods.

Other Law-Reform Projects

Every province and territory in Canada has legislation that is the equivalent to British Columbia's *Strata Property Act*.²³ 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.²⁴ Beyond Canada, there also have been a number of major projects carried out

22. See *ibid*, s 116.

23. 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).

24. See Yukon, Department of Justice, *The Condominium Act Review: A Discussion Paper* (Fall 2012), online: <<https://perma.cc/H5UU-KWJE>>; Newfoundland and Labrador, Government Services, *Condominium Act of Newfoundland and Labrador: Consultation Discussion Paper* (2008), online: <<https://perma.cc/K4JX-72KM>>.

in Australia (whose states have legislation that is similar to the *Strata Property Act*).²⁵

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 Ontario²⁶ and Alberta,²⁷ both of which have led to major statutory reforms.²⁸ 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”²⁹ with the sense that some provisions

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25. See New South Wales, NSW Fair Trading, *Strata Title Law Reform: Strata & Community Title Law Reform Position Paper* (Parramatta: NSW Fair Trading, 2013), online: <<https://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: <<https://perma.cc/4JUJ-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: <<https://perma.cc/2CZ8-WMA5>>; Queensland University of Technology Law, Commercial and Property Law Research Centre, *Final Recommendations: Procedural Issues under the Body Corporate and Community Management Act 1997* (2017), online: <<https://perma.cc/QJ2Y-ADKW>>; Western Australia, Landgate, *Strata Titles Act Discussion Paper* (Discussion Draft 30 June 2014), online: <<https://perma.cc/ZG8R-24YN>>.
 26. 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: <<https://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: <<https://perma.cc/Q5NV-6MRL>>.
 27. Service Alberta, *Condominium Property Act Review: Consultation Analysis Report* (June 2013), online: <<https://perma.cc/874W-JPUE>>.
 28. See Alberta: *Condominium Property Amendment Act, 2014*, SA 2014, c 10 [not in force]; Ontario: *Protecting Condominium Owners Act, 2015*, SO 2015, c 28.
 29. 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 26 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 26 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 gov-

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.³⁰

ernance of a condominium.”). Ontario pointedly named the legislation that implements their *Condominium Act* Review the *Protecting Condominium Owners Act, 2015*.

30. See *Body Corporate Governance Issues: By-laws, Debt Recovery, and Scheme Termination*, *supra* note 25 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”).
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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.³¹ 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 properties³² 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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31. 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 2017 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).
 32. 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.

- 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.³³

In British Columbia, these essential elements are enabled by legislation. This legislation is called the *Strata Property Act*,³⁴ and it is constructed largely from provisions drawn from older, more established bodies of law—especially, real-estate law, easements, and corporate law.³⁵

Strata Property Act

Sometimes called the third generation of strata-property legislation,³⁶ the *Strata Property Act* was enacted in 1998.³⁷ 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 2009,³⁸ 2012,³⁹ and 2015.⁴⁰ These changes primarily relate to financial planning, dispute resolution, and termination; they don't have much bearing on this consultation paper'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 stra-

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

34. *Supra* note 4.

35. See *Shaw Cablesystems—BCSC*, *supra* note 5 at para 6.

36. 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.

37. *Supra* note 4.

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

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

40. See *Natural Gas Development Statutes Amendment Act, 2015*, *supra* note 17.

tas. These qualities can make it difficult to discuss the act's provisions, as it's often 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 land⁴¹ 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.”⁴² It is a document prepared by a qualified land surveyor, which is required to contain specific details and meet exacting technical standards.⁴³

41. 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 consultation paper 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.

42. *Chow v The Owners, Strata Plan NW 3243*, 2015 BCSC 1944 at para 5, [2015] BCJ No 2306 (QL), Smith J.

43. 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.⁴⁴

The other kind of strata plan isn't named in the act, but it's commonly called a *building or conventional strata plan*.⁴⁵ 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."⁴⁶ 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*.

44. 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.

45. See Murray, *supra* note 31 at 1.13; Mangan, *supra* note 31 at 17; *British Columbia Strata Property Practice Manual*, *supra* note 31 at § 1.14.

46. *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.”⁴⁷ 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”).⁴⁸ These things may be common property by definition, depending on the location of the thing or the usage of the thing.⁴⁹ 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 focusses 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.⁵⁰

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

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

49. See *British Columbia Strata Property Practice Manual*, *supra* note 31 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.”).

50. *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 lots⁵¹ or is otherwise part of an “integrated whole,”⁵² 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.”⁵³

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.”⁵⁴ 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.⁵⁵ 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.⁵⁶

51. *Taychuk v Owners, Strata Plan LMS 744*, 2002 BCSC 1638 at para 28, 7 RPR (4th) 302, Gray J.

52. *Fudge v Owners, Strata Plan NW2636*, 2012 BCPC 409 at para 48, [2012] BCJ No 2358 (QL), Woods Prov Ct J.

53. *British Columbia Strata Property Practice Manual*, *supra* note 31 at § 3.2.

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

55. *Ibid*, s 73 (a)–(b).

56. *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.”⁵⁷ 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.”⁵⁸ 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.⁵⁹ 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.”⁶⁰ Ownership of common property and common assets is in the hands of the strata-lot owners, collectively.⁶¹ The membership of the strata corporation is made up of “the owners of the strata lots in the strata plan.”⁶² The strata corporation is the means for coordinating these owners to make effective and timely collective decisions.

57. *Ibid*, s 1 (1) “common asset.”

58. *Ibid*, s 1 (1) “common asset.”

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

60. *Ibid*, s 3.

61. 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.”).

62. *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.⁶³

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.”⁶⁴

Although the strata corporation is responsible for common expenses,⁶⁵ 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.

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

64. *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)).

65. 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.⁶⁶

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);⁶⁷
- **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);⁶⁸
- **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

66. *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.

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

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

owners of the residential strata lots and the owners of the nonresidential strata lots.”⁶⁹

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,⁷⁰ 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.”⁷¹ For nonresidential strata lots, size is determined by the *total area* of the strata lot.⁷²

In both cases, option (a) requires unit entitlement to be “determined by a British Columbia land surveyor.”⁷³

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.⁷⁴

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.⁷⁵ These unit-entitlement numbers are grouped together as a schedule to the strata plan, called

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

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

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

72. Total area isn’t a defined term; it simply takes its everyday meaning. See *British Columbia Strata Property Practice Manual*, *supra* note 31 at § 2.39 (“‘total area’ includes all of those areas listed as excluded from ‘habitable area’ of a residential strata lot”).

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

74. *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.”).

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

the Schedule of Unit Entitlement.⁷⁶ 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.’ ”⁷⁷ 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.⁷⁸ 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:⁷⁹

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

This formula also applies when a strata corporation raises funds by way of a special levy.⁸⁰

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-

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

77. *The Owners, Strata Plan LMS 1537 v Alvarez*, 2003 BCSC 1085 at para 35, 17 BCLR (4th) 63, Bauman J.

78. 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”).

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

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

gency reserve fund.⁸¹ This agreement may only be made at “an annual or special general meeting held after the first annual general meeting.”⁸²

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.”⁸³ This change must result in a “way that establishes a fair division of expenses for that particular levy.”⁸⁴

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.⁸⁵ A *unanimous vote* means “a vote in favour of a resolution by all the votes of all the eligible voters.”⁸⁶ 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,⁸⁷ this consultation paper 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,

81. See *ibid*, s 100.

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

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

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

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

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

87. See e.g. *Growing Up: Ontario’s Condominium Communities Enter a New Era: Condominium Act Review Stage Two Solutions Report*, *supra* note 26 at 30–35.

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- 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.⁸⁸

Since its inception, the tribunal's authority has extended to most kinds of strata disputes.⁸⁹ The tribunal has been accepting strata-dispute claims since 2016.

Given that it's still early days for the tribunal, this project hasn't made an attempt to address reforms concerning dispute resolution. But the tribunal's existence does play into several tentative recommendations in this consultation paper.⁹⁰

88. *Civil Resolution Tribunal Act*, *supra* note 39, s 2 (2).

89. See *ibid*, s 3.6.

90. See e.g., below, at 51.

Chapter 3. Bylaws and Rules

Background

Nature of bylaws

Bylaws have been described as stratas' "second legislative element"⁹¹ (after the *Strata Property Act*) and as "a strata corporation's constitution," which "reflect[s] each strata community's values."⁹² 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.⁹³ 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."⁹⁴ 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.⁹⁵

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."⁹⁶ 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.⁹⁷ The leading cases on this sec-

91. Fanaken, *supra* note 31 at 97.

92. Mangan, *supra* note 31 at 297.

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

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

95. *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)).

96. *Ibid*, s 164. See also *Civil Resolution Tribunal Act*, *supra* note 39, s 48.1.

97. See e.g. *Chan v Owners, Strata Plan VR-151*, 2010 BCSC 1725 at para 21, 98 RPR (4th) 309,

tion 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.”⁹⁸ 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.”⁹⁹ 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.¹⁰⁰ Any of the default standard bylaws can be displaced “to the extent that different bylaws are filed in the land title office.”¹⁰¹

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.”¹⁰² The strata corporation’s power to amend bylaws is limited by the requirements in sections 126–28 of the act.

Smith J.

98. *Reid v Strata Plan LMS 2503*, 2003 BCCA 126 at para 27, 12 BCLR (4th) 67, Ryan JA [*Reid*]. See also *Dollan v The Owners, Strata Plan BCS 1589*, 2012 BCCA 44 at paras 25–30, 27 BCLR (5th) 68, Garson JA (Hall JA concurring) [*Dollan*] (“In the case of a strata unit owner seeking redress under s. 164, I would adapt the test, suggested by Greyell J. [in *Golden Pheasant Holding Corp v Synergy Corporate Management Ltd*, 2011 BCSC 173, 85 BLR (4th) 122], 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, [2017] BCJ No 881 (QL), 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?”).

99. *Reid*, *supra* note 98 at para 26.

100. 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)).

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

102. *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.¹⁰³

An amendment only takes effect after it is filed in the land title office,¹⁰⁴ and the "strata corporation must inform owners and tenants of any amendment to the bylaws as soon as feasible after the amendment is approved."¹⁰⁵

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;

103. *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)).

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

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

- deny access to a recreational facility under section 134.¹⁰⁶

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.¹⁰⁷

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.”¹⁰⁸ 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.”¹⁰⁹

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.”¹¹⁰ It is “\$200 for each contravention of a bylaw,”¹¹¹ unless the bylaw is one that “prohibits or limits rentals” and the contravention relates to “the rental of a residential strata lot.”¹¹² In these cases, the maximum amount is “\$500 for each contravention of the bylaw.”¹¹³

106. *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)).

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

108. *Ibid*, s 26.

109. *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.”).

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

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

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

113. *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 decisions¹¹⁴ 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.¹¹⁵

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.”¹¹⁶

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.¹¹⁷

114. See e.g. *The Owners, Strata Plan NW498 v Pederson*, 1999 BCCA 224, 64 BCLR (3d) 8; *The Owners v Grabarczyk*, 2006 BCSC 1960, (*sub nom Strata Plan VR 2000 v Grabarczyk*) 55 RPR (4th) 36.

115. See *The Owners Strata Plan LMS 2768 v Jordison*, 2012 BCCA 303 at paras 14–15, 35 BCLR (5th) 36, Hall JA (for the court) (“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 31 at § 9.46 (“s. 133 states that a strata corporation may do what is necessary to remedy a contravention of its bylaws and rules. That should include an injunction.”).

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

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

A rule also can't be in conflict with a bylaw; if it is, "the bylaw prevails."¹¹⁸

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.¹¹⁹ 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.¹²⁰

When a strata council adopts a rule it also "must inform owners and tenants of [the] new rules as soon as feasible."¹²¹

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."¹²²

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-

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

119. 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)).

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

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

122. *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.¹²³ 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.¹²⁴

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."¹²⁵ Another commentator has suggested that the test to apply is as follows: "When legislated bylaws provide direction and/or

123. 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), 115–32 (default "Part 5 bylaws").

124. See *British Columbia Strata Property Practice Manual*, *supra* note 31 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.").

125. *British Columbia Strata Property Practice Manual*, *supra* note 31 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 by a substantial number of 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, [2014] BCJ No 1867 (QL).

prescription to *all* strata corporations and are essentially consumer protection public policies, they should not be bylaws which can be amended by the owners.”¹²⁶

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.”¹²⁷ 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.”¹²⁸

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 consultation paper, these sections depart somewhat from the organization used elsewhere in this consultation paper. 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.

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.”¹²⁹

126. Fanaken, *supra* note 31 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).

127. *British Columbia Strata Property Practice Manual*, *supra* note 31 at § 9.1.

128. *Ibid.*

129. *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws, s 1.

The committee's tentative recommendation for reform

The committee noted that section 99 of the act already effectively requires a strata-lot owner to pay strata fees.¹³⁰ 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 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 tentatively 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.¹³¹

130. 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”).

131. 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's tentative 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.

The committee tentatively 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.¹³²

The committee's tentative 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

132. 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.”).

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.

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 tentatively 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 tentatively 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.¹³³

The committee's tentative 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 diffi-

133. 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.”).

culty 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 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*.¹³⁴ These issues will likely become more pronounced as the population ages.

The committee also accepted criticism of subsection (2) as being a redundant provision that should be repealed.¹³⁵

The committee tentatively recommends:

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

The committee tentatively 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 owner's representative's name, strata-lot number, and mailing address outside the strata plan, if any.

The committee tentatively recommends:

7. Section 4 (2) of the Schedule of Standard Bylaws should be repealed.

134. SBC 2009, c 13.

135. See Fanaken, *supra* note 31 at 160. See also *Strata Property Regulation*, *supra* note 8, Form K (Notice of Tenant's Responsibilities).

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.¹³⁶

The committee's tentative 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 tentatively recommends:

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

The committee tentatively recommends:

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

136. 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.”).

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.¹³⁷

The committee's tentative 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 tentatively 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.¹³⁸

The committee's tentative recommendation for reform

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

137. 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.").

138. 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 tentatively 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.¹³⁹

The committee's tentative recommendation for reform

The committee viewed this provision as being a key provision of the standard by-laws. 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.

The committee felt that section 8 had to be discussed alongside section 72 of the act, which covers similar territory.¹⁴⁰ Section 8 appears to set out the minimum stand-

139. 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.”).

140. 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 own-

ards 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.

The committee tentatively 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 tentatively 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.

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 tentatively 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). Other-

er 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.”).

wise, 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.”¹⁴¹ 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.¹⁴² 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.”¹⁴³ 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.”¹⁴⁴ So a strata corporation will have no scope in which to make an owner responsible for the repair and maintenance of 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.¹⁴⁵

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

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

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

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

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

The committee's tentative 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 tentatively 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.¹⁴⁶

The committee's tentative 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.¹⁴⁷ The committee was also of the view that the provision should be set in legislation, placing it beyond the reach of strata-corporation amendment.

The committee tentatively 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."

146. 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.").

147. See, below, at 149–50.

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.¹⁴⁸

The committee's tentative recommendation for reform

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

The committee tentatively recommends:

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

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.¹⁴⁹

148. 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]).

149. 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.”).

The committee's tentative 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 tentatively 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.¹⁵⁰

The committee's tentative 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.¹⁵¹

The committee has addressed the level of these maximum fines later in this consultation paper.¹⁵²

The committee tentatively recommends:

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

150. 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.”).

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

152. See, below, at 175–76.

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.¹⁵³

The committee's tentative 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 132¹⁵⁴ 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.¹⁵⁵ The regulation fails to include the words *without interruption*, which in the committee's view form an integral part of 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 consultation paper.¹⁵⁶

The committee tentatively 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.

153. 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.").

154. 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.").

155. 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.").

156. See, below, at 74–77.

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.¹⁵⁷

The committee's tentative recommendation for reform

In the committee's view, the subject matter of this provision is appropriate for inclusion in the standard bylaws.

The committee tentatively recommends:

21. Section 25 of the Schedule of Standard Bylaws should remain a part of the standard bylaws.

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.¹⁵⁸

157. 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.”).

158. See *ibid*, 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”).

The committee's tentative 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 tentatively recommends:

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

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.¹⁵⁹

The committee's tentative 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 consultation paper.¹⁶⁰

The committee tentatively recommends:

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

159. 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.”).

160. See, below, at 134–37.

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.¹⁶¹

The committee's tentative 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 consultation paper.¹⁶²

The committee tentatively 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.¹⁶³

161. 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 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.”).

162. See, below, at 147–48.

163. 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

The committee's tentative 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 tentatively 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.¹⁶⁴

The committee's tentative 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 privilege, which may be lost, for example, in a phased strata plan in accordance with section 13.3 (2) of the regulation.¹⁶⁵ This provision should remain part of the standard bylaws, so it will remain open for strata corporations to amend it.

(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.”).

164. 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.”).

165. 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

The committee tentatively recommends:

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

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.¹⁶⁶ 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.¹⁶⁷ 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 tentative 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.

lots in the strata plan.”).

166. 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.”).

167. 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.”).

The committee tentatively 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 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 lien¹⁶⁸ 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.

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.¹⁶⁹

168. See *Black’s Law Dictionary*, 10th ed, *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.”).

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

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.¹⁷⁰ 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.¹⁷¹

Conspicuous by its absence from this list is the amount of any fines levied due to a contravention of the bylaws.¹⁷² Should a strata corporation be able to secure such amounts by registering a lien against the contravening owner's strata lot?

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 tentative 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

170. 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*").

171. See *ibid*, s 117.

172. 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, [2016] BCJ No 35 (QL), Harris J.

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 tentatively 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 assessed 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 tentative 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 tentative recommendation is in accord with the rationale for not including fines within the scope of the lien in the first place.

The committee tentatively 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-focussed 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.¹⁷³

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 tentative 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.

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

The committee tentatively 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.

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 tentative recommendation for reform

The committee gave this issue extended consideration. While 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.¹⁷⁴

Ultimately, the committee decided not to endorse this proposal.

The committee tentatively recommends:

31. 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 to a charge back for an insurance deductible or expenses incurred due to damage which are less than an insurance deductible, even if the charge back has been found valid by a court 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.

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;¹⁷⁵ (2) remedying a contravention;¹⁷⁶ (3) denying access to a recreational facility.¹⁷⁷ The sole offence provision

174. See *ibid*, s 85.

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

176. 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.”).

177. 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).

in the act doesn't mention bylaws; it relates to anyone who "knowingly makes a false statement in a Certificate of Strata Corporation."¹⁷⁸

Other provinces provide more tools for bylaw enforcement. Alberta's act contains a remedy for "improper conduct."¹⁷⁹ In many respects, this provision is the equivalent of British Columbia's remedy for significantly unfair acts,¹⁸⁰ 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."¹⁸¹ This opens the door to a wide range of judicial remedies.¹⁸² Ontario's legislation allows a court to make a "compliance order."¹⁸³ Once again, an analogous provision exists in British Columbia's statute.¹⁸⁴ But this British Columbia provision is more narrowly framed than the Ontario equivalent, and it doesn't mention bylaws.

178. *Ibid*, s 290.

179. *Condominium Property Act*, *supra* note 23, s 67.

180. *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].

181. *Supra* note 23, s 67 (1) (a) (i) [emphasis added].

182. 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 compensation 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.").

183. *Condominium Act, 1998*, *supra* note 23, 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 28, 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).

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

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.¹⁸⁵ 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*."¹⁸⁶

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 alterations to a strata lot that affected common property,¹⁸⁷ access to and use of a strata lot,¹⁸⁸ and eviction of an owner from a strata lot.¹⁸⁹

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

185. See *Report on Strata Property Law: Phase One*, *supra* note 14 at 24.

186. *Leeson v Condominium Plan No 9925923*, 2014 ABQB 20 at para 20, 8 Alta LR (6th) 75, Master Schlosser [italics in original].

187. See *Maverick Equities Inc v Owners: Condominium Plan 942 2336*, 2008 ABCA 221 at para 1, 168 ACWS (3d) 419, 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.").

188. See *Condominium Plan No 772 0093 v Rathbone*, 2010 ABQB 69 at para 1, 184 ACWS (3d) 352, 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").

189. See *Owners: Condominium Plan No 022 1347 v N.Y.*, 2003 ABQB 790 at para 2, 22 Alta LR (4th) 166, 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.").

the declaration, by-laws and rules of the condominium corporation.”¹⁹⁰ 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.¹⁹¹

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.¹⁹² 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 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.

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

191. 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?”).

192. See *The Owners Strata Plan LMS 2768 v Jordison*, 2013 BCSC 487, [2013] BCJ No 550 (QL); *Bea v The Owners, Strata Plan LMS 2138*, 2015 BCCA 31, 73 BCLR (5th) 219.

The committee's tentative 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."¹⁹³ Such orders may be enforced by filing them in the supreme court.¹⁹⁴ 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.

The committee tentatively 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."¹⁹⁵ 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,

193. *Civil Resolution Tribunal Act*, *supra* note 39, s 48.1 (1) (a)–(b).

194. See *ibid*, s 57.

195. *Supra* note 4, Schedule 1, s 1. See, above, at 30–31 (committee's tentative recommendation regarding section 1 of the standard bylaws).

and notice of decision.”¹⁹⁶ 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 contraventions, 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.¹⁹⁷

The committee’s tentative 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.

196. *Supra* note 4, s 135.

197. See Fanaken, *supra* note 31 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.”).

The committee tentatively 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 strata fees on or before the first day of the month to which the strata fees relate."¹⁹⁸ Failure to make this required payment would place the strata corporation in a position to fine the owner for breach of the bylaw.¹⁹⁹ 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.²⁰⁰

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

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

199. 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.

200. 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.”).

certain circumstances, to flouting the rules against criminal interest rates.²⁰¹ 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 charging interest, interest does still function as an effective deterrent against failure to pay strata fees.

The committee's tentative 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.

The committee tentatively 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."²⁰² 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 unani-

201. 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").

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

mous vote, if the strata corporation is entitled to register a lien against that strata lot under section 116 (1).”²⁰³

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.²⁰⁴ As one textbook has noted, “[t]he strata corporation cannot enforce a by-law that prohibits voting because of arrears until the corporation has complied with all of the prerequisites for filing a lien.”²⁰⁵ A leading practice guide spells out those prerequisites as follows: “In order for a 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. . . .”²⁰⁶

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 consid-

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

204. See *Azura Management (Kelowna) Corp v Owners of the Strata Plan KAS2428*, 2009 BCSC 506 at paras 97–98, 95 BCLR (4th) 358, Burnyeat J, varied, 2010 BCCA 474, 10 BCLR (5th) 300.

205. Mangan, *supra* note 31 at 154.

206. *British Columbia Strata Property Practice Manual*, *supra* note 31 at § 6.55.

ered. 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 making a determination 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.

The committee's tentative 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.

The committee tentatively 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 is entitled to register 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*²⁰⁷ 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.²⁰⁸

207. (1816), 1 Mer 572, 35 ER 781.

208. *Ross Gibson Industries Ltd v Greater Vancouver Housing Corp* (1985), 21 DLR (4th) 481, 67 BCLR

The rule is sometimes given in a “short form statement” as “first in, first out.”²⁰⁹

“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.²¹⁰

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 ef-

55 at 60 (CA), Esson JA (for the court).

209. *Re Ontario Securities Commission and Greymac Credit Corp* (1986), 55 OR (2d) 673 at 677, 30 DLR (4th) 1 (CA), Morden JA (for the court), aff’d (*sub nom Greymac Trust Co v Ontario (Securities Commission)*) [1988] 2 SCR 172, [1988] SCJ No 77 (QL).

210. Mangan, *supra* note 31 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.”).

fect, a compromise that lets strata corporations that want to pursue this policy do so with the heightened awareness of strata-lot owners.

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.²¹¹ An argument could be made that there is no reason to treat this matter as being anything out of the ordinary.

The committee's tentative 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.²¹²

The committee also considered whether its tentative 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.

The committee tentatively 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 (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.

211. 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).

212. See *ibid*, s 121.

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,²¹³ 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."²¹⁴

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 made no comment on the bylaw.)²¹⁵ Finally, practice guides and other commentary

213. 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).

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

215. See *Strata Plan NW 499 v Kirk*, 2015 BCSC 1487 at para 20, (*sub nom Strata Plan NW 499 v Louis Estate*) 59 RPR (5th) 65, 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.").

either don't touch on this issue²¹⁶ or mention it in passing, implying that there are no problems with the current state of the law.²¹⁷

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.

The committee's tentative 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.

216. See *British Columbia Strata Property Practice Manual*, *supra* note 31; Mangan, *supra* note 31.

217. See Fanaken, *supra* note 31 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 tentatively 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.²¹⁸ 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.²¹⁹

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”²²⁰ or a “waiting period.”)²²¹ The delaying provisions say that “a bylaw that prohibits or limits rentals does not apply to a 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.²²²

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

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

220. See Mangan, *supra* note 31 at 332.

221. See Fanaken, *supra* note at 31 at 113.

222. *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 devel-

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.²²³ 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 to 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.

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

oper before the first conveyance of a strata lot to a purchaser.

223. 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.").

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 provisions 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.²²⁴ 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.”²²⁵ 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.

The committee’s tentative 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

224. See e.g. *The Owners, Strata Plan VR2122 v Wake*, 2017 BCSC 2386 at para 77, [2017] BCJ No 2644 (QL), 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]).

225. Fanaken, *supra* note 31 at 113.

benefits of a grace period just because the strata corporation has decided to amend its rental-restriction bylaw.

The committee tentatively 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 of 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.²²⁶

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:

226. *Hrushka v Canada (Foreign Affairs)*, 2009 FC 69 at para 16, 340 FTR 81, 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.²²⁷

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.”²²⁸

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.²²⁹ 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.”²³⁰ 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.”²³¹

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

228. 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).

229. 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.”).

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

231. *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.”²³² 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 case²³³ turned to human-rights law (which also employs this concept)²³⁴ 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).²³⁵

232. Fanaken, *supra* note 31 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 . . .”).

233. See *Zaidi v The Owners, Strata Plan LMS 3464*, 2016 BCSC 731, 67 RPR (5th) 138 [*Zaidi*].

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

235. *Zaidi, supra* note 233 at para 32, Gropper J (citing *British Columbia Securities Commission v Bapty*, 2006 BCSC 638, 150 ACWS (3d) 246; *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 corporation 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 tentative 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.

The committee tentatively recommends:

39. *The Strata Property Act should define “continuing contravention” to mean “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 37,²³⁶ 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
- 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.²³⁷

Strictly speaking, the expression only appears once in the substance of the act, since a headnote is considered to be just a reference aid.²³⁸

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

237. *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.”).

238. See *Interpretation Act*, *supra* note 229, s 11 (1) (“In an enactment, a head note to a provision or a

Strata manager also crops up in the regulations, on a handful of prescribed forms.²³⁹

Historically, *strata manager* appeared in section 56 (3) of the *Strata Property Act* as originally enacted in 1998.²⁴⁰ This provision was amended before the *Strata Property Act* came into force in 2000. Also of historical note, the *Homeowner Protection Amendment Act, 2001*,²⁴¹ contained a definition of *strata manager*.²⁴² This act was never brought into force. It was repealed in 2004.²⁴³

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*²⁴⁴ and once in the *Strata Property Regulation*.²⁴⁵

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.”)

239. 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).

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

241. SBC 2001, c 14.

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

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

244. 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.”).

245. 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

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,
- but does not include an activity excluded by regulation.²⁴⁶

The committee’s tentative 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.

The committee tentatively 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

given under section 37 (1) of the Act must pay to the strata corporation \$1 000.”).

246. *Supra* note 243, 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).

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?

Summary of options for reform

The word *rent* (and derivatives of it) appears frequently in the *Strata Property Act*.²⁴⁷

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 following way: "let (property) for rent or payment; hire out."²⁴⁸

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.²⁴⁹

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:

247. 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).

248. *The New Shorter Oxford English Dictionary*, *sub verbo* "rent." See also *Canadian Oxford English Dictionary*, *sub verbo* "rent" ("occupy or use (property, equipment, etc.) for a fixed, usu. temporary period, in return for payment").

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

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
- (b) give a copy of the statement to each prospective purchaser before the prospective purchaser enters into an agreement to purchase.²⁵⁰

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*.²⁵¹

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.²⁵²

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.²⁵³

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

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

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

253. 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 2017–9) (Toronto: Carswell, 1998) at § 6:1:1.

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 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*].²⁵⁴

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

The committee’s tentative 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 tentatively 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.”

254. 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."²⁵⁵ A recent court decision has characterized this language as creating "uncertainty."²⁵⁶ 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.²⁵⁷ 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."²⁵⁸

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

256. *East Barriere Resort Ltd v The Owners, Strata Plan KAS1819*, 2017 BCCA 183 at para 46, [2017] BCJ No 912 (QL) [*East Barriere—BCCA*], Bauman CJ (Tysoe and Savage JJA concurring).

257. 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").

258. 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 passed by a 3/4 vote at an annual or special general meeting"), 261 (amending Schedule of Unit

Residential strata lot also appears three times in the regulations²⁵⁹ and on two prescribed forms.²⁶⁰

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.²⁶¹

The definition hadn't received much judicial consideration, until the recent *East Barriere* case.²⁶² In *Winchester Resorts Inc v Strata Plan KAS2188 (Owners)*,²⁶³ 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."²⁶⁴ In *Azura Management (Kelowna) Corp v Owners of the Strata Plan KAS2428*,²⁶⁵ the definition was cited in the context of a dispute over bylaw amendments and compliance with section 128 of the act.²⁶⁶

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

Entitlement), 264 (calculation of unit entitlement and voting rights following amendment).

259. 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).

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

261. 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, 98 ACWS (3d) 481 ("caretaker's suite did not qualify as a residential strata lot because it was not defined as such in the strata plan").

262. *East Barriere Resort Ltd v The Owners, Strata Plan KAS1819*, 2016 BCSC 1609, [2016] BCJ No 1840 (QL) [*East Barriere—BCSC*], *rev'd in part East Barriere—BCCA*, *supra* note 256.

263. 2002 BCSC 1165, 4 BCLR (4th) 390.

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

265. *Supra* note 204.

266. *Ibid* at para 74. See also Smythe & Vogt, *supra* note 261 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").

had been developed in four phases.²⁶⁷ 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.”²⁶⁸

But despite all this, owners ultimately used their strata lots solely for residential purposes.²⁶⁹ 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).²⁷⁰

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.²⁷¹

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,
- (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

267. *East Barriere—BCSC*, *supra* note 262 at para 2, Betton J.

268. *Ibid* at paras 7–8.

269. 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.”).

270. See *East Barriere—BCCA*, *supra* note 256 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.”).

271. *East Barriere—BCSC*, *supra* note 262 at para 15.

- (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.²⁷²

This petition put the definition of *residential strata lot* squarely before the court, as the determination of whether the strata lots were residential stratas 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.²⁷³

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."²⁷⁴ 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":²⁷⁵

"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."²⁷⁶

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:

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

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

273. *East Barriere—BCSC*, *supra* note 262 at para 37.

274. *Ibid* at para 45.

275. *East Barriere—BCCA*, *supra* note 256 at para 13.

276. *Ibid* at para 46.

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.”²⁷⁷

The committee’s tentative 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.

The committee tentatively 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.

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),²⁷⁸ 139 (3) (rental disclo-

277. *Ibid.* The authors of the *British Columbia Strata Property Practice Manual*, *supra* note 31, 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 § 4.1).

278. 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 *nonresi-*

sure by owner-developer),²⁷⁹ 191 (1) (enabling creation of sections),²⁸⁰ 197 (3.1) (bylaws and rules for a section),²⁸¹ 245–48 (Schedules of Unit Entitlement and Voting Rights),²⁸² and 264 (calculation of unit entitlement and voting rights following strata-plan amendment).²⁸³

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 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?

dential 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]).

279. 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]).

280. 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]).

281. 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]).

282. See *ibid*, ss 245–48. See also *Strata Property Regulation*, *supra* note 8, Form V (Schedule of Unit Entitlement), Form W (Schedule of Voting Rights).

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

The committee's tentative 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.²⁸⁴ In these cases, it wouldn't be desirable for 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.²⁸⁵

The committee tentatively recommends:

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

284. See, online: <<https://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]).

285. 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.²⁸⁶

Most, but not all, of these subjects are covered in this chapter. This is because the chapter focusses 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;

286. *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*.²⁸⁷

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.²⁸⁸

Corporate law classifies corporate meetings into two kinds: directors' meetings and shareholders' meetings.²⁸⁹ 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.²⁹⁰ It's a term that's meant to be understood in its everyday sense as a meeting that's open to all shareholders.²⁹¹

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

288. 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").

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

290. 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").

291. See *The Oxford English Dictionary*, 3rd ed, *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.²⁹² 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.²⁹³

All three roles crop up in the *Strata Property Act*.²⁹⁴

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,²⁹⁵ it must hold an annual general meeting each year “no later than 2 months after the strata corporation’s fiscal year end.”²⁹⁶ Certain business must be dealt with at each annual general meeting, such as receiving reports on insurance coverage²⁹⁷ and on strata-council activities and decisions since the last annual general meet-

292. See Nathan & Voore, *supra* note 289 at 1-1 (“At common law, all corporate decisions had to be arrived at by means of a validly constituted meeting.”).

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

294. 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).

295. 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.”).

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

297. See *ibid*, s 154.

ing,²⁹⁸ approving a budget for the strata corporation,²⁹⁹ and electing a strata council.³⁰⁰

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."³⁰¹ 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.³⁰²

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.³⁰³

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 cases³⁰⁴ to get a fix on what a procedure at a meeting should be.

298. See *ibid*, Schedule of Standard Bylaws, s 28 (h).

299. See *ibid*, s 103.

300. See *ibid*, s 25.

301. *Ibid*, s 42.

302. 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.").

303. See *ibid*, s 125.

304. See *British Columbia Strata Property Practice Manual*, *supra* note 31 at § 6.38 ("[i]n 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.³⁰⁵

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.³⁰⁶ 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.³⁰⁷

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)

305. See Nathan & Voore, *supra* note 289 at 19-1; Hartley R Nathan, *Nathan’s Company Meetings Including Rules of Order*, 9th ed (Toronto: CCH Canadian, 2011) at xxv.

306. See Nathan & Voore, *supra* note 289 at 1-12.1 (“Irregularities in the holding of meetings do not necessarily invalidate them.”).

307. See Nathan, *supra* note 305 at 4; *British Columbia Strata Property Practice Manual*, *supra* note 31 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.³⁰⁸

The *Strata Property Act* uses *proxy* to refer to a person.³⁰⁹ This usage bucks the trend of most corporate-law legislation, which uses *proxy* in the second sense, to refer to a document.³¹⁰ While this consultation paper 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.”³¹¹

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.”³¹²

308. *Beatty v First Exploration Fund 1987 and Co* (1988), 25 BCLR (2d) 377 at 381, 40 BLR 90 (SC), Hinds J.

309. 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 . . .”).

310. See *Business Corporations Act*, *supra* note 290, 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”).

311. McGuinness, *supra* note 293 at § 12.134.

312. *Supra* note 4, s 56 (4).

Legislation enabling and regulating the appointment of proxies first appeared in corporate statutes in the early twentieth century.³¹³ This legislation was primarily aimed at large public corporations. It essentially had two purposes: (1) to facilitate shareholder participation in corporate decision-making;³¹⁴ and (2) to help corporations meet the quorum needed to hold a valid general meeting.³¹⁵

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.³¹⁶

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.³¹⁷

313. 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.

314. 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).

315. See Nathan & Voore, *supra* note 289 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.").

316. See *Growing Up: Ontario's Condominium Communities Enter a New Era: Condominium Act Review Stage Two Solutions Report*, *supra* note 26 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 25 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").

317. 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.").

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.³¹⁸ Criticisms of proxy laws have also cropped up from time to time in stories in the media.³¹⁹ These concerns have moved other law-reform projects to study proxy laws and make recommendations for reform.³²⁰

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

318. See Bitá 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”).

319. See e.g. John Lancaster & Michael Smee, “Questionable proxies shut down Charles Street condo election, sources say,” *CBC News* (17 May 2017), online: <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.”).

320. See *Growing Up: Ontario's Condominium Communities Enter a New Era: Condominium Act Review Stage Two Solutions Report*, *supra* note 26 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 25 at 9.

and be signed by the person appointing the proxy.”³²¹ There is a prescribed proxy-appointment form, but its use is “optional.”³²²

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.”³²³ 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.”³²⁴

The Ontario government has accepted this recommendation. As part of a package of reforms passed in 2015,³²⁵ 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.*”³²⁶ This provision came into force on 1 November 2017, at which date the new proxy form was made available on an Ontario government website.³²⁷

321. See *supra* note 4, s 56 (2) (a).

322. See *Strata Property Regulation*, *supra* note 8, Form A (Proxy Appointment).

323. *Growing Up: Ontario’s Condominium Communities Enter a New Era: Condominium Act Review Stage Two Solutions Report*, *supra* note 26 at 39.

324. *Ontario’s Condominium Act Review: Stage One Findings Report*, *supra* note 26 at 17.

325. See *Protecting Condominium Owners Act, 2015*, *supra* note 28.

326. *Supra* note 23, s 52 (4), as am by *Protecting Condominium Owners Act, 2015*, *supra* note 28, Schedule 1, s 48 (3) [emphasis added].

327. See, online: <https://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.³²⁸ The other provinces and territories impose few to no formalities on proxy appointments.³²⁹

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*³³⁰ requires a proxy appointment that is “created by a person other than the member” to meet a long list of formal requirements.³³¹

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

328. See Form 9 (Proxy for General Matters and for the Election of Directors).

329. See Alberta: *Condominium Property Act*, *supra* note 23, 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.”); Saskatchewan: *The Condominium Property Act, 1993*, *supra* note 23, 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 23, 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 23 (no formalities prescribed); Prince Edward Island: *Condominium Act*, *supra* note 23 (no formalities prescribed); Nova Scotia: *Condominium Act*, *supra* note 23 (no formalities prescribed); Newfoundland and Labrador: *Condominium Act, 2009*, *supra* note 23 (no formalities prescribed); Yukon: *Condominium Act*, *supra* note 23 (no formalities prescribed); Northwest Territories and Nunavut: *Condominium Act*, *supra* note 23 (no formalities prescribed).

330. SC 2009, c 23.

331. 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 accordingly”).

(Form A) that they may choose to employ. But they aren't bound to this form; any regular proxy appointment³³² 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 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.

332. 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.

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 tentative 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.

The committee tentatively 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 for-

mality. 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,³³³ 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.³³⁴

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 applicable 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.³³⁵

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

333. See *supra* note 326.

334. See *British Columbia Strata Property Practice Manual*, *supra* note 31 at § 6.38.

335. Nathan & Voore, *supra* note 289 at 18-30 [footnotes omitted].

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 tentative 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.

The committee noted that amendments to section 56 of the act³³⁶ would be necessary to implement its proposal.

The committee tentatively 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

336. 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.”).

proxy votes in order to gain control of the decisionmaking process.”³³⁷ Among the ills attributed to proxy farming are that it breeds resentment and apathy, and results in unrepresentative decisions.³³⁸

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 supporting 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.³³⁹ 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.

337. *Strata Title Law Reform: Strata & Community Title Law Reform Position Paper*, *supra* note 25 at 9.

338. 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.”).

339. See Fanaken, *supra* note 31 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.”).

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.”³⁴⁰
- Queensland, which adopts a hub-and-spoke model to strata legislation,³⁴¹ has a similar sliding-scale limit.³⁴² The numbers are identical to the New South Wales proposal for strata corporations that come within its “standard module.”³⁴³ “Accommodation module” stratas allow for a person to hold proxy appointments up to a number equal 10 percent of the strata lots, if the strata corporation has 20 or more strata lots.³⁴⁴ (If the number is fewer than 20 strata lots, then the limit is one.)³⁴⁵ There are no limits for “commercial module” or “small schemes module” stratas.³⁴⁶
- 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.”³⁴⁷

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

340. *Strata Title Law Reform: Strata & Community Title Law Reform Position Paper*, supra note 25 at 9.

341. See *Body Corporate and Community Management Act 1997* (Qld), s 122 (regulation module).

342. See *Body Corporate and Community Management Act 1997* (Qld), s 103.

343. See *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld), s 107 (4).

344. See *Body Corporate and Community Management (Accommodation Module) Regulation 2008* (Qld), s 105 (4) (a).

345. See *Body Corporate and Community Management (Accommodation Module) Regulation 2008* (Qld), s 105 (4) (b).

346. See *Body Corporate and Community Management (Commercial Module) Regulation 2008* (Qld), s 73–77; *Body Corporate and Community Management (Small Schemes Module) Regulation 2008* (Qld), ss 54–57.

347. 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)).

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 tentative recommendation for reform

The committee struggled with this issue. It's particularly interested in public comments on the issue.

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 tentative 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 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.

The committee tentatively 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.³⁴⁸ 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

348. With the exception of the prescription of an optional proxy-appointment form. See *Strata Property Regulation*, *supra* note 8, Form A (Proxy Appointment).

- 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 behalf of an owner could be in a perceived conflict of interest.³⁴⁹ 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. 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."³⁵⁰

Manitoba has gone somewhat further than British Columbia and Saskatchewan.³⁵¹ Like those two provinces, it places restrictions on employees and strata managers.

349. See *Strata Title Law Reform: Strata & Community Title Law Reform Position Paper*, *supra* note 25 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.").

350. See *The Condominium Property Act*, *supra* note 23, 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.

351. See *The Condominium Act*, *supra* note 23, 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.")

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."³⁵²

Every other Canadian province and territory places no legislative or regulatory limits on who may be a proxy. Notably, both Alberta and Ontario have recently passed major amendments to their legislation.³⁵³ Neither statute contained 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

352. *Ibid.*

353. See Alberta: *Condominium Property Amendment Act, 2014*, *supra* note 28 [not in force]; Ontario: *Protecting Condominium Owners Act, 2015*, *supra* note 28.

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 tentative recommendation for reform

The committee favoured the approach Manitoba has taken. In particular, the committee approved extending the reach of the prohibition to owner-developers.

The committee tentatively 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 or agent 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.

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* focusses primarily on what it calls "motions," which are roughly equivalent to the *Strata Property Act's* resolutions.³⁵⁴ 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 records,³⁵⁵ while *Wainberg's Society Meetings* contains practical advice for "inexpe-

354. Henry M Robert III et al, *Robert's Rules of Order Newly Revised*, 11th ed (Philadelphia: Da Capo Press, 2011).

355. John George Bourinot, *Bourinot's Rules of Order*, 3rd ed by Geoffrey H Stanford (Toronto: McClelland and Stewart, 1977).

rienced chairs” and “strategic manoeuvres” members may take advantage of in bringing forward motions.³⁵⁶

Although the *Strata Property Act* has been described as being “silent” on rules of order and having a “gap” on meeting procedures,³⁵⁷ 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.³⁵⁸ 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).³⁵⁹ If a corporation hasn’t adopted rules of order, then the common law would apply.³⁶⁰

Rules of order have been described as being “first and foremost purposive.”³⁶¹ Their purpose is to advance “the basic principle with respect to meetings,” which is that “they must be conducted fairly and reasonably.”³⁶² Courts have disdained strict enforcement of “technical” rules if strict enforcement is determined to violate this basic principle and cause prejudice to someone at the meeting.³⁶³

356. JM Wainberg & Mark I Wainberg, *Wainberg’s Society Meetings Including Rules of Order* (Don Mills, ON: CCH Canadian, 1992). See also Nathan, *supra* note 305 (parallel publication with a focus on for-profit corporations).

357. *The Owners, Strata Plan NW 971 v Daniels*, 2010 BCCA 584 at para 35, 13 BCLR (5th) 7, Smith JA (for the court) [*Daniels* (CA)], aff’g *The Owners, Strata Plan NW971 v Daniels*, 2009 BCSC 1235, 86 RPR (4th) 241 [*Daniels* (SC)]. See also Fanaken, *supra* note 31 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 31 at § 6.38 (“The Act contains only a few provisions governing conduct of general meetings.”).

358. See Nathan & Voore, *supra* note 289 at 19-2; *Daniels* (SC), *supra* note 357 at para 24, Hyslop J.

359. See Nathan & Voore, *supra* note 289 at 19-2.

360. See Nathan & Voore, *ibid* at 19-3; *Daniels* (SC), *supra* note 357 at para 25.

361. Nathan & Voore, *supra* note 289 at 19-4.

362. Nathan & Voore, *ibid* at 19-1. See also Nathan, *supra* note 305 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.”).

363. *Daniels* (SC), *supra* note 357 at paras 51–55.

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.

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,³⁶⁴ and even corporate bylaws tend not to have provisions dealing with meeting procedures.³⁶⁵ 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

364. See Nicholas & Voore, *supra* note 289 at 19-2 ("Corporate law statutes are generally silent with respect to rules of order.").

365. See *ibid* ("it usually proves impractical to adopt formal rules of order in the by-laws" [footnote omitted]).

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*.³⁶⁶ Others may simply fail to spell out rules of order, which could lead to confusion and protracted disputes over procedure.

The committee's tentative 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.

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 tentatively recommends:

48. The Strata Property Act should not prescribe a comprehensive set of rules of order for strata-corporation general meetings.

366. See Fanaken, *supra* note 31 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.").

Should the Strata Property Act contain provisions on who can chair a general meeting?

Brief description of the issue

The act itself doesn't address who is entitled to chair a general meeting. A provision is found in the standard bylaws, which says:

- (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.³⁶⁷

Because this provision is found in the bylaws, a strata corporation may amend it.

Under the current law, strata corporations have considerable flexibility and little direction on who may act as chair of a general meeting. Should the act be amended to give strata corporations more direction on this issue?

Discussion of options for reform

There are two options for reform to address this issue. One is to have the act give a more certain picture on who the chair of the meeting must be. There is currently a default provision in the bylaws that sets out who may be chair, but this provision may be amended. A legislative provision could establish who must act as meeting chair in all cases, with no individual variations possible. The benefits of such a provision include enhancing the certainty and consistency of the law.

The disadvantage of this proposal is that it wouldn't represent much of an advance on the current law. The standard bylaws present a logical order for determining who should act as meeting chair. It's not likely that a statutory amendment would be needed to confirm this order. Further, any legislation would need to rely on some variation of allowing the meeting itself to pick the chair once it became clear that strata-council officers were unable or unwilling to serve as meeting chair. Without such a residual provision, the legislation would risk derailing otherwise-acceptable general meetings because the strata corporation was unable to comply with a closed list of people who could act as meeting chair.

367. *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws, s 25.

The second option for legislative reform would be to have the act list certain categories of people who can't act as meeting chair. For example, the legislation could provide that a meeting chair must be drawn from the ranks of eligible voters at a general meeting. The rationale for limiting who may act as chair is that the position is important to the functioning of the meeting. Selecting a chair from outside the group of eligible voters could be a way to allow other abuses to go unchecked, such as allowing an unrepresentative faction to dominate the meeting.

The downside of this option is that it could prove to be too rigid. Some strata corporations might want to have an outsider chair a general meeting. They might feel that such a person would bring impartiality to contested circumstances. Almost any legislative provision would run into the problem of being a one-size-fits-all solution that might not work in the face of the diversity of British Columbia's strata corporations. Most Canadian jurisdictions have no legislative or regulatory provisions on this issue, likely for this reason. Of the two provinces that do address this issue, their approach is similar to the current provisions in British Columbia: Alberta sets out a default provision in its version of the standard bylaws;³⁶⁸ Saskatchewan deals with the issue in a regulation.³⁶⁹

The committee's tentative recommendation for reform

In the committee's view, the current law is working well and doesn't pose any difficulties in practice. Legislative reform isn't needed for this issue.

The committee tentatively recommends:

49. 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.

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

368. See *Condominium Property Act*, *supra* note 23, Appendix 1, s 22 (1) (“The president or, in the event of the president's absence or disability, the vice-president or other person elected at the meeting, shall act as chair of an annual general meeting or a general meeting.”)

369. See *The Condominium Property Regulations, 2001*, RRS c C-26.1, Reg 2, s 23 (1) (“The president, or in the event of his or her absence or disability, the vice-president or other person elected at the meeting shall act as chairperson of an annual meeting or a general meeting.”).

validly transacted.”³⁷⁰ The purpose of a legislative quorum requirement is “to avoid the usurping of decision making by a small and potentially unrepresentative group.”³⁷¹

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.”³⁷² 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.”³⁷³ But strata corporations are free to change what their quorum for general meetings will be by spelling out a different quorum in their bylaws.³⁷⁴

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.³⁷⁵

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.

370. Nathan & Voore, *supra* note 289 at 16-11.

371. *Ibid.*

372. *Supra* note 4, s 48 (1).

373. *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)).

374. See *ibid*, s 48 (2).

375. *Ibid*, s 48 (3).

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.

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."³⁷⁶ 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.³⁷⁷ Restricting the extent to

376. *Supra* note 290, s 82 (4).

377. See Fanaken, *supra* note 31 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

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.

The committee's tentative 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.

The committee tentatively recommends:

50. 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.³⁷⁸ In this case, the voters requisitioning the meeting may be the only

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).").

378. See *Strata Property Act*, *supra* note 4, s 43.

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.

The committee tentatively recommends:

51. 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 meeting called by voters under section 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.³⁷⁹

More support for the argument that a quorum must be continuously present can be found in the common law of corporate meetings.³⁸⁰ 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*,³⁸¹ 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.”³⁸² Second, “courts have been reluctant to invalidate

379. 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.”).

380. See Nathan & Voore, *supra* note 289 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]).

381. RSBC 1979, c 59.

382. *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 *Compa-*

corporate proceedings where a shareholder has withdrawn from a meeting for the sole purpose of breaking the quorum.”³⁸³

Some corporate-law statutes have gone a step further and adopted as their default position (subject to the bylaws) that “opening quorum [is] sufficient.”³⁸⁴ 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 Brunswick³⁸⁵ and Nova Scotia³⁸⁶ 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.

ny 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).

383. Nathan & Voore, *supra* note 289 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.

384. 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 330, s 164 (3).

385. See *Condominium Act*, *supra* note 23, s 26 (2) (“No business shall be transacted at an owners’ meeting unless a quorum is present at the beginning of business.”).

386. See *Condominium Act*, *supra* note 23, 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's tentative 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.

The committee tentatively recommends:

52. 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.³⁸⁷ 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."³⁸⁸ 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."³⁸⁹ 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?

387. 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.").

388. See *ibid*, s 32 (e).

389. See *ibid*, Schedule of Standard Bylaws, s 16 (2).

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 quorum at the meeting whether or not the director votes on any or all of the resolutions considered at the meeting.”³⁹⁰

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 tentative 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 committee tentatively recommends:

53. 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.

390. *Supra* note 290, s 149 (4). Note that this legislation 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.³⁹¹ 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”;³⁹²
- 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”;³⁹³
- 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”;³⁹⁴
- 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.”³⁹⁵

391. *Supra* note 4, ss 53–58.

392. *Ibid*, s 1 (1) “majority vote.”

393. *Ibid*, s 1 (1) “3/4 vote.”

394. *Ibid*, s 1 (1) “80% vote.”

395. *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.”³⁹⁶ 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”³⁹⁷ and “3/4 vote.”³⁹⁸ 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.³⁹⁹

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.

396. *Ibid*, Schedule of Standard Bylaws, s 18 (1).

397. 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”).

398. 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”).

399. 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 tentative 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 committee tentatively recommends:

54. 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."⁴⁰⁰ This provision doesn't set out the default position for strata corporations. The provision only comes into effect "if the bylaws so provide."⁴⁰¹

What this provision is referring to is commonly called the meeting chair's *casting vote*.⁴⁰² While the casting vote isn't a feature of the common law,⁴⁰³ it is regularly en-

400. *Ibid*, s 53 (4).

401. *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).

402. 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.

403. See Nathan & Voore, *supra* note 289 at 2-11.

abled by corporate legislation. Its purpose is to “resolve disputes”⁴⁰⁴ and “remedy occasional, or even frequent, tie votes.”⁴⁰⁵ The casting vote operates as “a second vote exercisable in addition to the votes that the chair personally has as a shareholder.”⁴⁰⁶ It is meant to be exercised in “good faith,”⁴⁰⁷ and “not to promote the personal interests of the chair.”⁴⁰⁸

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.⁴⁰⁹ 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 be put in a difficult position to cast the deciding vote.”⁴¹⁰ 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-

404. *Ibid* at 11-18.

405. *Ibid* at 2-11.

406. *Ibid*.

407. *Ibid* at 11-18.1.

408. *Ibid* at 11-18.

409. *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.”).

410. Nathan & Voore, *supra* note 289 at 2-11.

dealing.⁴¹¹ 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.⁴¹² 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.

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.

411. *Ibid.*

412. 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.").

The committee's tentative 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 does, 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.

The committee tentatively recommends:

55. 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,⁴¹³ can be traced back to the committee's *Report on Terminating a Strata*.⁴¹⁴

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

413. 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]").

414. See *supra* note 16.

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;⁴¹⁵
- paying funds out of the contingency reserve fund;⁴¹⁶
- approving a special levy;⁴¹⁷
- borrowing money;⁴¹⁸
- changing the fiscal year end;⁴¹⁹
- approving a significant change in the use or appearance of common property;⁴²⁰
- authorizing a lawsuit as representative of the owners;⁴²¹
- cancelling a strata-management contract;⁴²²
- amalgamating with another strata corporation.⁴²³

A 2014 amendment to the *Strata Property Act* has placed a qualifier on one of the items on this list.⁴²⁴ Some expenditures from the contingency reserve fund may now be authorized by a resolution passed by a majority vote.⁴²⁵

415. See *Strata Property Act*, *supra* note 4, s 128 (1) (a).

416. See *ibid*, s 96 (b) (i) (B).

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

418. See *ibid*, s 111 (1).

419. See *ibid*, s 102 (1).

420. See *ibid*, s 71.

421. See *ibid*, s 171 (2).

422. See *ibid*, s 39 (1).

423. See *ibid*, s 269 (2).

424. See *Natural Gas Development Statutes Amendment Act, 2014*, SBC 2014, c 10, s 43 (in force 9 April 2014).

425. 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)”).

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-profit⁴²⁶ and not-for-profit⁴²⁷ 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.⁴²⁸ 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 voting 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).⁴²⁹ In these other jurisdictions, the threshold is applied to "ownership of the common elements"—a concept equivalent to British Columbia's unit entitlement.⁴³⁰

426. See e.g. *Business Corporations Act*, *supra* note 290, s 1 (1) "special majority"; *Canada Business Corporations Act*, *supra* note 384, s 2 (1) "special resolution."

427. See e.g. *Societies Act*, *supra* note 290, s 1 (1) "special resolution"; *Cooperative Association Act*, *supra* note 347, s 1 (1) "special resolution"; *Canada Not-for-profit Corporations Act*, *supra* note 330, s 2 (1) "special resolution."

428. See *The Condominium Property Act*, *supra* note 23, s 2 (1) (z).

429. See *Strata Property Act*, *supra* note 4, s 1 (1) "3/4 vote."

430. See New Brunswick: *Condominium Property Act*, *supra* note 23, ss 19 (7), 27 (13), 32 (3) (60 percent); Prince Edward Island: *Condominium Act*, *supra* note 23, ss 13 (1), 19 (66 2/3 percent); Nova Scotia: *Condominium Act*, *supra* note 23, ss 14 (1C), 14 (3A) (66 2/3 percent), 23 (1) (60 percent); Newfoundland and Labrador: *Condominium Act, 2009*, *supra* note 23, ss 18 (3), 35 (1)

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,⁴³¹ Manitoba,⁴³² and Québec⁴³³ use versions of this threshold.⁴³⁴ The current threshold also has the benefit of familiarity.

In considering this issue, the committee also paid heed to the 2014 amendment.⁴³⁵ 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.

The committee's tentative 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.

The committee tentatively recommends:

56. The Strata Property Act should not change the voting threshold for all resolutions requiring passage by a 3/4 vote.

(66 percent); Yukon: *Condominium Act*, *supra* note 23, ss 12 (1), 16 (1), 19 (2), 22 (1) (66 2/3 percent); Northwest Territories and Nunavut: *Condominium Act*, *supra* note 23, s 17 (1) "special resolution" (66 2/3 percent).

431. See *Condominium Property Act*, *supra* note 23, s 1 (1) (x). See also *Condominium Property Amendment Act, 2014*, *supra* note 28, s 2 (a) (xiii) (amending *Condominium Property Act*, s 1 (1) (x)), 17 (adding new s 26.4) (both retaining current threshold) [not in force].

432. See *The Condominium Act*, *supra* note 23, s 1 (1) "specified percentage" (b).

433. 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").

434. Ontario's legislation appears to lack any intermediate threshold between a majority vote and an 80-percent vote.

435. See *supra* note 424.

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.⁴³⁶ 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.⁴³⁷ After noting the absence of voting booths,⁴³⁸ and a general lack of privacy in casting votes,⁴³⁹ 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 . . .”⁴⁴⁰

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

436. See *Strata Property Act*, *supra* note 4, Schedule of Standard Bylaws, s 27.

437. See *Imbeau v Owners Strata Plan NW971*, 2011 BCSC 801 at para 22, 88 BLR (4th) 270, Truscott J [*Imbeau*] (“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.”).

438. See *ibid* at para 24.

439. See *ibid* at para 26.

440. *Ibid* at para 28.

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.⁴⁴¹ (A poll is "[t]he casting or recording of votes by ballot of shareholders at a meeting.")⁴⁴² As a textbook on corporate meetings notes, the meeting chair has discretion to determine the mechanics of voting by poll.⁴⁴³ Usually, ballots are used for the poll, but even more informal procedures (such as voting lists) are acceptable.⁴⁴⁴ 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 address this issue refer to voting by poll or an analogous term, not by secret ballot.⁴⁴⁵

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

441. See e.g. *Business Corporations Act*, *supra* note 290, 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 290, allow "2 or more voting members" or the meeting chair to require voting by secret ballot (see *Societies Regulation*, *supra* note 379, Schedule 1 Model Bylaws, s 3.13). The form of rules prescribed by the *Cooperative Association Act* contains references to both: see *supra* note 347, 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.").

442. Nathan & Voore, *supra* note 289 at cix.

443. 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.").

444. See *ibid* at 21-55 to 21-59.

445. See Alberta: *Condominium Property Act*, *supra* note 23, Appendix 1, ss 23–24 ("poll"), Appendix 2, Schedule A, ss 21–22 ("poll"); Saskatchewan, *The Condominium Property Regulations, 2001*, *supra* note 369, Appendix, Part II (bylaws), ss 24–25 ("vote by unit factors"); Manitoba, *The Condominium Act*, *supra* note 23, s 121 ("recorded vote"); Ontario, *Condominium Act, 1998*, *supra* note 23, s 52 (1) ("recorded vote") (as amended by *Protecting Condominium Voters Act, 2015*, *supra* note 28, Schedule 1, s 48 (1)).

vote in a certain way.”⁴⁴⁶ It recommended amending New South Wales’s legislation to “introduce options for conducting secret ballots.”⁴⁴⁷

The committee’s tentative 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.

The committee tentatively recommends:

57. 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.”

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.”⁴⁴⁸ 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.

446. *Strata Title Law Reform: Strata & Community Title Law Reform Position Paper*, supra note 25 at 6.

447. *Ibid.*

448. *Strata Property Act*, supra note 4, Schedule of Standard Bylaws, s 27 (7).

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.⁴⁴⁹ 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 tentative 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.

The committee tentatively recommends:

58. 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 tentative recommendations would require a consequential amendment to section 27 (7) of the Schedule of Standard Bylaws,⁴⁵⁰ 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.⁴⁵¹

449. See *Societies Regulation*, *supra* note 379, Schedule 1 Model Bylaws, s 3.13.

450. 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.”).

451. See *Strata Property Act*, *ibid*, s 25.

Apart from this requirement to hold an annual election for council and some basic provisions on eligibility for council,⁴⁵² 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.”⁴⁵³ 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 section 50 (1) of the act,⁴⁵⁴ a valid election doesn’t require passing a resolution by a majority vote.⁴⁵⁵ The practice of electing individuals to a strata council by acclamation⁴⁵⁶ 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.⁴⁵⁷

452. See *ibid*, s 28.

453. *Ibid*, s 25.

454. 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.”).

455. *Yang v Re/Max Commercial Realty Associates (482258 BC Ltd)*, 2016 BCSC 2147 at para 114, [2016] BCJ No 2422 (QL), Punnett J.

456. = “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 305 at xi.

457. See Industry Canada, Corporate, Insolvency, and Competition Law Policy, *Consultation on the Canada Business Corporations Act* (December 2013), online: <perma.cc/ZEC3-MFG8> at 6.

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. Legislative amendments to implement this proposal for publicly traded corporations⁴⁵⁸ are currently being considered by parliament.⁴⁵⁹

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."⁴⁶⁰ 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 tentative 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 requir-

458. 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).

459. See Bill C-25, *An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act, and the Competition Act*, 42nd Parl, 1st Sess, 2016, cl 13 (1) (as passed by the House of Commons 21 June 2017; referred to committee in the Senate 23 November 2017; committee report adopted 7 February 2018) (amending *Canada Business Corporations Act*, *supra* note 384, s 106 (3)).

460. See *Consultation on the Canada Business Corporations Act*, *supra* note 457 at 6.

ing simply that council members command the majority of ballots cast. This approach would add sufficient clarity to council elections.

The committee tentatively recommends:

59. *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."⁴⁶¹ But this is a default provision, which a strata corporation is free to amend.⁴⁶²

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.⁴⁶³

461. *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)).

462. 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).

463. 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.⁴⁶⁴ 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.”⁴⁶⁵ In its view, removing the upper limit would reflect the diversity of strata corporations and hand some power back to owners.⁴⁶⁶ 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.”⁴⁶⁷

There are disadvantages to consider for all three proposals. Lowering the minimum number of directors 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 tentative 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.

The committee tentatively recommends:

60. The Strata Property Act should not be amended to address the number of members that must be elected to council.

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;

464. See *Strata Title Law Reform: Strata & Community Title Law Reform Position Paper*, *supra* note 25 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*.

465. *Ibid* at 7–8.

466. *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.”).

467. *Ibid* at 7.

[and] (c) tenants who . . . have been assigned a landlord's right to stand for council."⁴⁶⁸

Given the responsibilities of strata-council members,⁴⁶⁹ 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.⁴⁷⁰ 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.⁴⁷¹

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*.⁴⁷² When the bulk of the 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;

468. *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)).

469. See *ibid*, s 31.

470. See *Growing Up: Ontario's Condominium Communities Enter a New Era: Condominium Act Review Stage Two Solutions Report*, *supra* note 26 at 41–42. In addition to statutory qualifications, the report also recommended training for council members and term limits.

471. *Ibid* at 41.

472. *Supra* note 28.

- (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.⁴⁷³

473. *Ibid*, s 27 (repeals s 29 of the *Condominium Act, 1998*, *supra* note 23 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 convicted 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

While the Ontario provision breaks new ground for strata corporations, similar provisions are commonly found in Canadian for-profit⁴⁷⁴ and not-for-profit⁴⁷⁵ 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."⁴⁷⁶

The committee's tentative 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 committee tentatively recommends:

61. 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 Stand-

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.").

474. See e.g. *Business Corporations Act*, *supra* note 290, s 124.

475. See e.g. *Societies Act*, *supra* note 290, s 44.

476. *Supra* note 26 at 41.

ard Bylaws⁴⁷⁷ 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.⁴⁷⁸ Sometimes this election doesn't result in a council that has the maximum number of council members allowed for the strata corporation.⁴⁷⁹ In other cases, council members are removed by the owners⁴⁸⁰ or they resign between annual general meetings.⁴⁸¹

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 the council member for the remainder of the term."⁴⁸² 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."⁴⁸³ 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?

477. 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.").

478. See *Strata Property Act*, *ibid*, s 25.

479. 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.").

480. See *ibid*, Schedule of Standard Bylaws, s 11.

481. See *ibid*, Schedule of Standard Bylaws, s 12.

482. *Ibid*, Schedule of Standard Bylaws, s 11 (2).

483. *Ibid*, Schedule of Standard Bylaws, s 12 (1).

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 tentative 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 (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.

The committee tentatively recommends:

62. 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.⁴⁸⁴

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

484. *Ibid*, Schedule of Standard Bylaws, s 28.

amended? The answer to this question turns on whether amendments would provide practical benefits for general meetings.

The committee's tentative 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.

The committee tentatively recommends:

63. 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.

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,⁴⁸⁵ no equivalent requirement exists in the act or the standard bylaws for minutes of general meetings. 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 not in a given case, then a strata-lot owner would be entitled to require the strata corporation to grant access to them.⁴⁸⁶

The committee's tentative recommendation for reform

The committee reviewed a number of points as part of its consideration of this issue.

485. 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 40 (committee's tentative recommendation for reform regarding section 19).

486. See *Strata Property Act, ibid*, 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).").

First, it decided that the terminology of “informing” owners and others of minutes that appears elsewhere in the act⁴⁸⁷ 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 tentative recommendation for strata-council-meeting minutes.⁴⁸⁸

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 committee tentatively recommends:

64. 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.

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.”⁴⁸⁹ 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.

487. See *ibid*, Schedule of Standard Bylaws, s 19 (“The council must inform owners of the minutes of all council meetings . . .”).

488. See, above, at 40.

489. *Supra* note 4, s 106.

The committee's tentative 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 committee tentatively recommends:

65. 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."

Chapter 6. Finances

Background

Background information on strata-corporation finances

The wellspring of most financial issues under the *Strata Property Act*⁴⁹⁰ 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."⁴⁹¹ As a consequence of this responsibility, the "strata corporation is responsible for the common expenses of the strata corporation."⁴⁹² 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.⁴⁹³

As one commentator has plainly said, paying for common expenses means that a strata corporation "spends a lot of money."⁴⁹⁴ And a strata corporation "raises that money mostly through the monthly contributions ('strata fees') paid by its members—'owners.'"⁴⁹⁵

The *Strata Property Act* and the *Strata Property Regulation*⁴⁹⁶ 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;

490. *Supra* note 4.

491. *Ibid*, s 3.

492. *Ibid*, s 91.

493. *Ibid*, s 1 (1) "common expenses."

494. Fanaken, *supra* note 31 at 67.

495. *Ibid*.

496. *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.⁴⁹⁷

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 2017.⁴⁹⁸ 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.

497. See *British Columbia Strata Property Practice Manual*, *supra* note 31 at §§ 7.1–7.53; Fanaken, *supra* note 31 at 67–95; Mangan, *supra* note 31 at 167–223.

498. *Supra* note 19.

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.⁴⁹⁹ The act requires each strata corporation to “establish” and each strata-lot owner to “contribute, by means of strata fees,” to this operating fund.⁵⁰⁰ 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 94.⁵⁰¹

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.”⁵⁰² 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.”⁵⁰³

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-

499. *Supra* note 4, s 92.

500. *Ibid*, s 92.

501. *Ibid*, s 92 (a).

502. *British Columbia Strata Property Practice Manual*, *supra* note 31 at § 7.4.

503. 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.⁵⁰⁴ 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." Alberta⁵⁰⁵ and Saskatchewan⁵⁰⁶ do have provisions setting out the purposes of their equivalents to the

504. 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).

505. See *Condominium Property Act*, *supra* note 23, 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 28, 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]).

506. See *The Condominium Property Act, 1993*, *supra* note 23, 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.⁵⁰⁷ Their legislation simply requires a strata corporation to have an operating fund.⁵⁰⁸ Legislative purposes are only applied to the contingency reserve fund.⁵⁰⁹ 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.”).

507. 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 23, 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 23, doesn't have any provisions dealing with a strata corporation's funds.
508. See Manitoba: *The Condominium Act*, *supra* note 23, 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 23, 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 28, 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 23, 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 23, 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 23, 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 23, 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”).
509. See Manitoba: *The Condominium Act*, *supra* note 23, s 143; Ontario: *Condominium Act, 1998*, *supra* note 23, s 93 (2), *Protecting Condominium Owners Act, 2015*, *supra* note 28, 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 23, s 31 (1A); Newfoundland and Labrador: *Condominium Act, 2009*, *supra* note 508, s 49 (1); Northwest Territories and Nunavut: *Condominium Act*, *supra* note 23, s 19.10 (2).
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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.⁵¹⁰ 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.⁵¹¹

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-

510. See Alberta: *Condominium Property Act*, *supra* note 23, s 38 (1); Saskatchewan: *The Condominium Property Act, 1993*, *supra* note 23, s 55 (3); Manitoba: *The Condominium Act*, *supra* note 23, s 143.

511. 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.⁵¹²

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.⁵¹³ These borderline cases have involved legal expenses⁵¹⁴ and water leaks.⁵¹⁵ 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-

512. See *Condominium Act, 2009*, *supra* note 23, s 49 (1).

513. See *British Columbia Strata Property Practice Manual*, *supra* note 31 at § 7.4.

514. See *Dockside Brewing Co v The Owners, Strata Plan LMS 3837*, 2005 BCSC 1209 at para 42, 46 BCLR (4th) 153, 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, 59 RPR (4th) 12, leave to appeal to SCC refused, [2007] SCCA No 262 (QL).

515. See *Strata Corp LMS 509 v Andresen*, 2001 BCSC 201 at para 51, 102 ACWS (3d) 1007, Skipp J; *Nicolson v Section 1 of the Owners Strata Plan VIS 1098*, 2003 BCSC 1108, 124 ACWS (3d) 1015.

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 tentative 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.

The committee tentatively recommends:

66. 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.”⁵¹⁶ In the usual case, a special levy must be approved by a resolution passed by a 3/4 vote.⁵¹⁷ 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 entitlement⁵¹⁸—the levy must be approved by a resolution passed by a unanimous vote.⁵¹⁹ In both cases, the resolution to approve the special levy must disclose a detailed set of information about the levy.⁵²⁰

516. *Supra* note 4, s 108 (1).

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

518. See *ibid*, ss 99, 100, 195.

519. See *ibid*, s 108 (2) (b).

520. 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

The act also sets some ground rules for managing the money collected⁵²¹ on a special levy. These ground rules cover issues that include accounting for, investing, and using the money collected.⁵²² 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.”⁵²³ 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.”⁵²⁴

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 into their contingency reserve funds—for dealing with an excess of money collected?

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.”).

521. 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.”).

522. 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.”).

523. See *ibid*, s 108 (5).

524. See *ibid*, s 108 (6).

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.⁵²⁵ 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 tentative 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 committee tentatively recommends:

67. 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

525. See *Condominium Property Amendment Act, 2014*, *supra* note 28, s 30 (adding new section 39.1 (5) to the *Condominium Property Act*, *supra* note 23, 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]).

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.⁵²⁶ 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.⁵²⁷

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.")⁵²⁸ The act contemplates that this approval take place at each annual general meeting.⁵²⁹ The act's provision for approval at an annual general meeting generates the sole issue for this part of the chapter.

526. See *Strata Property Act*, *supra* note 4, s 103 (1).

527. See *Strata Property Regulation*, *supra* note 8, s 6.6.

528. *Smooke v Rosemont Estate Condo Corp 101222494*, 2017 SKQB 201 at para 39, [2017] SJ No 326 (QL), 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.

529. 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.”⁵³⁰ 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.”⁵³¹ 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.⁵³² 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.

530. *Ibid*, s 103 (1).

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

532. See *British Columbia Strata Property Practice Manual*, *supra* note 31 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, focussed 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 tentative 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.

The committee tentatively recommends:

68. 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.

The committee tentatively recommends:

69. 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.”⁵³³ The requirements for putting together this financial statement are found in the *Strata Property Regulation*.⁵³⁴

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.”⁵³⁵ 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.⁵³⁶

(A parallel list exists in the regulation for budgets.)⁵³⁷

The act also provides that the budget and financial statements “may be in the form set out in the regulations.”⁵³⁸ But as a leading practice guide has noted, “[a]t the pre-

533. *Strata Property Act*, *supra* note 4, s 103 (2).

534. See *Strata Property Regulation*, *supra* note 8, s 6.7.

535. *Strata Property Act*, *supra* note 4, s 103 (3) (a).

536. *Supra* note 8, s 6.7 (1).

537. See *ibid*, s 6.6 (1).

538. *Supra* note 4, s 103 (3) (b).

sent time, there is no specific form set out in the Regulation.”⁵³⁹ 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.⁵⁴⁰ 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.”⁵⁴¹ 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

539. *British Columbia Strata Property Practice Manual*, *supra* note 31 at § 7.6.

540. See Fanaken, *supra* note 31 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).

541. *British Columbia Strata Property Practice Manual*, *supra* note 31 at § 7.6.

regulations.⁵⁴² British Columbia and federal corporate-law legislation also take this approach to financial statements.⁵⁴³

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 tentative 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.

The committee tentatively recommends:

70. The Strata Property Regulation should not contain a prescribed form for strata-corporation financial statements.

542. See Alberta: *Condominium Property Act*, *supra* note 23, s 30 (3) (a); *Condominium Property Amendment Act, 2014*, *supra* note 28, 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 23, s 39 (2); *The Condominium Property Regulations, 2001*, *supra* note 369, Reg 2, 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 23, s 150 (1); *Condominium Regulation*, Man Reg 164/2014, ss 31–32 (additional disclosure required for financial statements); Ontario: *Condominium Act, 1998*, *supra* note 23, s 66; *General Regulation*, *supra* note 473, s 16 (3); *Protecting Condominium Owners Act, 2015*, *supra* note 28, s 59 (3) (amending section 66—not in force); Québec: art 1087 CCQ; New Brunswick: *Condominium Property Act*, *supra* note 23, s 34 (1); *General Regulation*, NB Reg 2009-169, s 21; Nova Scotia: *Condominium Act*, *supra* note 23, s 24A; *Condominium Regulations*, NS Reg 60/71, s 72B; Newfoundland and Labrador: *Condominium Act, 2009*, *supra* note 23, 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.

543. See *Business Corporations Act*, *supra* note 290, s 198 (4); *Business Corporations Regulation*, BC Reg 65/2004, s 21 (1); *Cooperative Association Act*, *supra* note 347, s 153 (1) (a); *Societies Act*, *supra* note 290, s 35 (3). See also *Canada Business Corporations Act*, *supra* note 290, s 155 (1) (a); *Canada Business Corporations Regulations, 2001*, *supra* note 458, s 72; *Canada Not-for-Profit Corporations Act*, *supra* note 330, s 172 (1) (a); *Canada Not-for-profit Corporations Regulations*, *supra* note 331, s 79 (1).

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.”⁵⁴⁴ 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.⁵⁴⁵ 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.”⁵⁴⁶ 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.

The first provision concerns a strata-management contract that was “entered into before the first annual general meeting.”⁵⁴⁷ 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-

544. *Strata Property Act*, *supra* note 4, s 2 (2).

545. *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.”).

546. Fanaken, *supra* note 31 at 19.

547. *Strata Property Act*, *supra* note 4, s 24 (1).

management contract.⁵⁴⁸ 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 already 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.⁵⁴⁹ (A "turn-over meeting" is a meeting that "must be called by the declarant'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

548. See *ibid*, s 39.

549. *The Condominium Act*, *supra* note 23, 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 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.").

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.)⁵⁵⁰

Alberta is also planning to implement a similar provision. It appears in legislation that has been enacted but hasn’t yet been brought into force. 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.”⁵⁵¹

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 focussed 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 their 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.”⁵⁵² Under section 24, such a strata-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

550. *Ibid*, s 75.

551. *Condominium Property Amendment Act, 2014*, *supra* note 28, s 12 (adding new s 17.1—not in force—“(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.”).

552. *Supra* note 4, s 24 (1).

- the cancellation date established in accordance with section 39.⁵⁵³

(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.”⁵⁵⁴

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 tentative 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.

The committee tentatively recommends:

71. The Strata Property Act should not be amended to provide any new enhanced termination power to strata corporation for contracts it enters into before its first annual general meeting.

553. *Ibid*, s 24 (1).

554. *Ibid*, s 24 (2).

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.⁵⁵⁵ 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.”⁵⁵⁶ 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.”⁵⁵⁷

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.”⁵⁵⁸ 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 council. 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 erod-

555. *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.”).

556. *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.”).

557. *Ibid*, s 39 (1) (a).

558. Allen Regan, email message to Strata Property Law (Phase Two) Project Committee, 17 February 2017.

ed. 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 tentative 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.

The committee tentatively recommends:

72. 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;⁵⁵⁹
- maximum fee for an Information Certificate (Form B);⁵⁶⁰

559. *Strata Property Regulation*, *supra* note 8, s 4.2.

560. *Ibid*, s 4.4.

- maximum fee for a Certificate of Payment (Form F);⁵⁶¹
- maximum fines.⁵⁶²

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.”⁵⁶³ But this maximum amount can’t exceed the maximum provided for in the regulation.⁵⁶⁴

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.⁵⁶⁵

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.”⁵⁶⁶

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

561. *Ibid*, s 6.10.

562. *Ibid*, s 7.1.

563. *Strata Property Act*, *supra* note 4, s 132 (1).

564. *Strata Property Act*, *ibid*, s 132 (3).

565. *Supra* note 8, s 7.1 (1).

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

owners repeatedly at the maximum levels. Commentators⁵⁶⁷ and courts⁵⁶⁸ have often called for restraint in these circumstances. Raising the maximum fines could exacerbate concerns over enforcement of bylaws.

The committee's tentative 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.

The committee tentatively recommends:

73. 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 create a new maximum fine for contravention of a short-term accommodation bylaw?

Brief description of the issue

Dealing with short-term, hotel-like rentals of residential strata lots has become an emerging concern on the strata-property scene.⁵⁶⁹ Commentators agree that the case law on this issue has taken dealing with it outside the scope of a rental-restriction bylaw, so that "a strata corporation that wishes to prohibit hotel-type accommodation should do so by way of a bylaw governing the use of a strata lot, and

567. See Mangan, *supra* note 31 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 31 at 105.

568. See *Drummond v Strata Plan NW2654*, 2004 BCSC 1405 at paras 15, 39, 34 BCLR (4th) 359, McKinnon J. See also *Condominium Corporation No 072 9313 (Trails of Mill Creek) v Schultz*, 2016 ABQB 338 at para 33, [2016] AJ No 622 (QL), Master Schlosser.

569. See Veronica Franco, "Banning AirBnb, VRBO, and Short-Term Rentals: What Strata Corporations Need to Know," *CHOA Journal* (Fall 2015) 33 at 33 ("Rarely does a week go by that I don't get a call or email about short-term rentals."). See also *The Owners, Strata Plan VR812 v Yu*, 2017 BCCRT 82 (example of recent dispute over use of a strata lot for short-term accommodation).

not by way of a rental limitation bylaw.”⁵⁷⁰ Has the time come to bring the maximum fine for contravention of a short-term accommodation bylaw into line with the maximum fine for contravention of a rental-restriction bylaw?

Discussion of options for reform

Although they aren’t addressed by rental-restriction bylaws, short-term rentals raise many of the same concerns that motivate strata corporations to adopt rental-restriction bylaws. These concerns include issues relating to control of property, security, and building character. The similar rationales for these types of bylaws is an argument in favour of harmonizing the maximum fines applicable to them.

Another argument in favour of the proposal is that the current maximum fine might not be providing much of a deterrent to short-term rentals. As advances in communications and technology have made short-term rentals more widespread and lucrative, the penalties for engaging in them haven’t kept pace.

But retaining the status quo is another option to consider. Short-term rentals are a rapidly changing subject, which might be better addressed by some other policy tool. In addition, an argument could be made that short-term-rental bylaws aren’t the equivalent of rental-restriction bylaws. The latter are subject to an elaborate legal framework,⁵⁷¹ which doesn’t apply to a short-term-rental bylaw based on the use of a strata lot.⁵⁷²

The committee’s tentative recommendation for reform

In the committee’s view, the time is right to create a new category of maximum fine for contravention of short-term accommodation bylaws. The amount of that maximum fine should be set at the same amount for contravention of a rental-restriction bylaw. To do otherwise would be to risk eroding the deterrent value of bylaws restricting short-term rentals.

The committee tentatively recommends:

74. The Strata Property Regulation should provide for a new maximum fine to be set at \$2000 for each contravention of a short-term accommodation bylaw.

570. *British Columbia Strata Property Practice Manual*, supra note 31 at § 11.6 (citing *The Owners Strata Plan VR2213 v Duncan*, 2010 BCPC 123, 190 ACWS (3d) 288). See also *HighStreet Accommodations Ltd v The Owners, Strata Plan BCS2478*, 2017 BCSC 1039, [2017] BCJ No 1212 (QL) [*HighStreet Accommodations*].

571. See *Strata Property Act*, supra note 4, ss 139–48.

572. See *HighStreet Accommodations*, supra note 570 at para 54, Sharma J.

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.”⁵⁷³ The maximum fee for a Certificate of Payment is \$15.⁵⁷⁴ 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 tentative recommendation for reform

In the committee’s view, 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.

The committee tentatively recommends:

75. The Strata Property Regulation should be amended (a) to raise the maximum fee a strata corporation may charge for an Information Certificate to \$300 plus the cost of photocopying, or other means of reproduction, up to 25 cents per page and (b) to raise the maximum fee for a Certificate of Payment to \$50.

573. *Supra* note 8, s 4.4.

574. See *ibid*, s 6.10.

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].⁵⁷⁵

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.”⁵⁷⁶ 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*⁵⁷⁷ and the *Societies Regulation*⁵⁷⁸ 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

575. *Supra* note 4, s 36 (1). See also s 36.1 (*ibid*) for a parallel right for former owners and former tenants.

576. *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)).

577. See *Business Corporations Regulation*, *supra* note 543, 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 290, 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”).

578. See *Societies Regulation*, *supra* note 379, 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.”).

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) that actual cost. The rationale for this approach would be to cause the person requesting access to bear the burden (or some of the burden) of the cost of facilitating that access.⁵⁷⁹

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,⁵⁸⁰ than private corporations like companies or societies.

The committee's tentative 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.

The committee tentatively recommends:

76. 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.

579. Ontario has taken a version of this approach in recently amended regulation. See *General Regulation*, *supra* note 473, 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").

580. 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.⁵⁸¹ 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."⁵⁸² (The maximum fee societies may charge for copies provided by any means other than email is \$0.50 per page.)⁵⁸³ 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."⁵⁸⁴

581. 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.").

582. *Supra* note 578, s 5 (b).

583. See *ibid*, s 5 (a).

584. See *General Regulation*, *supra* note 473, s 13.3 (8) 4.

The committee's tentative 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.

The committee tentatively recommends:

77. 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.

The committee tentatively recommends:

78. The Strata Property Regulation should allow a strata corporation to charge a fee of up to \$0.25 per page for 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 responsibilities, 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.⁵⁸⁵

This consultation paper 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.”⁵⁸⁶ 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 consultation paper, relevant claims are those involving proceedings by or against a strata corporation. In particular, the focus 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.⁵⁸⁷ So to grasp the applicable limitation period for them it's necessary to turn to British Columbia's general limitations statute, the *Limitation Act*.⁵⁸⁸

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.”⁵⁸⁹ This basic limitation period applies to any claim that a strata corporation has for money owing to it from a strata-lot owner.

585. Mangan, *supra* note 31 at 200.

586. *Black's Law Dictionary*, 10th ed, *sub verbo* “limitation.”

587. See *British Columbia Strata Property Practice Manual*, *supra* note 31 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 cause of action as set out in the *Limitation Act* or other applicable legislation.”).

588. SBC 2012, c 13.

589. *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 39, s 13 (*Limitation Act* applies to claim before Civil Resolution Tribunal).

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.⁵⁹⁰

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.⁵⁹¹ The practical concern is that a two-year limitation period may be too short for strata corporations, significantly curtailing their flexibility in dealing with money owing from strata-lot owners. (And note that, while limitations law is focussed on court proceedings, the new act also has the effect of barring “self-help remedies” that strata corporations often employ in collection cases.)⁵⁹² Should the *Strata Property Act* create a special, longer limitation period for these cases?

590. *British Columbia Strata Property Practice Manual*, *supra* note 31 at § 8.10.

591. 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.”).

592. 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.”).

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 government 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. These concerns may arise with longer limitation periods, but they may not come to the fore in shorter limitation periods.

The committee's tentative 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.

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.

The committee tentatively recommends:

79. 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*.⁵⁹³

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.⁵⁹⁴

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.⁵⁹⁵

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

593. 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 229, 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.

594. See *supra* note 4, ss 60–65 (part 4, division 7).

595. 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.⁵⁹⁶

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

596. *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.⁵⁹⁷

Both sections have features in common. They begin by setting out their reach. The sections apply to a notice, record,⁵⁹⁸ 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;⁵⁹⁹
- 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

597. *Ibid*, s 63.

598. See *Interpretation Act*, *supra* note 229, 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”).

599. 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.⁶⁰⁰

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:

600. See Sullivan, *supra* note 227 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.⁶⁰¹

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.”⁶⁰²

The *Interpretation Act's* default provision for calculating time is “the first day must be excluded and the last day included.”⁶⁰³ But many enactments contain language that engages a special provision in the *Interpretation Act*:

- (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.⁶⁰⁴

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.

601. *Supra* note 4, s 45 (1)–(1.1) [emphasis added].

602. *Interpretation Act*, *supra* note 229, 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)).

603. *Ibid*, s 25 (5).

604. *Ibid*, s 25 (4).

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.”⁶⁰⁵ 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.⁶⁰⁶

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.

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.”⁶⁰⁷

605. *Ibid*, s 25 (2).

606. *Ibid*, s 29 “holiday.”

607. *Supra* note 4, s 65.

This exceptional method of notice may only be used to inform *resident* owners and tenants about unapproved expenditures,⁶⁰⁸ changes to strata fees brought in by a new budget,⁶⁰⁹ expenditure of money collected by special levy,⁶¹⁰ the adoption of new rules,⁶¹¹ amendments to bylaws,⁶¹² a lawsuit against the strata corporation,⁶¹³ or under “any regulations that require the strata corporation to inform owners or tenants of certain matters.”⁶¹⁴

Should this exceptional provision for notice be amended?

Discussion of options for reform

This issue is rather open ended. The committee focussed 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 tentative 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

608. See *ibid*, s 98 (6).

609. See *ibid*, s 106.

610. See *ibid*, s 108 (4).

611. See *ibid*, s 125 (4).

612. See *ibid*, s 128 (4).

613. See *ibid*, s 167 (1).

614. *Ibid*, s 65.

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.⁶¹⁵ 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.

The committee tentatively recommends:

80. 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 61.⁶¹⁶

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

615. 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).

616. 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 189–90 (general discussion of the deemed-notice provision).

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 tentative 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 hearing⁶¹⁷ or a decision regarding an exemption from a rental-restriction bylaw.⁶¹⁸

The committee tentatively recommends:

81. 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 tentatively recommends:

82. 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 tentatively recommends:

83. Section 144 (4) (a) (ii) of the Strata Property Act should be amended by striking out "two weeks" and replacing it with "three weeks."

617. See *Strata Property Act*, *supra* note 4, s 34.1 (3).

618. See *ibid*, s 144 (4) (a).

Chapter 8. Conclusion

The committee hopes to receive a wide range of responses to its tentative recommendations. Public comment is an integral part of the process of developing law-reform recommendations. Final recommendations are often shaped by input received at the consultation stage. The committee is proposing a host of changes to the *Strata Property Act* and the *Strata Property Regulation*, on which it would like to receive additional consideration before they are made final recommendations.

APPENDIX A

List of Tentative 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. (30–31)*

2. *Section 2 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. (31–32)*

3. *Section 3 (1) of the Schedule of Standard Bylaws should be relocated to part 5 of the Strata Property Act. (32–33)*

4. *Section 3 (2)–(4) of the Schedule of Standard Bylaws should remain a part of the standard bylaws. (32–33)*

5. *Section 4 (1) of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. (33–34)*

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 owner's representative's name, strata-lot number, and mailing address outside the strata plan, if any. (33–34)*

7. *Section 4 (2) of the Schedule of Standard Bylaws should be repealed. (33–34)*

8. Section 5 (1) and (2) of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. **(35)**
9. Section 5 (3) of the Schedule of Standard Bylaws should be repealed. **(35)**
10. Section 6 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. **(36)**
11. Section 7 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. **(36–37)**
12. Section 8 of the Schedule of Standard Bylaws should be relocated to become new section 72 (3) of the Strata Property Act. **(37–38)**
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. **(37–38)**
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). **(37–38)**
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. **(39–40)**
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.” **(40)**
17. Section 20 (4) of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. **(41)**
18. Section 22 of the Schedule of Standard Bylaws should be relocated to become part of section 31 of the Strata Property Act. **(41–42)**
19. Section 23 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. **(42)**

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. **(43)**

21. Section 25 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. **(44)**

22. Section 26 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. **(44–45)**

23. Section 27 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. **(45)**

24. Section 28 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. **(46)**

25. Section 29 of the Schedule of Standard Bylaws should be repealed. **(46–47)**

26. Section 30 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. **(47–48)**

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.” **(48–49)**

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. **(49–51)**

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. **(51–52)**

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. **(52–53)**

31. 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 to a charge back for an insurance

deductible or expenses incurred due to damage which are less than an insurance deductible, even if the charge back has been found valid by a court or the Civil Resolution Tribunal. (53–54)

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. (54–58)

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. (58–60)

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. (60–61)

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 is entitled to register a lien against that strata lot under section 116 (1).” (61–63)

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. (63–65)

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. (66–68)

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. **(68–72)**

Statutory definitions

39. The Strata Property Act should define “continuing contravention” to mean “a succession or repetition of separate acts of the same character.” **(74–77)**

40. The Strata Property Act should not be amended to add a definition of “strata manager.” **(77–79)**

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.” **(79–82)**

42. The Strata Property Act’s definition of “residential strata lot” should not be amended. **(83–87)**

43. The Strata Property Act should not contain a definition of “nonresidential strata lot.” **(87–89)**

General meetings and strata-council meeting—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.” **(98–102)**

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. **(102–04)**

46. The Strata Property Act should not limit the number of proxy appointments that may be held for a general meeting. **(104–08)**

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 or agent of the strata corporation; (b) an owner-developer or an em-

ployee 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. (108-11)

General meetings and strata-council meeting—conduct of meetings

48. The Strata Property Act should not prescribe a comprehensive set of rules of order for strata-corporation general meetings. (113-15)

49. 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. (116-17)

General meetings and strata-council meeting—quorum

50. 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.” (118-20)

51. 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 meeting called by voters under section 43.” (118-21)

52. 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. (121-23)

53. 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. (123-24)

General meetings and strata-council meeting—voting

54. 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.” **(126–27)**

55. 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. **(127–30)**

56. The Strata Property Act should not change the voting threshold for all resolutions requiring passage by a 3/4 vote. **(130–33)**

57. 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.” **(134–36)**

58. 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. **(136–37)**

General meetings and strata-council meeting—strata-council elections

59. The Strata Property Act should require that each strata-council member must be elected by a majority of the ballots cast. **(138–40)**

60. The Strata Property Act should not be amended to address the number of members that must be elected to council. **(140–41)**

61. 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. **(141–45)**

62. *The Strata Property Act should provide that additional strata-council members may be elected at a special general meeting. (145–46)*

General meetings and strata-council meeting—agenda and meeting minutes

63. *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. (147–48)*

64. *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. (149–50)*

65. *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.” (150–51)*

Finances—operating fund

66. *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. (155–60)*

Finances—special levies

67. *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. (161–63)*

Finances—budgets

68. *The Strata Property Act should continue to require strata corporations to initiate the budget-approval process only at an annual general meeting. (164–65)*

69. *The Strata Property Act should not be amended to permit budgets to be amended at a special general meeting. (164–65)*

Finances—financial statements

70. *The Strata Property Regulation should not contain a prescribed form for strata-corporation financial statements. (166–68)*

Finances—contracts

71. *The Strata Property Act should not be amended to provide any new enhanced termination power to strata corporation for contracts it enters into before its first annual general meeting. (170–72)*

72. *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. (173–74)*

Finances—regulatory provisions on fines and fees

73. *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. (175–76)*

74. *The Strata Property Regulation should provide for a new maximum fine to be set at \$2000 for each contravention of a short-term accommodation bylaw. (176–77)*

75. *The Strata Property Regulation should be amended (a) to raise the maximum fee a strata corporation may charge for an Information Certificate to \$300 plus the cost of photocopying, or other means of reproduction, up to 25 cents per page and (b) to raise the maximum fee for a Certificate of Payment to \$50. (178)*

76. *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. (179–80)*

77. *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. (181–82)*

78. *The Strata Property Regulation should allow a strata corporation to charge a fee of up to \$0.25 per page for copy of a record or document provided under section 36 of the Strata Property Act by electronic means. (181–82)*

Finances—limitation period and collections

79. *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. (184–86)*

Notices and communications

80. *Section 65 of the Strata Property Act should not be amended. (192–94)*

81. *Section 34.1 (3) of the Strata Property Act should be amended by striking out “one week” and replacing it with “two weeks.” (194–95)*

82. *Section 144 (4) (a) (i) of the Strata Property Act should be amended by striking out “one week” and replacing it with “two weeks.” (194–95)*

83. *Section 144 (4) (a) (ii) of the Strata Property Act should be amended by striking out “two weeks” and replacing it with “three weeks.” (194–95)*

APPENDIX B

Summary Consultation

Introduction

The purpose of this summary consultation is to highlight three proposals from the British Columbia Law Institute's *Consultation Paper on Governance Issues for Stratas*. In the interest of brevity, background information and discussion of these proposals has been kept to a bare minimum. Citations and footnotes for the text have not been provided. If you wish to read about the issues raised in this summary consultation in depth, or if you want to comment on all of this consultation's 83 tentative recommendations (or a greater range of those tentative recommendations than is offered in this summary consultation), then you are encouraged to obtain a copy of the full *Consultation Paper on Governance Issues for Stratas* by downloading it for free from <https://www.bcli.org> or by contacting BCLI and asking us to send a hard copy to you.

How to respond to this summary consultation

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

If you want your comments to be considered in the preparation of the final report on governance issues for stratas, then we must receive them by **15 June 2018**. BCLI expects to publish this report in mid-2018.

About the British Columbia Law Institute

The British Columbia Law Institute is British Columbia's independent law-reform agency. Incorporated as a not-for-profit society in 1997, BCLI's strategic mission is to be a leader in law reform by carrying out the best in scholarly law-reform research and writing and the best in outreach relating to law reform. After public consultations, BCLI makes recommendations for legislative changes to the provincial government. BCLI's recommendations can only be implemented by British Columbia's legislative assembly, which is responsible for the enactment of legislation.

About the Strata Property Law (Phase Two) Project

This consultation forms part of a broader BCLI project on strata-property law. The Strata Property Law Project—Phase Two builds on the research and consultation carried out in the phase-one project. Phase two is concerned with making legislative recommendations to reform the *Strata Property Act* in the following seven major areas: (1) fundamental changes to a strata; (2) complex stratas; (3) selected governance issues; (4) common property; (5) selected land-title issues; (6) selected insurance issues; (7) leasehold stratas. Work on phase two began in summer 2013 and will carry on until the conclusion of the project, which is projected for June 2018.

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

Patrick Williams—chair <i>(Partner, Clark Wilson LLP)</i>	Veronica Barlee (Jul. 2014–present) <i>(Senior Policy Advisor, Housing Policy Branch, Ministry of Municipal Affairs and Housing)</i>
Larry Buttress (Oct. 2013–Jun. 2016) <i>(Deputy Executive Officer, Real Estate Council of British Columbia)</i>	Garth Cambrey <i>(Real Estate Institute of British Columbia)</i>
Tony Gioventu <i>(Executive Director, Condominium Home Owners Association)</i>	Ian Holt (Oct. 2016–Apr. 2017) <i>(Realtor, Re/Max Real Estate Services)</i>
Tim Jowett <i>(Senior Manager, E-Business and Deputy Registrar, Land Title and Survey Authority)</i>	Alex Longson (Jul. 2016–present) <i>(Senior Compliance Officer, Real Estate Council of British Columbia)</i>
Judith Matheson (Oct. 2013–Oct. 2016) <i>(Realtor, Coldwell Banker Premier Realty)</i>	Elaine McCormack <i>(Partner, Wilson McCormack Law Group)</i>
Susan M. Mercer (Sep. 2016–present) <i>(Notary Public)</i>	Doug Page (Oct. 2013–Jul. 2014) <i>(Director of Legislation, Housing Policy Branch, Ministry of Municipal Affairs and Housing)</i>
David Parkin <i>(Assistant City Surveyor, City of Vancouver)</i>	Allen Regan <i>(Vice-President, Bayside Property Services Ltd.)</i>

Garrett Robinson (Apr. 2017–present) <i>(Realtor, Re/Max Crest Realty— Westside)</i>	Stanley Rule (Oct. 2013–Sep. 2016) <i>(Lawyer, Sabey Rule LLP)</i>
Sandy Wagner <i>(President of the Board of Directors, Vancouver Island Strata Owners Asso- ciation)</i>	Ed Wilson <i>(Partner, Lawson Lundell LLP)</i>

Our supporters

The Strata Property Law Project—Phase Two has been made possible by project funding from the Real Estate Foundation of British Columbia, the Notary Foundation of British Columbia, the Ministry of 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.

About strata-property law

When a landowner wants to develop a strata property this owner-developer must have a professional land surveyor create a strata plan. The owner-developer deposits this strata plan in the land title office. This act gives rise to the three defining characteristics of a strata property:

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

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

About strata-property governance

Strata-property governance is concerned with the third item on the list from the previous page: the strata corporation. The strata corporation is the law's vehicle for coordinating the views of a diverse group of property owners. When it is functioning as planned, the strata corporation allows those owners to grapple with issues facing the strata property and to make timely and effective decisions.

In plain terms, *governance* can be defined as an organization's system or method of managing itself. As such, it is a huge, potentially never-ending, topic for strata corporations. The *Strata Property Act* narrows its range somewhat by containing a dedicated part on "Strata Corporation Governance." But even this part (which comes in at a lengthy 40 sections) doesn't fully capture the issues at stake in this public consultation.

In the committee's view, the areas of strata-corporation governance that called for immediate review and potential reform were:

- bylaws and rules, which are the third pillar supporting the legal framework for strata corporations (after the *Strata Property Act* and its regulations) and which often spell out crucial provisions for the operation and management of the strata corporation;
- statutory definitions, which may be used to clarify that legal framework;
- general meetings and strata-council meetings, where decisions get made and much of the business of operating and managing the strata is done;
- finances, including both strata-corporation finances and the public system of fees set out in the regulations; and
- notices and communications between the strata corporation and its members.

Stepping back to take in the broad view, the committee is interested in a number of big-picture questions. Can the procedures governing strata meetings be made clearer, as a way to make those meetings a more effective vehicle of collective decision-making? Are there ways to further empower eligible voters' participation in meet-

ings and decision-making? Can the act enhance the accountability of the people given the responsibility to implement the collective's decisions? Does the strata corporation have the right legal tools to enforce its decisions?

The three proposals in this summary consultation highlight aspects of these questions. They tackle clarifying an important document often used in strata-corporation meetings, confirming an effective method to elect strata-council members, and enhancing one part of the strata corporation's toolkit for enforcing its decisions.

Should the Strata Property Act require a defined form of proxy appointment?

The *Strata Property Act* calls a person who stands in for an absent strata-lot owner at a strata corporation's general meeting a *proxy*. The document that gives the proxy the authority to represent the owner is called a *proxy appointment*.

When an owner signs a proxy appointment that executed document creates what the law refers to as an agency relationship between the owner and the proxy. The broad outlines of this relationship are defined by the *Strata Property Act*, which says that "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."

The presence of proxy appointments in the act has been justified for two reasons. First, they're seen as a way to encourage greater owner participation in collective decision-making. Second, they're felt to be needed to help strata corporations meeting their quorum requirements. (A *quorum* is the minimum number of owners who must be present to constitute a valid meeting.)

In recent years, many people have begun to criticize aspects of the proxy-appointment system. Rather than deepening open and democratic involvement in the strata corporation, proxy appointments (in the critics' view) have been leading to the opposite result. They have been entrenching control by unrepresentative factions that manipulate both owners' apathy and proxy laws to keep themselves in power.

The full consultation paper explores issues concerning proxy appointments in their full dimensions. The proposal highlighted in this summary consultation tackles one aspect of a multifaceted problem.

This aspect concerns the proxy-appointment document itself. This document plays a critical role in defining the agency relationship between an owner and a proxy. But

the document is subject to few requirements. The act only holds that the document must be in writing and that it must be signed by the owner appointing the proxy. There is a form of proxy appointment prescribed in the regulation, but its use is “optional.”

In the eyes of some critics, this approach to the central document defining the agency relationship creates a grey area that can be exploited. But even in the absence of exploitation, vagueness on the terms of the proxy appointment can lead to misunderstandings and disputes, eroding the effectiveness of a general meeting.

The proposal to address these concerns is to create a standard form of proxy appointment. A standard form would clarify the terms of the agency relationship, filling in gaps and clarifying uncertainties. In this way, it would cut down on exploitation.

And a standard form may have other benefits. By clearly defining the scope of the proxy’s authority, a standard form could help to foster and support owners’ participation in making collective decisions. A standard form would give owners’ greater confidence that the proxy appointment is being used in accordance with their wishes, and not as a means to entrench some unrepresentative faction in the strata corporation’s governance. A standard form could also result in a proxy system that, in the long run, would be easier for strata corporations to administer and would be less susceptible to disputes.

But there might also be drawbacks to requiring the use of a standard proxy appointment. British Columbia has a vast number of strata corporations. These strata corporations can differ greatly in their composition. Designing a standard proxy appointment that would be simple to use and that would respect the range and diversity of British Columbia’s strata corporations could be a considerable challenge.

There could also be implementation issues with a standard proxy appointment. Strata corporations and strata managers would have to be educated on the existence and use of the form. While their learning curve would probably not be steep, they could still encounter some confusion and conflict, particularly in the short term.

Finally, limiting proxy appointments to one standard form could make it less attractive for owners to authorize proxies for general meetings. This could lead to apathy and difficulties for strata corporations in meeting their quorum requirements.

The committee considered these advantages and disadvantages and decided that British Columbia should move toward a standard form of proxy appointment for strata corporations. A standard proxy appointment should help to clarify the agency

relationship between an owner and a proxy. Clarity on this relationship should, in turn, help to allay the concerns of critics of the proxy system.

Adopting a standard form also creates an opportunity to clarify the role of the strata corporation in that system. When disputes over proxy appointments arise, often people look to the strata corporation to take a position on them or to resolve them. But this isn't the strata corporation's role.

Finally, a clearly defined form should reduce the number of disputes over proxy appointments, by spelling out what constitutes a valid proxy appointment. In the committee's view, this benefit will flow from making use of the form mandatory.

Proposal (1) 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."

agree

disagree

comments: _____

Should the Strata Property Act expressly provide that election to a strata council requires a majority of the ballots cast?

One of the most important things that the owners do at each annual general meeting is elect a strata council. According to the *Strata Property Act*, and unless the act, its regulations, or a strata's bylaws say otherwise, "the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules."

Given the important responsibilities of the strata council, it's somewhat surprising that the act doesn't clearly define what election to council entails. Intuitively, people may have a sense of what an election is about—it's essentially a contest to attract

votes. But the courts have held that, in the absence of legislation that spells this intuitive sense out, the meaning of *election* in this context is actually much broader in scope. This ruling opens the door to practices such as electing a council by acclamation (which is essentially the appointment of a slate or group of individuals as council members without the owners voting on any of them, because the slate or group is smaller than the number of available council slots).

Electing a council by acclamation, and other, similar practices, have been criticized as tending to undermine the accountability of the strata council and the democratic spirit of the strata corporation. Proposals that forge a clearer link between the voters at an annual general meeting and the representatives they are electing have come up in strata-property law, and in corporate law generally.

These proposals are intended to act as a safeguard against an entire group being acclaimed as a strata council without the opportunity for individual consideration. The main advantages of the proposal are that it clarifies the process of election and it gives owners a chance to evaluate each candidate. In this way, a blow may be struck against a common governance problem for stratas, which is having a clique entrench itself in power. In addition, because there is a clearer connection between owners voting at the annual general meeting and entry onto council, it may also foster a greater sense of accountability among strata-council members.

There are downsides to this approach. It could slow down elections, making them more rule bound and difficult to administer. At the extreme end, it could result in failed elections, where no candidate is able to attract a majority.

The committee decided that the current law is rather open-ended and somewhat vague. This could lead to irregularities and even abuses. Tightening up what is meant by a strata-council election would be beneficial.

In coming to this decision, the committee did take some pause over the downsides to this approach. It wasn't willing to go as far as some proposals being considered in the corporate sector, which would insist on individual election of corporate directors by separate resolutions, each passed by a majority vote. In the committee's view, simply having a legislative provision that requires that each strata-council member must be elected by a majority of the ballots cast would strike the right balance. Many well-run strata corporations already use this procedure, so its implementation likely wouldn't cause significant disruption at the level of practice. But it would clarify the legislation and would give owners another tool to root out problems.

Proposal (2) The Strata Property Act should require that each strata-council member must be elected by a majority of the ballots cast.

agree

disagree

comments: _____

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?

A limitation period is a period of time, set out in legislation, that bars a person from bringing proceedings in a court or tribunal. When a limitation period has elapsed, a person with an otherwise valid legal claim may be left with no legal means to enforce that claim.

The *Strata Property Act* has nothing to say about limitation periods. When a strata corporation wants to find out about a limitation period that applies to a claim it may have, it has to turn to a statute of general application called the *Limitation Act*.

Strata corporations rely on a constant flow of money from strata-lot owners to meet the duties and obligations they have under the *Strata Property Act*. If that flow is interrupted, even by one owner refusing or failing to pay, then it is critical that the strata corporation act on its legal rights and enforce its claim against the delinquent owner. Otherwise, the strata corporation may fall into default or the other owners will have to pick up the slack left by the debtor owner.

In recognition of the importance of this cash flow from owner to the strata corporation, the *Strata Property Act* gives strata corporations some enhanced enforcement tools. The most important of these tools is the lien that a strata corporation may place on title to a delinquent owner's strata lot. When an owner fails to make certain specified payments (for strata fees, special levies, a reimbursement of the cost of doing work under a work order, or a share of judgment against a strata corporation), then the strata corporation may secure this debt against the value of the strata lot. And if the strata lot is ultimately sold under a court order, then the strata corporation has a privileged priority position in claiming the proceeds of that sale vis-à-vis any other creditors.

But all this is subject to proceeding within the *Limitation Act's* basic limitation period of two years (“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”). Some commentators have said that this relatively short limitation period creates hardships for strata corporations. The up-front costs of enforcing most strata-corporation claims are high. Proceeding within two years often makes little financial sense. So there have been calls for a special limitation period, which would be applicable just to strata-corporation claims.

The rationale for a special limitation period is that it would reflect the special position of strata corporations. The relationship between a strata corporation and a delinquent owner is fundamentally different from the standard creditor-debtor relationship. That standard relationship is best seen in a consensual lending transaction, in which a creditor agrees to lend money to a debtor. In a strata, on the other hand, there is no such loan, simply an owner who refuses or fails to pay required fees, levies, or the like. When one owner fails to pay the harm ultimately falls on the other owners, who must either make up for the lost funds themselves or run the risk of having the value of their own strata lots decline.

The difficulty with these arguments is that there might not be enough that sets strata corporations apart from other creditors and warrants special treatment under the law. After all, most creditors would prefer to have the benefit of more time and greater flexibility in pursuing their claims.

The *Limitation Act* is a relatively new statute. It's only been in force since 2013. One of its hallmarks was a move to a new, shorter basic limitation period (cutting what had previously been a six-year period down to two years). It's likely that the government will need particularly strong reasons to start carving out exceptions to this new basic limitation period.

In general, limitation periods are intended to promote certainty and finality in court and tribunal proceedings. They're also intended to guard against stale claims coming before a court or tribunal. The longer the limitation period, the greater the likelihood of a stale claim. This can force the court or tribunal to have to make decisions in the face of lost or disposed-of records or fading memories. Stale claims are one more burden on an already overburdened justice system.

In the end, the committee decided to propose a special, four-year limitation period for strata-corporation claims that come within the *Strata Property Act's* lien. In the committee's view, these claims have enough special characteristics to set them apart from the broad run of creditor-debtor cases. The current law has caused problems

for strata corporations, and the simplest way to alleviate those problems is with a dedicated, longer limitation period.

Proposal (3) 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.

agree

disagree

comments: _____

Conclusion

The committee is interested in your thoughts on these proposals. And if you wish to pursue any of the ideas raised in this summary consultation in greater detail or depth, the committee encourages you to read and respond to the full consultation paper. Responses to the full and summary consultations received before **15 June 2018** will be taken into account in preparing the final report on governance issues for stratas, which BCLI plans to publish in 2018.

APPENDIX C

Biographies of Project-Committee Members

Patrick Williams is a partner of the Vancouver law firm Clark Wilson LLP and a member of the firm's Strata Property Group. He is also a member of the Alternative Dispute Resolution Practice Group. Patrick's practice focusses on assisting strata corporations, developers, and strata-lot owners with dispute resolution. He is an experienced and qualified arbitrator and mediator who has managed numerous strata-property, real-estate, and construction disputes.

Patrick has written and published many articles on issues impacting the strata-property industry, including construction-related problems experienced by owners, property managers, and developers. He is a regular contributor to industry periodicals and regularly delivers presentations and seminars to industry groups, strata corporations, and property managers. He has also published articles regarding the use and benefit of arbitration and mediation as an alternative to court and is a frequent guest instructor for the mediation component of the Professional Legal Training Course required to be taken by all articulated students in British Columbia.

Patrick received his dispute resolution training through the Continuing Legal Education Society of British Columbia and the British Columbia Arbitration and Mediation Institute. He obtained his Bachelor of Commerce degree in 1973 and his Bachelor of Laws degree in 1974, from the University of British Columbia.

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 *Under-*

standing 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
- Vancouver Island Strata Owners Association
- Condominium Home Owners Association
- Ministry of Municipal Affairs and Housing for British Columbia
- Employment and Social Development Canada
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