



SUBMISSIONS
TO THE
BRITISH COLUMBIA LAW INSTITUTE
ON RECOMMENDED AMENDMENTS TO THE
STRATA PROPERTY ACT

Issued by:

Canadian Bar Association
British Columbia Branch
Insurance Law Section
December 2018

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PREFACE

The British Columbia Law Institute (the “BCLI”) has released its Consultation Paper on Insurance Law Issues for Stratas. The BCLI invited the Insurance Law Section of the Canadian Bar Association (BC Branch) (the “CBABC”) to provide comments on its recommendations. To respond, the Insurance Law Section (the “Section”) created a subcommittee consisting of Andrea Fraser, Daniel Barber, and Ruby Egit, who considered the BCLI's recommendations and developed responses on behalf of the Insurance Law Section. The responses were then distributed to the Section's members for input before being finalized.

The Canadian Bar Association nationally represents over 35,000 members and the British Columbia Branch itself has 7,000 members. Its members practice law in many different areas and the Branch has established 76 different sections to provide a focus for lawyers who practice in similar areas to participate in continuing legal education, research and law reform. The Branch also establishes special committees from time to time to deal with issues of interest to the Branch.

The Section is concerned with law which applies to the insurance contract and regulates the rights and responsibilities of the parties to a contract of insurance. These submissions reflect the views of the CBABC Insurance Law Section only and do not necessarily reflect the views of the CBABC as a whole.

EXECUTIVE SUMMARY

This report reviews the 10 recommendations and one discussion of the BCLI and provides the Section's responses. Overall, the Section is largely in agreement with the BCLI's recommendations.

SUBMISSIONS

The BCLI released its Consultation Paper on Insurance Law Issues for Stratas in September 2018. In the Consultation Paper, the BCLI reviewed the basics of the *Strata Property Act* and the various insurance provisions in the legislation. The Consultation Paper then reviewed 10 issues for reform and reached recommendations regarding these issues. The Consultation Paper also included an additional question for discussion. The BCLI has asked for comments on their recommendations and the discussion question by December 15, 2018.

As the recommendations and discussion question relate to the insurance requirements for strata corporations, the recommendations may impact both the practice of many Section members and the business operations of many members' clients. Accordingly, the Section struck a subcommittee to respond to the BCLI's recommendations. The subcommittee has organized its comments in response to the specific recommendations made by the BCLI.

The BCLI recommendations and the Subcommittee's response to those recommendations are as follows:

<p>1.</p>	<p>Recommendation: The <i>Strata Property Act</i> should require a strata corporation to obtain directors-and-officers insurance.</p> <p>Response: The Section agrees with this recommendation.</p>
<p>2.</p>	<p>Recommendation: For the purposes of section 151 of the <i>Strata Property Act</i>, the strata corporation must obtain and maintain directors-and-officers insurance for a minimum amount of \$2,000,000.</p> <p>Response: The Section is in favour of some level of minimum, but has no specific comment on the level recommended.</p>
<p>3.</p>	<p>Recommendation: The definition of "major perils" in the <i>Strata Property Regulation</i> should not be amended to include earthquakes.</p> <p>Response: The Section agrees with the BCLI recommendation but adds that if earthquakes are included within the definition of "major perils," this change should be applied to specific geographic areas by regulation.</p>
<p>4.</p>	<p>Recommendation: The definition of "major perils" in the <i>Strata Property Regulation</i> should not be amended to include overland flooding.</p> <p>Response: The Section agrees with the BCLI recommendation but adds that if overland flooding is included within the definition of "major perils," this change should be applied to specific geographic areas by regulation.</p>

5.	<p>Recommendation: Section 158 of the <i>Strata Property Act</i> should be amended to allow a strata corporation to decide to charge back to an owner, if the owner is responsible for the loss or damage that gave rise to the claim, the lesser of the following amounts: (a) the cost of repairing the loss or damage; (b) the deductible limit of the insurance claim.</p> <p>Response: The Section agrees with the BCLI recommendation.</p>
6.	<p>Recommendation: A new standard bylaw should be added to the Schedule of Standard Bylaws that requires a strata-lot owner to have insurance that covers payment of a deductible under a strata-corporation policy.</p> <p>Response: The Section agrees with the BCLI recommendation.</p>
7.	<p>Recommendation: Section 155 of the <i>Strata Property Act</i> should not be amended.</p> <p>Response: The Section agrees with the BCLI recommendation.</p>
8.	<p>Recommendation: Section 149(4)(a) of the <i>Strata Property Act</i> should be amended by adding the words “as determined by the most recent appraisal” after “full replacement value.”</p> <p>Response: The Section agrees with the BCLI recommendation.</p>
9.	<p>Recommendation: The frequency of appraisals should be determined by regulation. The regulation should initially set this frequency at a minimum of three years.</p> <p>Response: The Section agrees that the frequency of appraisals should be determined by regulation, but recommends that the frequency be set at a minimum of five years.</p>

<p>10.</p>	<p>Recommendation: Section 154 of the <i>Strata Property Act</i> should be amended to require a strata corporation to inform the owners and tenants as soon as feasible of any material change in insurance coverage, including an increase in any deductible.</p> <p>Response: The Section agrees in principle but seeks more clarity as to the meaning of “material change” before agreeing with the BCLI’s recommendation.</p>
<p>Discussion</p>	<p>Questions: Should British Columbia adopt the standard-unit concept?</p> <p>Response: The Section recommends adopting the standard-unit concept with no carve out allowing for a Strata to amend its bylaw to opt-out. The standard unit will allow for clarity, efficiency, and cost savings.</p>

CONCLUSION

The Section would be pleased to discuss our submissions further with the BCLI, either in person or in writing, in order to provide any clarification or additional information that may be of assistance to the BCLI.

All of which is respectfully submitted.

Sincerely,

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