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McCarthy Tétrault's
ANNOTATED BRITISH COLUMBIA STRATA PROPERTY ACT
by Scott D. Smythe and Gillian Piggott
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What's New in this Update:

This release features updates to the commentary on the *Strata Property Act*.

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Highlights

- **STRATA PROPERTY ACT—STRATA CORPORATION GOVERNANCE—RECORDS—ACCESS TO RECORDS—CASE LAW—**The owner argued that the lower court had erred by creating a temporal limitation on the disclosure of legal opinions. The appeal was allowed to the extent that the orders of the lower court and the Tribunal below were set aside. Relying on Supreme Court of Canada decisions emphasizing that solicitor-client privilege must be protected and may not be set aside by inference, the appellate court dismissed the owner's application for production of the legal opinions obtained by the strata corporation. While solicitor-client privilege may be abrogated by statute, legislation appearing to do so must be interpreted restrictively and the language used must clearly, explicitly, and unequivocally evidence a legislative intent to abrogate solicitor-client privilege. Sections 35(2) and 36 of the SPA do not meet the threshold established by the Supreme Court of Canada for demonstrating the required legislative intent: *Mitchinson v. Strata Plan VR 1120*, 2024 BCCA 89 (B.C. C.A.).
- **STRATA PROPERTY ACT—LEGAL PROCEEDINGS AND DISPUTE RESOLUTION—SUITS BY THE STRATA CORPORATION—STRATA CORPORATION MAY SUE AS REPRESENTATIVE OF ALL OWNERS—CASE LAW—** The principal issue on appeal was whether a strata corporation has standing, in reliance on s. 171 of the SPA, to bring a representative statutory cause of action under s. 22(3) of REDMA for damages arising out of a disclosure statement that allegedly contained misrepresentations. The appellate court noted that it had previously described the question, in passing, as "arguable" and an "interesting question", but this was the first occasion where the specific issue was brought squarely before the appellate court. The appellate court concluded that the trial judge erred in law in his interpretation of the relevant provisions of the SPA and REDMA and that, applying the principles of statutory interpretation correctly, only the initial purchasers of a strata lot may advance a REDMA claim for misrepresentation in a disclosure statement; a strata corporation lacks standing to do so. The trial judge's decision constituted an error of law because he focused on s. 171 of the SPA in isolation from the clear wording of s. 22(3) of REDMA, which limits the statutory cause of action to a "purchaser". As REDMA defines "purchaser" to mean a purchaser "from a developer" of a development unit, only initial purchasers from a developer may avail themselves of the statutory right to claim damages for misrepresentation.

The statutory cause of action is personal in nature, and the strata corporation's attempt to advance a REDMA claim was therefore unavailable to it from the outset. Section 171 of the SPA allows a strata corporation to sue on behalf of the owners when a matter affects the strata corporation, but misrepresentations made to purchasers in a disclosure statement are not matters affecting the strata corporation: *Findlay v. The Owners, Strata EPS401*, 2024 BCCA 305 (B.C. C.A.).

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