

From Loss to Recovery: Making Subrogation Work in Condo Claims

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Today's Panel

Today's Agenda



HOW TO HANDLE THE CLAIM AT
THE OUTSET



HOW TO DEAL WITH THE
INSURED WHEN SUBROGATING



NEW RULES UNDER QUEBEC'S
CIVIL CODE

Setting the stage

Some definitions

- Condo corp?
- Board of directors?
- Unit?
- Common elements?
- Condo fees

What belongs to the unit owner vs. the corporation?

Setting the stage

Major areas of variation:

- What the corporation must insure
- What owners must insure
- Deductible recovery rules
- Ability to charge back deductibles

How to handle claims - Overview

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Important elements of early file handling:

1. Understanding limitation dates.
2. Understanding relevant laws.
3. Lawyer tips for handling the investigation.

Limitation Periods

- Limitation periods vary by province to province – if you have claims in multiple provinces, ensure that you have the correct dates diarized!
- Most jurisdictions in Canada observe a **2-year** limitation period – this includes Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland & Labrador, Ontario, and Saskatchewan.
- Quebec has a **3-year** limitation period.

Limitation Periods

- The remaining jurisdictions- Northwest Territories, Nova Scotia, Nunavut, PEI, and Yukon – have a **6-year** limitation period.
- The limitation period begins **when a claim is discovered**.
- If you want to proceed with subrogation, ensure your counsel is assigned early (i.e. within 3-6 months, minimum) so they have ample time to review materials and assess the claim.

Understanding Relevant Laws

- Beyond limitation periods, it is important to understand the contrast in laws between jurisdictions.
- E.g. in Alberta, a condominium corporation cannot recover more than \$50,000 as a deductible from an owner against whom a subrogation claim is made: see s. 39.01, *Condominium Property Act*, RSA 2000, c. C-22, and s. 62.4(1), *Condominium Property Regulation*, Alta Reg 168/2000.
- Conversely, in British Columbia, there is **no such limitation** on a strata in its ability to recover its damages.
- Understanding bylaws is also important – some bylaws preclude actions against the strata/condo board, while some do not.
- Know the Small Claims threshold! It ranges from \$15,000 (Quebec) to \$100,000 (Alberta), depending on the province.

Lawyer's Tips for Preliminary Investigation

1

Retain an expert early – this allows you to get an early assessment on causation and liability before litigation has even begun.

2

Organize your documents – ensure your lawyer has everything when they open the file.

3

If you investigate, communicate! – make sure your lawyer is aware of any key findings during the investigatory stage (e.g. whether to pursue a claim against a particular party) – this will save you time and money.

4

Ask the insured about their losses – lawyers will subrogate both insured and uninsured losses, so a full scope of the damages is important.



Subrogating against unit owners or occupants

- Alberta – Statutory limits for subrogation:
 - \$50,000 limit:
 - Condo corporation claims against unit owners for deductible only
 - No limit:
 - Claims by unit owners against other unit owners
 - Claims by condo corp or owners against tenants

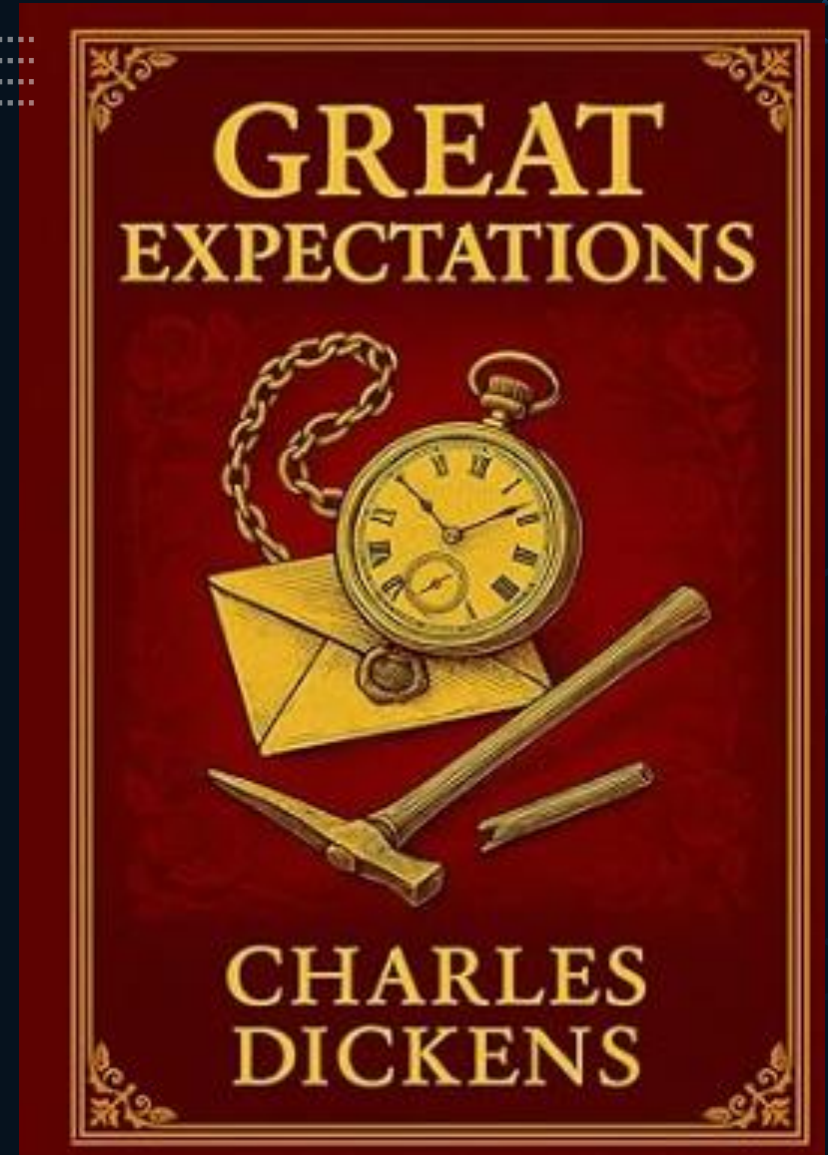
Subrogating against the condo corporation or strata

- Check the bylaws!
 - Bylaws may prohibit claims against the condo corporation / strata
- If no prohibition in the bylaws:
 - Corporation / strata can be sued for negligent repairs causing damage to personal property
- Responsible unit owner generally responsible for negligence claims with personal property damage, not corporation or strata

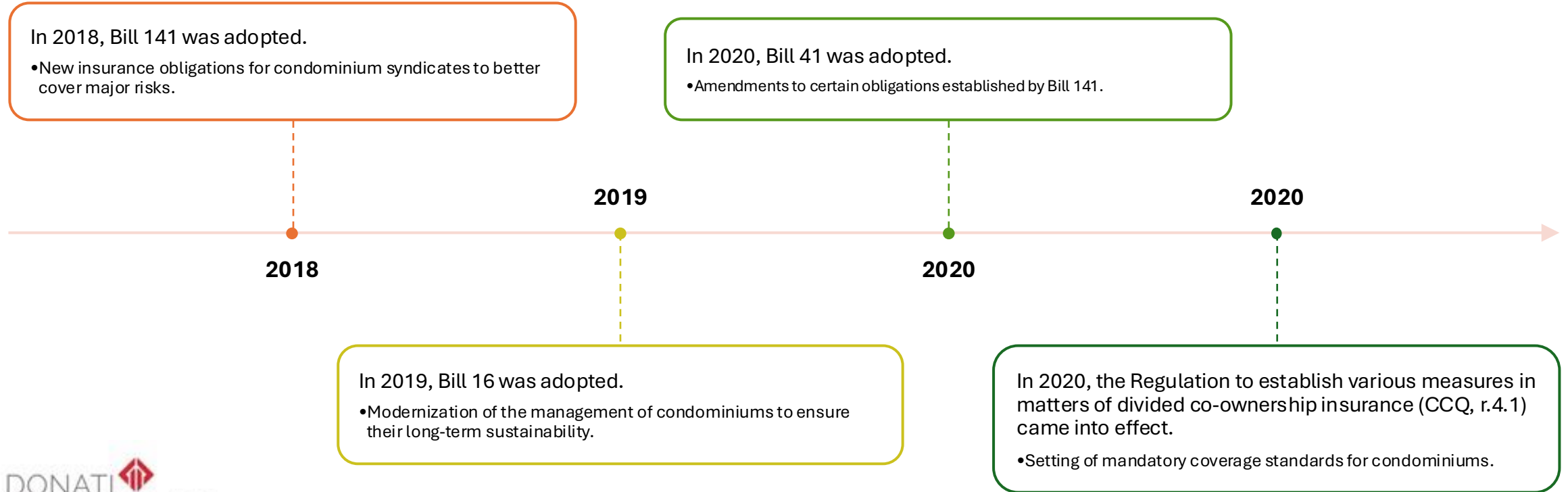


Managing insureds and expectations

- Fees for recovering uninsured losses
- Understanding recovery prospects
- When they should retain their own counsel



Legislative History



General principle: no subrogation in co-ownership

The insurer is generally subrogated to the rights of its insureds against a third party:

“2474 C.C.Q. The insurer is subrogated to the rights of the insured against the author of the injury, up to the amount of indemnity paid. The insurer may be fully or partly released from his obligation towards the insured where, owing to an act or omission of the insured, he cannot be so subrogated.

The insurer may never be subrogated against persons who are members of the household of the insured.”



General principle: no subrogation in co-ownership

However, the situation is different in the case of co-ownership:

“1075.1. C.C.Q. An insurer may not, despite article 2474, be subrogated to the rights of any of the following persons against another such person:

1° the syndicate;

2° a co-owner;

3° a person who is a member of a co-owner’s household; or

4° a person in respect of whom the syndicate is required to enter into an insurance contract to cover the person’s liability.

An exception to this rule applies in the case of bodily or moral injury or if the injury is due to an intentional or gross fault.”

General principle: no subrogation in co-ownership (Art. 1075.1 C.C.Q.)

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- Syndicate
 - Co-owner
 - Member of a co-owner's household
 - Is intended to be an evolving concept left to the interpretation of the courts;
 - Not a physical location but rather implies a certain degree of intimacy and closeness with the person;
 - A tenant is not a member of a co-owner's household.
 - *Industrielle Alliance, Assurance auto et habitation inc. c. Whirlpool Canada*, 2021 QCCQ 7405

General principle: no subrogation in co-ownership (Art. 1075.1 C.C.Q.)

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- Person in respect of whom the syndicate is required to enter into an insurance contract to cover the person's liability (See: Article 1073 C.C.Q.)
 - Members of the board of directors;
 - Building manager;
 - President of the general meeting of the co-owners;
 - Secretary of the general meeting of the co-owners;
 - Other persons responsible for seeing its proper conduct.

Exceptions to the general prohibition on subrogation (Art. 1075 *in fine* C.C.Q.)

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- Bodily or moral injury;
 - Damages resulting from intentional fault;
 - Deliberate act in association with a deliberate result.
 - Damages resulting from gross negligence.
 - Conduct that reveals carelessness, gross disregard, or a complete disregard for the interests of others. Although not intentional, it reflects such negligence that one might wonder whether the person committing it is not doing so on purpose.



Questions?