

# STRATA LAW 101 - WHAT YOU NEED TO KNOW!

CCI Vancouver – November 29, 2014



# Agenda

- Introduction to the panel
- Topics to be covered
  - Duty to Repair – Veronica Franco
  - Council's Duty of Care – Paul Mendes
  - Bylaw Enforcement – Jamie Bleay
- Format
- Questions

# The Duty to Repair

Veronica Franco, Clark Wilson LLP



# Overview

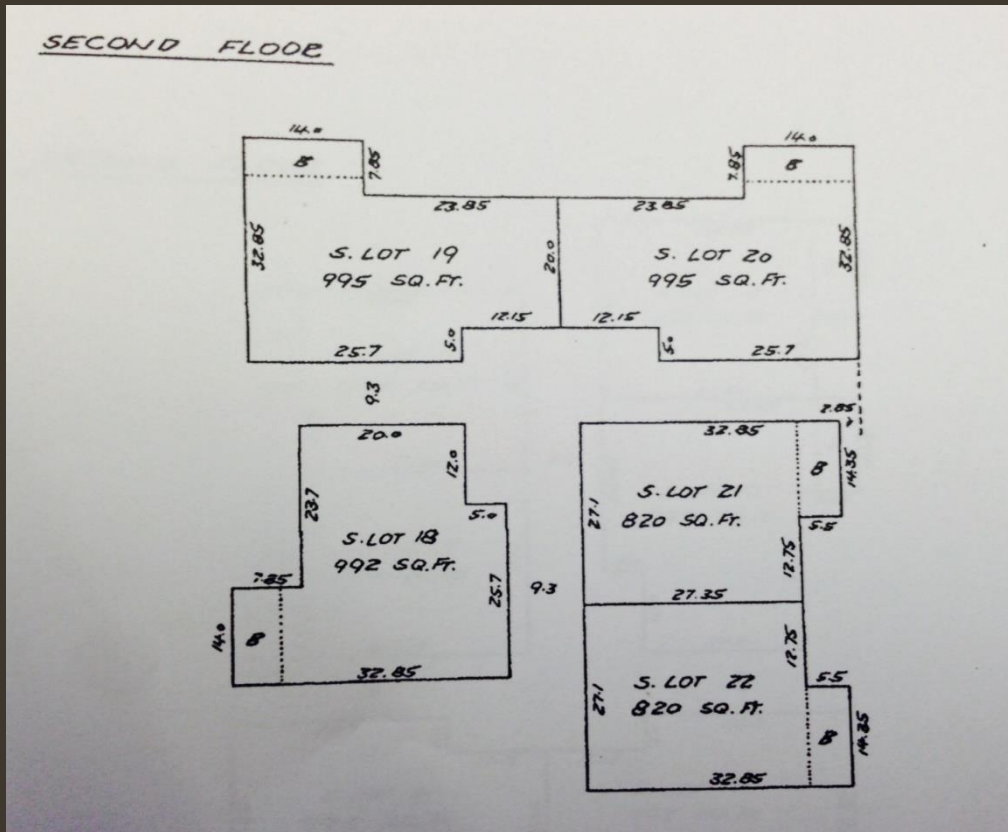
One of the most common questions I receive is “who is responsible for repairing X”

We will discuss today:

- What is common property, what is a strata lot and what is limited common property.
- The *Strata Property Act*, its regulation and your bylaws and the duty to repair
- Case law.

# Strata Lot – definition

Section 1 of the *Strata Property Act* says:  
“strata lot” means a lot shown on a strata plan



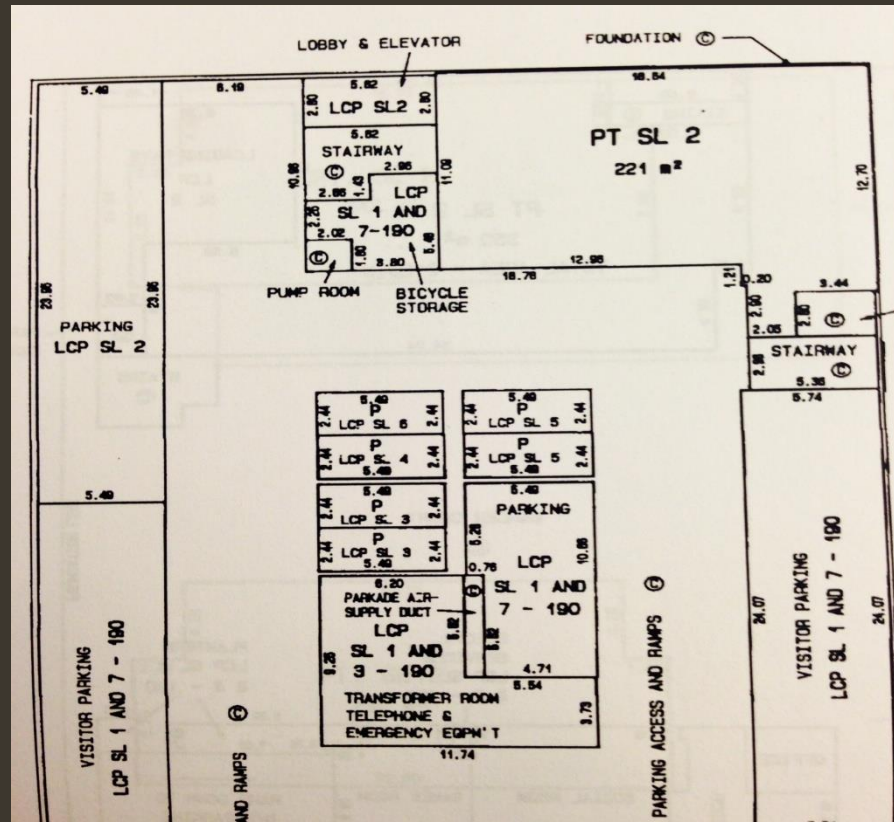
## LEGEND :

- SQ. FT. • SQUARE FEET
- S. LOT • STRATA LOT
- B • BALCONY (included in square foot areas)
- E • ELECTRICAL ROOM (common property)
- G • GARBAGE COLLECTION ROOM (common property)

# Limited Common Property - definition

Section 1 of the *Strata Property Act* says:

“limited common property” means common property designated for the exclusive use of one or more strata lots



# Common Property

Section 1 of the *Strata Property Act* says:

“**common property**” means

that part of the land and buildings shown on a strata plan that is not part of a strata lot, and

(b) 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, if they are located

(i) within a floor, wall or ceiling that forms a boundary

(A) between a strata lot and another strata lot,

(B) between a strata lot and the common property, or

(C) between a strata lot or common property and another parcel of land, or

(ii) wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property;

# Boundaries

## Section 68

(1) Unless otherwise shown on the strata plan, if a strata lot is separated from another strata lot, the common property or another parcel of land by a wall, floor or ceiling, the boundary of the strata lot is midway between the surface of the structural portion of the wall, floor or ceiling that faces the strata lot and the surface of the structural portion of the wall, floor or ceiling that faces the other strata lot, the common property or the other parcel of land.

(2) If a strata lot is not separated from another strata lot, the common property or another parcel of land by a wall, floor or ceiling, the boundary of the strata lot is as shown on the strata plan.

Most strata plans as per (1)

Bare land strata plans (2)



# Duty to Repair

## Section 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 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.

(3) The strata corporation may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.

# Duty to Repair – Standard Bylaws

## **Repair and maintenance of property by owner**

**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.

## Duty to Repair – Standard Bylaws (cont'd)

### **Repair and maintenance of property by strata corporation**

- 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;

# Duty to Repair – Standard Bylaws (cont'd)

- (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;

## Duty to Repair – Standard Bylaws (cont'd)

The strata corporation must repair and maintain all of the following:

- (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.

*John Campbell Law Corp. v. Strata Plan 1350*

Owners are responsible for repairing their strata lots.

A strata corporation is not an insurer.

# *Taychuk v. Strata Plan LMS 744*

## Repair means:

It is true that the primary meaning of the word “repair” is to restore to sound condition that which has previously been sound, but the word is also properly used in a sense to make good. Moreover, the word is commonly used to describe the operation of making an article good or sound, irrespective of whether the article has been good or sound before.

If the repair requires installing something in a strata lot, the strata corporation is responsible for paying for its installation and maintenance.

*Fudge v. Strata Plan NW 2636*

Broad definition of common property –  
beware many pipes might be common property pipes



*Weir v. Strata Plan NW 17*

Let's all just be reasonable.

## *Elahi v. Owners, Strata Plan VR 1023*

Alterations or additions to common property can be made  
the responsibility of an owner.

Owners will be responsible for maintaining limited common property  
only to the extent their use of it creates additional expenses.

# *Grantham v. The Owners, Strata Plan VIS 4116*

Repairs in crawl spaces –  
this time it was strata corporation's responsibility

Floor sheathing is part of the structure

Owner cannot impose method of repair

# The Council's Duty of Care

Paul G. Mendes, Lesperance Mendes Lawyer



# The council's general authority

## **Council exercises powers and performs duties of strata corporation**

26 Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

# The council's general authority

## Control of council

27 (1) The strata corporation may 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.

(2) The strata corporation may not direct or restrict the council under subsection (1) if the direction or restriction

(a) is contrary to this Act, the regulations or the bylaws, or

(b) interferes with the council's [bylaw enforcement decisions].

## Council member's standard of care

31 In exercising the powers and performing the duties of the strata corporation, each council member must

(a) act honestly and in good faith with a view to the best interests of the strata corporation, and

(b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

# Disclosure of conflict of interest

## Conflict of interest defined

32 A 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,



# Disclosure of conflict of interest

## Procedure in the event of a conflict of interest

must

- (c) disclose fully and promptly to the council the nature and extent of the interest,
- (d) abstain from voting on the contract, transaction or matter, and
- (e) leave 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.

# Accountability

## Ratification

33 (1) If a council member who has an interest in a contract or transaction fails to comply with section 32, the strata corporation or an owner may apply for an order under subsection (3) of this section to a court having jurisdiction unless, after full disclosure of the nature and extent of the council member's interest in the contract or transaction, the contract or transaction is ratified by a resolution passed by a 3/4 vote at an annual or special general meeting.

(2) For the purposes of the 3/4 vote referred to in subsection (1), a person who has an interest in the contract or transaction is not an eligible voter.

# Accountability

- Court remedies

(3) If, on application under subsection (1), the court finds that the contract or transaction was unreasonable or unfair to the strata corporation at the time it was entered into, the court may do one or more of the following:

(a) set aside the contract or transaction if no significant injustice will be caused to third parties;

(b) if the council member has not acted honestly and in good faith, require the council member to compensate the strata corporation or any other person for a loss arising from the contract or transaction, or from the setting aside of the contract or transaction;

(c) require the council member to pay to the strata corporation any profit the council member makes as a consequence of the contract or transaction.

## Case law

*Dockside Brewing Co. v. Strata Plan LMS 3837* 2007 BCCA 183

*Strata Plan LMS 2940 v. Quick as a Wink Courier Service Ltd.* 2010 BCCA 7418

*Strata Plan BCS 3699 v. 299 Burrard Development Inc.* 2013 BCCA 356

*Abdoh v. Strata Plan KAS2003* 2013 BCSC 817

*Wong v AA Management* 2013 BCSC 1551

*Boily v. Carleton Condominium Corporation 145*, 2014 ONCA 574

# Bylaw Enforcement

Jamie Bleay, Access Law Group



# Overview

- Bylaw enforcement comes in many different “shapes & sizes” but the one constant or truism is that it is the strata council that is tasked with the enforcement of bylaws (and rules). This duty of obligation is found in section 26 of the Act which says:
- 26 Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

# Bylaw enforcement SPA 119

- Complaints (in writing) should end up in the hands of the strata council and it is for the strata council to consider and decide whether a person has contravened a bylaw and what sanction(s) should be imposed.
- The need for bylaws and hence the need for bylaw enforcement has its genesis in section 119 of the Act:

## Nature of bylaws

119 (1) The strata corporation must have bylaws.

(2) The 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.

# Bylaw Enforcement SPA 121

- It is important to keep in mind the limitations set out in the Act when it comes to the enforceability of bylaws. Section 122 of the Act says:

## Unenforceable bylaws

121 (1) A bylaw is not enforceable to the extent that it

- (a) contravenes this Act, the regulations, the Human Rights Code or any other enactment or law,
- (b) destroys or modifies an easement created under section 69, or
- (c) 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.



# Bylaw Enforcement SPA 119

- Section 121 goes on to say:
  - (2) Subsection (1) (c) does not 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.
- While the types of bylaws that a strata corporation might wish to enact is a topic for another day it is important for strata councils to understand, before decisions are made regarding bylaw enforcement, that the bylaw(s) being complained of is prima facie enforceable.

# Enforcement Options SPA 129

Enforcement options:

129 (1) To enforce a bylaw or rule the strata corporation may do one or more of the following:

- (a) impose a fine under section 130;
- (b) remedy a contravention under section 133;
- (c) deny access to a recreational facility under section 134.

(2) Before enforcing a bylaw or rule the strata corporation may give a person a warning or may give the person time to comply with the bylaw or rule.

# Fines SPA 130

Who can be fined and who is responsible for fines?

Section 130 of the Act says:

130 (1) 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.

# Landlords and Tenants SPA 131

In the case of landlords and tenants section 131 of the Act says:

131 (1) If the strata corporation fines a tenant or requires a tenant to pay the costs of remedying a contravention of the bylaws or rules, the strata corporation may collect the fine or costs from the tenant, that tenant's landlord and the owner, but may not collect an amount that, in total, is greater than the fine or costs.

(2) If the landlord or owner pays some or all of the fine or costs levied against the tenant, the tenant owes the landlord or owner the amount paid.

# Maximum Fines SPA 132

If the decision at the end of the day is to impose fines section 132 of the Act says:

- (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.

# Remedying a Contravention SPA 133

- Enforcement might also take the form of action in the form of a remedy (where a fine might not be of any help or fines have proven to be unhelpful). Section 133 of the Act says:

(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.

# Denying Access to a Recreational Facility SPA 134

- More and more strata corporations are being constructed with recreational facilities. Section 134 of the Act says that:

The strata corporation may, for a reasonable length of time, deny an owner, tenant, occupant or visitor the use of a recreational facility that is common property or a common asset if the owner, tenant, occupant or visitor has contravened a bylaw or rule relating to the recreational facility.

# Enforcement Procedures SPA 135

Getting back to the obligation of the strata council to make the ultimate decision (with an implied obligation to investigate the complaint) one of the most important sections in the Act when it comes to bylaw enforcement is section 135 of the Act which says:

135 (1) The strata corporation must not

(a) impose a fine against a person,

(b) require a person to pay the costs of remedying a contravention, or

(c) deny a person the use of a recreational facility

for a contravention of a bylaw or rule unless the strata corporation has

(d) received a complaint about the contravention,

(e) 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

(f) if the person is a tenant, given notice of the complaint to the person's landlord and to the owner.



## Enforcement Procedures SPA 135

(2) The strata corporation must, as soon as feasible, give notice in writing of a decision on a matter referred to in subsection (1) (a), (b) or (c) to the persons referred to in subsection (1) (e) and (f).

(3) Once a strata corporation has complied with this section in respect of a contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of that bylaw or rule without further compliance with this section.

## Enforcement Procedures SPA 135

(2) The strata corporation must, as soon as feasible, give notice in writing of a decision on a matter referred to in subsection (1) (a), (b) or (c) to the persons referred to in subsection (1) (e) and (f).

(3) Once a strata corporation has complied with this section in respect of a contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of that bylaw or rule without further compliance with this section.

# Complaints against council members SPA 136

From time to time (and it may be hard to believe) bylaw complaints are made about council members. In that case section 136 of the Act says:

(1) If a complaint is made about a council member contravening a bylaw or rule, the council member must not participate in a decision made under section 135 about the complaint.

(2) Subsection (1) does not apply if all the owners are on the council.

# Landlord's Rights SPA 137

When it comes to landlords the Act has given them the authority (in conjunction with authority under a tenancy agreement and the Residential Tenancy Act) to evict a tenant.

Section 137 of the Act says:

A repeated or continuing contravention of a reasonable and significant bylaw or rule by a tenant of a residential strata lot is an event that allows the landlord to give the tenant a notice terminating the tenancy agreement under section 47 [landlord's notice: cause] of the Residential Tenancy Act.

# Eviction of Tenants by the Strata SPA 138

Once upon a time (like in a fairy tale) strata corporations also had the ability to evict tenants and in doing so could rely on section 138 of the Act which says:

138 (1) A 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 is an event that allows the strata corporation to give the tenant a notice terminating the tenancy agreement under section 47 [landlord's notice: cause] of the Residential Tenancy Act.

(2) An eviction under subsection (1) does not affect any rights of the landlord under the tenancy agreement.

# Case law

What do the cases say?

On a recent foray through the Canlii BC website I lost track after counting 280 cases that popped under when I used the words “strata bylaw enforcement”. We could be here all weekend if we wanted to see what each and every case has to say about bylaw enforcement but there is only so much free legal advice and help for today!

When it comes to the duty to enforce the Judge in *McGowan v. Strata Plan NW 1018*, 2002, BCSC 673 said:

“Council is obliged under s. 26 of the Act to deal with breaches of its bylaws provided the conditions of s. 135 of the Act are met. Should a complaint be made under that section, Council must undertake its duty to enforce the bylaw in accordance with the legislation”.

# Case law

- In *Dimitrov v. Summit Square Strata Corp.*, BCSC 967, 2006, the Judge affirmed that the strata council is the decision maker and said:

“Having regard to ss.4, 26 and 27 of the Strata Property Act, it appears that it is the council that must decide whether a person has contravened a bylaw or rule, whether a person should be fined, and what the amount of the fine should be. The intended notice of appeal alleges that the manager, and not the council, made those decisions. If that is so, then it is arguable that the decisions would have no legal effect”.

- In *Willson v. Highlands Strata Corp.*, 1999 CanLII 2900 (BCSC) the court considered fining in the context of bylaw enforcement and said:

“[28] The key factor in this case is that the Strata Council has an obligation to enforce its Bylaws when they have been breached. Accumulating fines in the amount of \$10,000 is a form of punishment, not an enforcement of its Bylaws, and is unreasonable. The Strata Council should have taken steps to enforce the Bylaw. Until this petition was filed, the Strata Council did not

## Case law

- seek to enforce Bylaw 136 by obtaining an injunction. That failure has directly affected the number of months in which the strata lot was rented in contravention of the Bylaw. As a result, the fines which could justifiably be levied against the petitioners has also been affected:  
*Strata Plan No. VR-333 v. Nunns* [1981] B.C.J. No.58 (Q.L.)(B.C.S.C.).

[29] I am satisfied that an order should be granted cancelling the accumulated fines in the amount of \$10,000 levied against the petitioners having regard to the history of this matter.”

- Contrast this to the decision in *The Owners, Strata Plan NW 319 v. Forberg*, 2010, BCSC 1301 where \$38,000.00 in fines (out of a total of \$43,500.00) were awarded for breach of a rental limitation bylaw.



# Case law

When it comes to the maximum fines that can be imposed under section 132 of the Act and section 7.1 of the regulations it is important to keep in mind that the bylaws of a strata corporation are validly adopted and properly applied.

“[34] Section 132 of the Strata Property Act reads in full as follows:

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.

# Case law

(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.

[35] In my opinion subsection (1) is specific and is mandatory. The requirement to set out in its bylaws the maximum amount the strata corporation may fine an owner for each contravention of a bylaw is not qualified by subsections (2) or (3). Nor do the transitional provisions contained in s. 17.11 of the Strata Property Regulation negate the requirement.”

- See *Fenby v. The Owners Strata Plan NW 2209*, 2002, BCSC 936

## Case law

- The rules of natural justice have always been near and dear to our courts and have been routinely applied to strata corporations under the regime of the Condominium Act of B.C. In *Scofield v. Strata Corp. N.W. 73* (1983) 574 B.C.C.A the court of appeal confirmed that the imposition of a fine without first giving the owner an opportunity to know of the complaint and an opportunity to be heard was oppressive and significantly unfair.
- Under the Act section 135(1)(e) now comes into play. In *Strata Plan VR 19 v. Collins et al*, 2004, BCSC 1743, the strata corporation did not grant the owner an opportunity to be heard in connection with installation of laminate flooring. An order was made that the bylaw contravention was to be remedied but the court did not order the owners in breach to pay the costs of remedying the contravention (considered to be costs of the court proceeding).

# Case law

- A discussion regarding bylaw enforcement is not complete without referring to the Jordison case. As a consequence of the breach of several of the strata corporation's bylaws, including the noise and nuisance bylaws, the strata corporation was compelled to seek the most draconian and unusual bylaw enforcement remedy set out in the Act. In the Jordison case section 173(1)(b) and (c) of the Act were used to ultimately evict Ms. Jordison and her son from their unit. Section 173 states:

173 (1) On application by the strata corporation, the Supreme Court may do one or more of the following:

- (a) order an owner, tenant or other person to perform a duty he or she is required to perform under this Act, the bylaws or the rules;
- (b) order an owner, tenant or other person to stop contravening this Act, the regulations, the bylaws or the rules;
- (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

# Case law

- Another case that relied on that section of the Act but with not such draconian results was *The Owners, Strata Plan LMS 4255 v. Newell*, 2012, BCSC 1542. The court considered evidence regarding a number of alleged bylaw contraventions, including unapproved alterations to common (limited) property and breach of noise bylaws (in connection with the use of a hot tub and entertainment system/speakers/television on a large exterior penthouse deck. The Judge concluded that:
  - At certain times and dates Mr. Newell and his companions breached the noise bylaws;
  - The hot tub and air conditioning units were not an alteration to common (limited) property as they were not permanently installed and as such the alteration bylaw had not been breached (but it might have to be removed due a problem relating to the location of the hot tub and possible interference with the use of the roof anchors; and
  - That the use or operation of the hot tub and any entertainment system,

# Case law

- television, speakers or musical instruments would be prohibited during the “quiet hours” set out in the bylaws of the strata corporation, being between the hours of 11:00 p.m. and 8:00 a.m.
- In conclusion, what can be gained from all of this? Generally speaking courts will not interfere with a strata council’s interpretation of its bylaws but do want to see that strata council’s discharge their bylaw enforcement duties reasonably, with due diligence and in a timely manner. While doing so might require more work and attention and even expense bylaw enforcement is a very important obligation. Getting it right the first time, including complete compliance with section 135 of the Act, should help minimize costly mistakes down the road.
- Questions???



Thank You