CCI Vancouver Chapter CONDO NEWS

- INSIDE THIS ISSUE -

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Canadian Condominium Institute
Institut canadien des condominiums

President's Message – Fall 2005

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~ ~ ~ ~

Welcome New Members

C&C Property Group Ltd.

IPM & Associates Property Management Inc.

Strata Plan LMS2064

Strata Plan LMS2965

Strata Plan LMS35

Strata Plan LMS355

Strata Plan NW152

Strata Plan VR10

Strata Plan VR1436

Strata Plan VR857

Wow! What happened to the summer? It does not seem that long ago that we just put the finishing touches on our last Chapter newsletter and introduced you to the Ambassador Program, both of which have been well received. As a matter of fact, we have had approximately a dozen new members join our Chapter through the Ambassador Program.

During my tenure as President I have had the pleasure to serve with a great group of volunteers, each of who has brought many new and exciting ideas to the table. The plan for the 2005/2006 board will be to prioritize its goals and objectives and to seize the momentum from this year. Your board has and continues to be committed toward growing the membership and expanding the services available to you, our members. However, we do need you to continue to support our Chapter and to be our "Ambassadors" and help us to market CCI Vancouver. We really need your continued help and support!

I would like to thank each of the members of the board for their hard work and dedication. Volunteering takes time, lots of time! Keep up the good work as we strive to spread the word about CCI throughout the Lower Mainland.

Jamie Bleay – President
CCI Vancouver – 2004/2005

A Day in the Life of...

by Kevin D. Middleton

11:30 p.m.: Arrived home from a Council Meeting.

1:15 a.m.: Finished working on report for upcoming Annual General Meeting and went to bed.

3:30 a.m.: A new concierge calls to ask whether he could let a resident into their apartment. (They had spent the evening at the local pub and had lost their keys.)

6:00 a.m.: Security calls again to say that the garage door is not working and what should he do.

7:15 a.m.: Resident Manager phoned to say "he's still stuck in the Sunshine Coast because of the ferry strike and won't be able to work today".

7:45 a.m.: There's an accident on the bridge...stuck in traffic again!!!!!

8:05 a.m.: While sitting in traffic, the President of one of the Councils phones to inform me that the garage door is broken again and what am I doing to fix it.

8:10 a.m.: Called to Overhead Door Company "again" to find out the status on the garage door.

8:15 a.m.: Treasurer phones to ask some questions about the monthly financial statements.

8:28 a.m.: Called Bookkeeper and left a message about the changes requested by the treasurer.

8:35 a.m.: While reaching for notepad my coffee hits the floor.

9:20 a.m.: Arrive at the building to find 4 fire trucks, 3 police cars, and an ambulance!!

All of this before 9:30 a.m...It's Going to Be a Long Day. I am sure that most Strata Property Managers can relate to this and although it may seem extreme, this is how many managers feel about their days.

Anyone who has been involved in the Strata Property Management Industry for any length of time knows how difficult the industry can be. When Managers talk to many of their colleagues in the industry the first comment that they hear is "I don't know how you can do Strata Management". The manager's job is rarely appreciated and most people don't really understand what the role of a Property Manager really entails.

Many people think that a Strata Manager is a glorified Resident Manager or Superintendent when in fact, a Property Manager must be an expert in all aspects of building operation including plumbing, electrical, heating and air conditioning, general building maintenance, just to name a few. It is important that they have an understanding of engineering, insurance, accounting, law, investments, contract negotiations and administration; including an understanding of all government and building legislation.

The Manager is usually the middleman between the trades/service providers and the Strata Council and Owners. They also work as trouble-shooters and mediators dealing with Owner-Resident issues, complaints about noise, odours, noisy pets, and a myriad of other problems.

The Strata style of community living has been around since the late 60's. As property values grow and the amount of serviceable land continues to diminish the Strata Community will continue to flourish. Along with this growth came the development of the Strata Management Industry, which although it has grown tremendously, the number of qualified professionals have had difficulty keeping up with the demand.

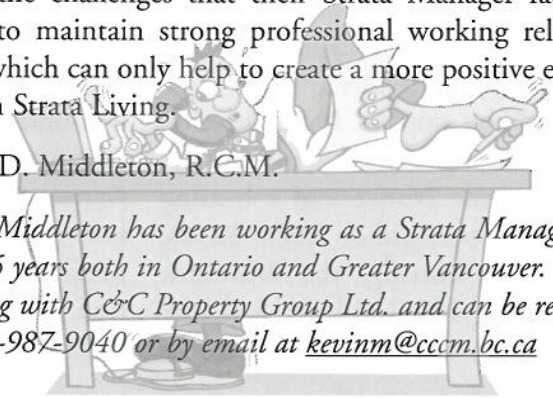
As most people are no doubt aware the Real Estate Services Act has been amended and now requires that all Strata Property Managers must be licensed in order to continue managing Strata Properties. Licensing will add a new set of challenges for both Management Companies Strata Managers, and Strata properties.

Many organizations that are currently providing Strata Management services will no longer be permitted to provide Strata Management as of January 1, 2006 unless they take steps to obtain their licenses. This will leave a major hole in the market and will leave a great number of Strata's in need of finding new management

Due to the large number of properties, the building/manager ratio requires most managers to carry a very large portfolio of buildings. (Anywhere from 8 to 20+ buildings of varying sizes per manager, dealing with between 300 to 1000+ suites).

It is important that Owners and Council members understand the challenges that their Strata Manager faces in order to maintain strong professional working relationships which can only help to create a more positive experience in Strata Living.

Kevin D. Middleton, R.C.M.



Kevin Middleton has been working as a Strata Manager for over 15 years both in Ontario and Greater Vancouver. He is working with C&C Property Group Ltd. and can be reached at 604-987-9040 or by email at kevinm@cccm.bc.ca

Case Law Update

Sullivan v. The Owners Strata Plan BCS 251, 2005 BCCA 342

This is a case involving a residential tenancy in a condominium complex located in Richmond, B.C. The Appellant, Ms. Sullivan, was a tenant in the condominium complex, having taken up residence in April 9, 2003. During February and March, 2004, Ms. Sullivan was advised, in writing, that she had violated several bylaws. On March 4, 2005, the strata council took steps to post a "Notice to End Tenancy" on the door to her suite, alleging that she had disturbed other owners, damaged common property, assaulted a member of the cleaning staff and harassed, threatened and verbally abused other occupants at "The Capri". The strata corporation purported to give notice pursuant to section 138(1) of the ***Strata Property Act***, S.B.C. 1998, c. 43 which allows a strata corporation to give notice to a tenant, even though the strata corporation is not the landlord, terminating the tenancy agreement. Section 138(1) says that "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.*

Ms. Sullivan applied for arbitration under the Residential Tenancy Act disputing the Notice and a hearing took place on April 6, 2005. At the arbitration hearing, the arbitrator ruled that Ms. Sullivan had not applied for arbitration within the time limit required to set aside the notice terminating her tenancy. As a result, the arbitrator found in favour of the strata corporation who had given the notice and dismissed her application to set aside the notice.

Ms. Sullivan applied, under the *Judicial Review Procedure Act,* to set aside the decision of the arbitrator. Her application was dismissed. She then appealed the decision to the British Columbia Court of Appeal which concluded, given the unusual circumstances of the case, that the arbitrator's decision should be set aside and a new hearing ordered. The Court of Appeal noted, in its decision, that Ms. Sullivan had filed her application for arbitration more than 9 days out of time and while she did not specifically request an extension of time to have the arbitration heard when she appeared before the arbitrator, she did use the correct code on her application for arbitration which included a request for an extension of time. The code used by her was "NC" which was defined as "NOTICE TO END FOR CAUSE – An order setting aside a notice to end a tenancy given for cause, and/or in exceptional circumstances, extending the time in which the application for such an order may be made." The arbitrator could, pursuant to section 66(1) of the RTA, extend the time limit for filing of an application for arbitration. The Court of Appeal found that the arbitrator had not canvassed the question of an extension of time for the filing of the application for arbitrator and that it was unfair, given that she was a lay litigant, not to do so. The Court of Appeal found that Ms. Sullivan did not receive a proper hearing and remitted the matter back to arbitration.

As you can see from this case, strata corporations sometimes have to take on the role as "landlord" and terminate a tenancy if "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", takes place. Whether or not Ms. Sullivan is (or was) ultimately successful in setting aside the notice, this strata corporation, which is required to enforce the bylaws of the strata corporation, took steps available to it under the Strata Property Act to enforce the bylaws against a tenant.

Dockside Brewing Co. Ltd. v The Owners,Strata Plan LMS 3837 et al, 2005 BCSC 1209

This case involved a dispute between two groups of strata lot owners in a strata hotel called "Le Soleil". One group of owners, which was referred to as the LSOG ("Le Soleil Owners Group"), had been attempting to facilitate the take over of the hotel after the developer (who was also the first hotel operator) experienced financial difficulty. The other group of owners opposed the efforts by the LSOG group to take over the hotel, which included trying to set aside two leases (which were essential to operate the hotel) involving the lobby and parking areas of the hotel. The leases were granted by the strata corporation to the developer and had been sold by a secured creditor of the developer to a party who had outbid what the LSOG had bid for the leases.

In order to work toward setting aside the two leases, on the grounds that they had been entered into by the developer in breach of a fiduciary

duty owed to the owners, the LSOG took over control of the strata council by having all but one of its members elected to the strata council. This allowed the LSOG, through the strata council, to put together and have approved a budget that provided legal fees to challenge the leases. This also allowed the LSOG, through the strata council, to give notice to the new holder of the leases that they were being terminated.

The Petitioners challenged the decisions of the strata corporation and the strata council members who were also members of the LSOG, contending that the strata council circumvented section 171(2) of the Strata Property Act (the "Act") by putting aside money in the operating budget to be spent on legal fees to support the strata corporation's efforts to commence legal proceedings to challenge the validity of the leases when a 3/4 vote to approve the litigation had not been approved at a duly convened annual or special general meeting.

Over a period of approximately 2 years, the Petitioners and others put the strata council on notice that the litigation expenses to challenge the leases had not been properly approved, that the litigation expenses were not "common expenses that usually occur either once a year or more often than once a year" as required by section 92(a) of the Act; rather the monies were used to fund the efforts of the Respondent strata council members to terminate the lobby lease or fund the litigation of an LSOG member who had sued the strata corporation. Amidst allegations of conflict of interest involving the Respondent strata council members and legal counsel retained to act for the Respondent strata council members and the strata corporation, and the expenditure of money to fund litigation costs without the required resolution of ? of the owners authorizing the litigation (and expenditures), the Court found, on the facts, that the Respondent strata council members (who were also LSOG members), had been working to support the LSOG interests to challenge the validity of the leases and did so knowing that the requisite 3/4 approval authorizing litigation had not been obtained.

The Court found that the Respondent strata council members, by not disclosing what was found to be "their numerous and obvious conflicts of interest in such a transaction, had contravened sections 32 and 33 of the Act. The Court stated that if they had complied with the disclosure requirements of the Act, they would not have been able to pass the resolutions challenged by the Petitioners and spend approximately $200,000.00 of strata corporation funds on what the Court called a "fruitless expenditure on legal fees."

The Court went on to state that "by failing to comply with s. 32 and s. 33 of the ***SPA***, the Respondent Strata Council Members authorized contracts and transactions which were "unreasonable and unfair to the Strata Corporation" under s. 33(3) in that they knowingly circumvented the requirement of s. 171(2) and authorized the expenditure of funds from the operating budget which could only have been legally expended with authorization by 3/4 of the strata lot owners."

Despite the claims made by the Respondent strata council members that they had been acting in good faith, the court found that the "failure to comply with the mandatory disclosure provision of s. 32 of the ***SPA*** cannot be characterized as acting "honestly and in good faith" nor does it reflect the exercise of "the care, diligence and skill of a reasonably prudent person in comparable circumstances."

The Respondent strata council members, who had an obligation to act honestly and in good faith in their capacity as strata council members, did not, in the Court's view, meet the standard of care as set out in section 131 of the Act. The Court found that the contracts to pay and payments of legal fees to pursue this course of litigation were "unreasonable and unfair to the strata corporation", that the Respondent strata council members did not act honestly and in good faith despite warnings of conflict of interest raised by the Petitioners and other owners.

The Court ordered the Respondent strata council members to repay to the strata corporation approximately $190,000.00 in legal fees which "provided no benefit to the strata corporation". The Court stated that the Respondent strata council members had "sought election to the Strata Council to effect the very strategy which had exposed them to liability." Lastly, given the nature of the behaviour and the actions of the Respondent strata council in the face of the efforts of and warnings by the Petitioners and other owners of the obvious conflict of interest, the court found that "the Respondent Strata Council Members acted in a reprehensible manner deserving of rebuke by the court through an award of special costs."

This case is one of the first of its kind involving a finding of conflict of interest and bad faith against one or more members of a strata council. Strata councils would be well advised to read the decision in its entirety in order to get a glimpse into the importance of impartiality and transparency when it comes to making decisions, including monetary decisions, for the owners who elected them in the first place.

BUILDING ENVELOPE FAILURE/REAL ESTATE VALUE

By Karel Palla

I was recently asked by a strata council of a larger strata development comprised of 3 large high-rise towers to attend an information meeting to provide some insight into the affects on valuations of properties in buildings which are faced with premature building envelope problems. It was the typical scenario that many of you may have already gone through, are going through or who have friends or family who have found out that they live in a leaky condominium. The strata corporation had received a report from an engineering firm confirming that the building had widespread damage and the entire building envelope had to be rehabilitated to the tune of several million dollars and each owner would be looking at a special assessment in the tens of thousands of dollars. I had been to a number of similar meetings in the past as a former strata manager and felt it was important for the owners to understand from a different perspective how this situation affects the value of their property. I decided to break down my talk from two perspectives: Important items to consider regarding re-sales in non-remediated buildings and important items to consider regarding re-sales in remediated buildings.

IMPORTANT ITEMS TO CONSIDER REGARDING RE-SALES IN NON-REMEDIATED BUILDINGS:

1. AWARENESS: Today, most Buyers and Real Estate professionals are very aware of building envelope problems with condominiums in the Lower Mainland. The first questions asked at almost every first visit is: "How is the builiding?" Are there any engineer reports?" "Has the building had any leak problems?" etc., etc...

2. LIMITING YOUR EXPOSURE WHEN SELLING: Many buyers will not even consider purchasing into a building which requires remediation, does not have an engineering report, or shows any indicatioin of problems. Many Real Estate professionals will not even bother showing their clients a building that has problems or does not have a plan to rectify the problems.

3. HOME INSPECTORS: Most offers to purchase a condominium include independent inspections which usually will point out to buyers existing and potential problem situations with the building, resulting in collapsed sales.

4. MASTER LEAKY CONDO LIST: The Coalition of Leaky Condo Owners(COLCO) has compiled a master list of many buildings which have envelope problems which the public and financial institutions have access to and use as a basis for qualifying buildings. If your building is placed on a leaky condo list by a financial institution it is very difficult to get mortgage financing and in many cases they will not provide financing. Those that will, typically will require larger down payments which will eliminate potential purchasers.

5. LOWER RE-SALE PRICES: The resale prices in condominium buildings that face envelope work are severely discounted compared to the overall market and particularly, to those buildings which have already undergone remedial work. I have seen instances whereby similar buildings in the same area that either do not have problems or have had their envelope repaired command $100 more per square foot compared to those buildings that have envelope problems which need to be rectified.

IMPORTANT ITEMS TO CONSIDER REGARDING RE-SALES IN REMEDIATED BUILDINGS

1. MAXIMUM EXPOSURE RETURNS: Buyers and Real Estate professionals will consider your building again provided the work has been done completely and professionally. The building quickly gains a reputation of being one of the more desirable buildings in the area as buyers will not be faced with major envelope repairs.

2. PROPERTY VALUES INCREASE: Not only does a building regain its reputation as one of the more desirable buildings to livein and the values return to comparable buildings but prices are now more closely aligned to newer buildings as the building envelope technology is the equivalent to those newer buildings. It is important for the first resales after completion of the remedial work to be marketed aggressively by Real Estate professionals who understand the significance of how the building has been transformed by this work and have an appreciation of the much higher valuations that the building now requires.

3. WARRANTIES: The restoration work will now have third party warranty insurance in place which will not only add peace of mind to existing owners but to potential purchasers too.

4. FINANCING AND INSPECTION ISSUES ARE ELIMINATED: Financial institutions are no longer alarmed about providing financing as the repairs have been completed and will no longer pose a problem to the resale market. Inspectors will advise potential purchasers that the building envelope will not be a source of future problems and expense.

5. RETURN TO COMFORTABLE STRATA LIVING: The restoration process is not an easy road and it will take detailed planning and patience. Through the coordinated efforts of your engineering professionals, strata council, strata agent and cooperation of the owners, your building will be restored and improved.

I hope the above information will be of use for those faced with this unfortnate scenerio. **Karel Palla** is a real estate agent with RE/MAX Select Properties and as a former strata manager and Vice President of a large management company. Direct Telephone: 604-329-1430, Email: kpalla@shaw.ca,
Website: www.kpalla.com

Your Old Car Tires Are Now Your New Rubber Roof

Introduction by Ted Denniston (Halsall Associates Limited)

The primary output of today's businesses is waste. Less than 10% of materials extracted from the earth become usable products, and within 6 months only 1% of these are still in service. "So while businesses obsess over labour and financial capital efficiency, we have created possibly the most inefficient system of production in human history" (Senge and Carstedt 2001).

Leaders in many industries have recognized the link between this phenomenal waste and their costs, and pursued the economic opportunities associated with eco-efficiency and sustainable design. The building industry is no exception.

At Halsall we strongly believe in the environment and providing a legacy for our children, and our children's children. We believe that buildings and the construction industry have a deep and lasting impact on our environment. All too often, buildings become a burden for future generations. We try to make them an asset.

You can make a difference by making the right decisions about building repairs and upkeep. Make sure your engineering consultant looks at the long-term life cycle when reviewing the options for building renewal projects. This is the key to sustainability. To you - building owners and operators - it translates into lower operating costs and reduced capital costs.

You can also make a big difference by learning about products that are energy efficient, durable and sustainable. Below is an article about a unique roofing material made from recycled tires. The product mentioned is one which Halsall recently specified to be installed on a large re-roofing project in Whistler, B.C. Halsall can not fully endorse this product for all roofs or situations; but, is offered as an example of innovative and sustainable thinking.

This article was originally written by Adrianne Hartley, Calgary Sun Advertising Writer and
reprinted by permission of GEM Inc.

There's a new product leaving tread marks all over the roofs of homes in the Calgary area and around the world.

Made almost entirely of recycled tires, EuroSlate, a new roofing product from Calgary-based GEM Inc. is not only taking the building industry by storm, it's also resisting storms. A EuroSlate roof can withstand winds of at least 170 km per hour and hail bounces right off.

"We did wind testing to 170 kilometers per hour and EuroSlate held up. We feel confident it would withstand even higher winds," says Sean Zimmer, VP of marketing with GEM Inc., adding the roof actually performed better after extensive weather testing.

In addition to resisting hail, wind and fire, unlike many other roofing materials, EuroSlate won't twist, split, rot or distort and it doesn't crack or shatter under impact. The tiles are soft to the touch and flexible, which is an important factor in resisting the elements.

"Even if you hit the roof with a hammer, you won't damage it," says Zimmer. When finished, a EuroSlate roof looks like expensive slate tiles, but the rubber tiles cost a fraction of the price of slate. Because EuroSlate's main ingredient is up 70 per cent recycled rubber, in a typical roofing project, about 1,000 used tires will be kept out of landfills, which is an added bonus to environmentally conscientious homeowners.

Invented and manufactured in Calgary by GEM Inc., EuroSlate is the only product of its kind in the world. It is also one of the few roofing products to pass rigorous testing by the Canadian Construction Materials Centre (CCMC) & DADE County in Florida.

A EuroSlate roof will outlast a pine or cedar shake roof many times over so you'd think it would cost a small fortune, but a new EuroSlate roof costs about the same as one build from good cedar shakes.

"The product, from both an architectural control standard and a weight perspective, is perfect for re-roof applications, especially for homeowners who have experienced problems with cedar or pine shakes," says Zimmer. It's also easy to install. EuroSlate is manufactured in sheets of three tiles; each sheet is three-ft. by two-ft. and just over and inch thick. To install the roof, the tile sheets are locked together with tongue-and-groove joints and securely nailed to the roof deck making them suitable for steeply pitched roofs. At less than 12 lbs. per sheet, and 37 sheets per square, weight per square is 430 lbs. so there

are no structural issues. And unlike other products, a heavy person can walk on the roof without damaging it or voiding the 50-year warranty.

Engineered air cells help keep the sheets light and each finished roof has two layers of rubber and two overlapping layers of air cells which makes the roof extremely energy-efficient. Attic temperatures are controlled and the costs of air conditioning and heating are reduced. During GEM's product testing, a roof surface was measured at 130 degrees Celsius, while the attic below was at 30 degrees Celsius.
"Once installed, the roof has a double layer of rubber and a double layer of air – it keeps houses cooler in the summer and warmer in the winter especially in homes that have vaulted or cathedral ceilings," says Zimmer.

Two different sheet styles give each roof the natural appearance of slate. EuroSlate is available in a variety of colours, from the two standard colours of black and slate gray to eight specialty colours including: copper, dark brown, leather, terracotta, sand, red, silver and forest green. "It couldn't just be a tough roof, it had to be beautiful as well," says Zimmer.

EuroSlate has caught the attention of not only the Calgary (*and Vancouver*) community but of builders, architects and homeowners from across the country and the world over. It has been sold in the Bahamas, Texas and Seattle and it was also chosen for a Dream Home at Vancouver's Pacific National Exhibition.

As an added benefit to homeowners, GEM has been negotiating with insurance companies to organize discounts on insurance policies when EuroSlate roofing is installed.

EuroSlate is already listed with State Farm Insurance – homeowners who have the product installed receive a discount, which varies depending on where they live – and other insurance companies are also considering discounts. One customer reported a 33% savings on her house insurance once she replaced her wood roof with the EuroSlate roof.

"Most homeowners don't realize that the roof on their home is the largest depreciating part of their home, but with a EuroSlate roof your home will increase in value by at least as much as a EuroSlate roof would cost you," says Zimmer. "This is a product that is unique to the building industry and it pays for itself." For more information visit www.euroslate.ca Tel: (403) 215-3333

LIABILITY FOR PAYMENT OF INSURANCE DEDUCTIBLE

By Shawn Smith

One of the more contentious issues which arises within a strata corporation is who pays for the cost of repairing damage caused to the building. While I don't propose to engage in a lengthy discussion about who is responsible for undertaking the actual repairs, I do feel it is important to point out an important distinction between "responsibility" versus "liability". "Responsibility" involves the question of who is responsible to fix the damage (ie. the strata corporation's responsibility under section 72 of the *Strata Property Act* to repair and maintain the common property). "Liability" involves the question of who is ultimately responsible for paying the costs of those repairs. An owner who damages property (whether it be the common property or another strata lot) is generally liable for the cost of repairing that damage, notwithstanding that the strata corporation or another owner may be responsible for making the repairs. Matters are further complicated when the damage is extensive enough to involve a claim under an insurance policy.

The case of *Strata Corp. VR 2673* v. *Comissiona* (2000)(BCSC) gives some guidance in this area. The facts of the case are not reviewed in any detail in the judgment but it appears that there was water leakage from the Comissionas' strata lot which caused damage to the common property. Their liability was not in issue. The damage was severe enough to require that an insurance claim be made. The issue was whether or not the Comissionas were liable to pay the insurance deductible.

Before proceeding further with a review of that case, a brief overview of the provisions of the *Strata Property Act* (the "Act") is in order. The Act requires the strata corporation to insure the building, and in particular, the common property (s.149). Section 158(1) states that the insurance deductible is a common expense to be contributed to by all owners on the basis of unit entitlement. Section 158(3) allows the deductible to be paid from the Contingency Reserve Fund without a 3/4 vote. Section 158(2), reproduced below, addresses the issue of the payment of the deductible.

"Subsection (1) does not limit the capacity of the strata corporation to sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave raise to the claim."

The application and meaning of this section was really what the court in *Comissiona* had to decide. After reviewing the past case law, the court held that there is nothing which prevents an insured person or entity (ie. a strata corporation) who has made a claim under an insurance policy from suing the person who caused the damage for the amount of the deductible. (This was previously in question. In *Lalji-Samji* v. *Strata Plan VR2135* (BCSC)(1992) the court held that an owner could not be sued for the cost of repairing damage against which the strata corporation was required to have insured). The court in *Comissiona* distinguished *Lalji-Samji* on the facts of that case and relied on an old English case for the right of an insured to sue for the amount of the deductible they had to pay. This conclusion is, of course, reinforced by s.158(2) of the Act.

The court, however, held that s.158(2) does <u>not</u> create a right to sue an owner for deductible. Rather all it does is not restrict the strata corporation's ability to do so. What is required is a bylaw which permits the strata corporation to sue an owner in such circumstances. This is a most interesting interpretation and application of that section. (One with which the author, with the greatest of respect, disagrees). One should also note that the bylaw to which the court makes reference, is quite a different and distinct thing from a bylaw which automatically makes such an owner responsible to pay the deductible. The latter type of bylaw denies one any form of due process and is inappropriate.

While the *Comissiona* case addresses the issue of the payment of the deductible, it does not answer one remaining and important question; must the strata corporation make an insurance claim? Clearly the cost of completing the repairs is a factor. If the repairs are less than the deductible then no claim should be made and the responsible owner(s) should be pursued for the whole costs. If the costs exceed the deductible then a decision must be made as to whether or not the own-

ers will "self-insure" (ie. pay for the repairs out of the Contingency Reserve Fund or by way of special levy) or make an insurance claim. (While the strata council has the authority to make such a decision, it might be an issue best put to the owners as a whole). Keep in mind that the strata corporation has a duty to repair and maintain the common property and this may very well necessitate the making of an insurance claim, especially if the owners refuse to pay for it themselves.

If the strata corporation chooses to pay for the repairs on its own, then it would only have the right to sue the responsible owner(s) for the costs of the repairs if the damage was not something against which the strata corporation was required to insure under section 149 of the Act (based upon the decision in *Lalji-Samji*. An owner, under the terms of the Act, is a named insured of any policy taken out by the strata corporation and is entitled to benefit from it). If an insurance claim is made, then the strata corporation can sue for the amount of the deductible. How these principles are applied and decisions made, will of course vary from situation to situation.

Shawn M. Smith is an associate lawyer with the law firm of Cleveland & Doan located in White Rock and may be reached at 536-5002. This article is intended for information purposes only and nothing contained in it should be viewed as the provision of legal advice.

Canadian Condominium Institute – Vancouver Chapter
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_____

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_____

_____

Telephone #: _____

E-mail: _____

I am interested in being on a committee ___yes ___no

---

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