CCI Condo News

President's Message

A little over 3 weeks ago Vancouver experienced an earthquake. Many of us were completely unaware of the quake but nonetheless, for a brief moment the earth moved and buildings swayed. Thankfully there was no damage or injury but I think that all of us became a little more concerned about when the "big" one will happen and we are told it is not a matter of "if" but of "when". Condominium home ownership is growing at a very brisk pace and in particular, the proliferation of condominium high-rise buildings in Vancouver is overtaking most other forms of housing construction in the Lower Mainland. While these new buildings are no doubt so well engineered that they will withstand a sizeable earthquake, is our City ready to deal with the property damage, injury and even death that is a distinct possibility when an earthquake bigger than the one we just experienced and that happens much closer to home happens? Each of us needs to have a plan in place for ourselves and our families in the event of a significant earthquake and for those of us living in condominiums, it is important to have a plan in place to deal with emergency evacuations and to provide emergency assistance as "first responders" until our emergency response services are able to get to us. There are some helpful tips in an article written by Paul Duchaine of BFL in our last newsletter that you should review in order to be ready when the big earthquake hits.

On a less ominous note, the B.C. Government continues to try and tweak and revise the legislation that governs strata corporations in B.C. In February of this year the Minister responsible for Housing put together a public on line consultation survey in anticipation of changes to the Strata Property Act regarding new rules to provide:

- Audited annual financial statements.
- Depreciation reports to help strata corporations plan for future maintenance costs.
- Better disclosure for purchasers regarding the parking and storage that come with the strata unit.

Recently the provincial government launched another on line discussion paper and survey to introduce a dispute resolution protocol for strata disputes. The new model that is proposed would utilize a tribunal that would adjudicate disputes. The goal of the new model would, according to the government website "be to make dispute resolution services available to any strata owner in the Province by offering an accessible, efficient and lower-cost alternative to the courts system and the current arbitration model." If you wish to participate in the survey and/or review the discussion paper and provide your feedback to assist the government with

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putting forward a new dispute resolution model, you can visit l be available until Monday, Oct. 31at 4:30 p.m. and can be accessed at: www.bcstrata2011.malatest.net. The site is available until the end of October, 2011. For more information on the survey and strata corporations you can visit http://housing.gov.bc.ca/strata.

When reviewing this newsletter make sure to sign up for the upcoming seminar scheduled for November 19, 2011 at the UBC Robson Square campus. Our speakers will include Natalia Szubbocsev of Suncorp Valuations, Jamie Bleay and Phil Dougan of Access Law Group, Paul Duchaine of BFL and a speaker from HPO. Also review the "Year at a Glance" which outlines our seminar schedule for 2012. We will provide more specific details of our seminar topics on our website and in future newsletters but you can now block off the seminar dates well in advance of our 2012 seminars.

CCI VANCOUVER 2012 SEMINAR DATES AND TOPICS

Mark your calendars now for the CCI Vancouver seminar events scheduled for 2012. All seminars will, by popular request, be held at the UBC Robson Square Campus on the following dates:

- February 18th
- April 28th
- June 16th
- October 27th

We have had seminar guests travel to this venue from various parts of the Lower Mainland and have told us that the venue is well located as it is close to the Canada Line Granville Station.

While we are not at this time able to provide you with a list of the guest speakers and details about all of the topics that will be presented at the seminars, we are able to let you know that continuing on with the theme of educating council members, owners and strata managers, our seminar topics in 2012 will include:

1. Keeping strata council members out of jail?
2. People, pets and parking;
3. Protecting your building and your biggest asset; and
4. Strata finances.

We look forward to seeing you there!

LEGAL CORNER

Case Law Update

Pets in condominiums and the Human Rights Code

In Judd v. Strata Plan LMS 737, 2010 BCHRT 276, the Judds filed a complaint alleging that the strata corporation had discriminated against them regarding a service customarily available to the public contrary to s. 8 of the Human Rights Code and in particular, with the enforcement of a no pet by-law. Mrs. Judd had apparently applied to the strata corporation for an exemption from the no-pet bylaw on "compassionate grounds" so that she could get a small pet. It turns out that her doctor had submitted a letter to support her request but nonetheless the strata corporation refused to grant the exemption. As part of the complaint Mr. & Mrs. Judd complained that they had both been discriminated against because both of their doctors recommended that their mental and physical health would benefit from owning a small dog.

After filing a response denying that it had discriminated against the Judd's, the strata corporation applied to dismiss the complaint pursuant to s. 27(1)(c) of the Code, which states:

> A member or panel may, at any time after a complaint is filed and with or without a hearing, dismiss all or part of the complaint if that member or panel determines that any of the following apply:
>
> (c) there is no reasonable prospect that the complaint will succeed;

In deciding whether to dismiss the complaint, the tribunal member considered the following background evidence:

1. Mrs. Judd was 72 years of age and suffered from anxiety and depression.
2. Mr. Judd was 82 years of age and suffered from, among other things, hypertension, heart disease, and arthritis.
3. They purchased their condominium in 2005 and were aware of the no-pet bylaw when they purchased.
4. In October, 2006, Mr. Judd's doctor gave him a note which suggested that he would benefit from having a pet. The note stated:

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Suzy Hahn

"Derek has been advised to get a dog for medical and personal reasons."

5. Subsequent to receiving the note, the Judds applied to the strata corporation to have the bylaw amended and stated that "spent a couple months dealing with this issue", including getting other owners to sign a petition.

6. The Judds brought a ¾ vote resolution to the membership in March, 2007 to amend the bylaw but the resolution was defeated.

7. Mrs. Judd's health apparently started to deteriorate and in July, 2009, her doctor gave her a letter which stated that she would benefit from a having a pet. She wrote:

"I am Ms. Judd's personal physician. She has a history of cardiac disease and anxiety disorder. In my opinion she would benefit from having a small pet for companionship and stress relief. Ms. Judd is well known to me and is an extremely responsible and intelligent woman. I am confident that she would not abuse this privilege."

8. In a letter dated July 25, 2009, the Judds asked the Strata council to provide them with an exemption from the no pet bylaw and submitted one of the doctor's letter in support.

9. The strata council advised the Judds that they did not have the authority to allow an exemption and advised the Judds that they would have to take steps to amend the bylaw.

10. On September 19 the Judds advised the strata council that their request had been misunderstood; they were not seeking to amend the no pet bylaw; instead they were seeking an exemption on medical grounds and requested that the situation be corrected prior to the annual general meeting of the owners. They also sent a notice to all of the strata lot owners clarifying their request to seek the exemption on medical grounds.

11. The strata council proceeded on the basis that the Judds wanted to amend the bylaw.

12. The notice of the annual general meeting included as an agenda item "proposed bylaw for allowing pets on compassionate grounds (with doctor's recommendation)". The proposed bylaw amendment was defeated on September 22, 2009.

13. The human rights complaint was filed on November 16, 2009.

14. On February 28, 2010, Dr. Spangehl wrote a letter on behalf of both of the Judds, describing the therapeutic benefits of having a pet.

15. On May 2, 2010, Dr. Spangehl provided a medical report at the Judds' request (the "Report"). In the Report, Dr. Spangehl states that he was asked to address the Judds' health conditions and, specifically, their need to be able to own a small pet. He was asked to "clearly outline why it is imperative for this family in particular to be allowed to have a pet based upon their specific medical conditions". Dr. Spangehl states that he does not feel that it is necessary or appropriate to reveal details of psychiatric history that have been obtained on the basis of doctor-patient confidentiality. Rather, the Report comments on the general beneficial impact pet ownership can have. It lists the Judds' "medical conditions as of hypertension, heart disease, arthritis (Derek) and anxiety and depression (Gail)". It provides excerpts from studies concerning pet ownership related to these conditions and it concludes:

"I trust that this brief synopsis has helped to explain, why in my medical opinion, not all seniors, but Derek and Gail Judd in particular will benefit greatly from owning a small pet. In fact, to continue to deny them access to a pet is tantamount to denying them any other required medical therapy such as nutritious food, regular exercise and even medications or devices such as crutches or walkers.

I believe there is clear evidence that the addition of a pet to Derek and Gail Judd's lives will not only make them happier and more content due to the provided companionship, but will allow them to live longer healthier lives with less need for medical intervention. The Judds state that the Strata never requested further medical documentation respecting the medical basis for the need for a small pet after Mrs. Judd's initial request for an exemption from the Bylaw."

In dismissing the Judds' complaint, the tribunal member considered section 27(1)(c) of the Code, which grants to the Tribunal the discretion to dismiss a complaint if it determines that the complaint has no reasonable prospect of success. The tribunal member went on to state that "The principles which the Tribunal employs in considering applications to dismiss under s. 27(1)(c) are well-established. In Wickham and Wickham v. Mesa Contemporary Folk Art and others, 2004 BCHRT 134, the Tribunal determined that the assessment under s. 27(1)(c) is not whether there is a mere chance the complaint will succeed, or whether there is a certainty it will do so. Rather, the Tribunal's role is to assess whether, based on all the material before it, and applying its expertise, there is no reasonable prospect the complaint will succeed: paras. 11 and 12; Contreras v. YMCA and another, 2009 BCHRT 433 (CanLII), 2009 BCHRT 433, para. 14.

The Tribunal's approach was affirmed by the Court of Appeal in Berezoutskaia v. British Columbia (Human Rights Tribunal), 2006 BCCA 95 (CanLII), 2006 BCCA 95, paras. 9 and 27 and recently reconfirmed in Gichuru v. British Columbia (Workers Compensation Appeal Tribunal), 2010 BCCA 191 (CanLII), 2010 BCCA 191, para. 31, leave to appeal to the Supreme Court of Canada denied."

The first order of business in order to establish a complaint pursuant to section 8 of the Code was for the Judds, individually or collectively, to prove that the strata corporation discriminated against them with respect to an accommodation, service or facility customarily available to the public because of a disability. The Judds had the onus or proof that they in fact had a disability and that the bylaw had an adverse impact on them because of their disability.

The strata corporation conceded that for the purpose of the complaint the Judds' medical conditions would constitute disabilities under the

Code. However, the strata corporation argued (successfully) that the Judds had failed to submit medical evidence that clearly identified the specific medical disabilities each of the Judds had and failed to explain how having a dog or other pet was medically necessary, not merely generally beneficial.

The tribunal member considered several decisions submitted by the strata corporation in support of its position where the Tribunal had dismissed complaints because of a lack of evidence showing a connection between the complainant's disability and the need to have a dog. She also considered the decision of Niagara North Condominium Corp. No. 125 v. Kinslow, [2007] O. J. No. 4469 (QL), ("Niagara") in which the Court stated:

"However, for me to find the discrimination necessary to defeat the Declaration, the no-pets provision must have the effect of preventing the respondent from living in her unit (as in Waterloo North Condominium Corp. No. 198 v. Donner, 1997 CanLII 12177 (ON SC), (1997), 36 O.R. (3d) 243 (Ont. Gen. Div), where it was held that barring an occupant's "hearing-ear dog" from being kept in a condominium unit would prohibit the occupant from residing in her unit, because the dog was necessary for her to function independently). This is not the situation here. There is no evidence that the respondent is unable to live without her cats. Certainly, they are a comfort to her and, no doubt, her preference is to live with them rather that without them, but the evidence does not support a finding that she is so physically, emotionally or otherwise medically dependent upon them that she cannot live without them …. (para. 35)."

The tribunal member found that the evidence linking the Judds disabilities with the severity of their conditions and "how the conditions effect their functioning, or how having a dog would actually beneficially impact on any one of those conditions" was quite vague. She went on to state that "the nexus between the Judds' disabilities and the adverse impact alleged is too tenuous. There is insufficient information provided to take the Judds' circumstances out of the general context of seeking something that might be generally good for human health and into the specific of requiring something because of a disability, the deprivation of which leads to a specific adverse impact. For these reasons, I find that there is no reasonable prospect that the complaint will succeed and it is thus dismissed."

The tribunal member then considered a further submission by the Judds that the strata corporation failed to accommodate them "in both a substantive and procedural basis by repeatedly treating their request for an exemption from the Bylaw as an application to amend it, failing to enter co-operative dialogue with them to explore the need for accommodation, and failing to fully inform themselves by requesting further medical documentation". However, she stated that because the Judds had no "reasonable prospect of establishing a prima facie case of discrimination", she did not have to continue the analysis and look at the issue of accommodation.

Editor's note: As you can see, the simple fact that an individual can produce evidence of a medical disability and the opinion of a medical professional provides an opinion that the individual would be happier and more content by having a pet for companionship is not sufficient to establish a prima facie case of discrimination.

LEGAL EXPENSES INSURANCE COVERAGE FINALLY AVAILABLE FOR STRATA CORPORATIONS

A large insurance brokerage in downtown Vancouver recently unveiled a new strata insurance program which includes the first and only legal protection insurance policy for strata corporations.

This type of insurance has been around in Europe for many years and continues to be very successful in some 18 countries around the world. The company behind the policy is DAS, the undisputed world leader in legal expenses insurance, which set up shop in Canada in January 2010.

The DAS slogan is "Affordable Justice for All": the idea being to pay for legal fees and many associated costs (including expert fees) to help

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This is a first in Canada: strata corporations now have the opportunity to sign up for an exclusive policy, designed specifically for strata and condominium corporations.

The policy includes access to a telephone legal advice service. All day, every day, property managers or designated council members can talk to a local lawyer about legal issues involving the strata corporation at no cost and with no time limit. What do you get? Confidential legal advice and information to help determine the strata's rights and options either as a plaintiff or defendant.

The insurance policy also provides protection for insured events.

- Legal defence costs are paid if an insured is under investigation for health or safety violations, criminal offenses, breach of privacy legislation and more. Alleged code and by-law violations would be taken care of.
- Contract disputes and debt recovery: legal fees are covered to pursue and defend the strata corporation's rights with regards to agreements for purchasing both goods and services. Got a problem with a contractor or supplier?
- Property protection funds legal fees for a strata looking for compensation for property damage, legal nuisance or trespass. Deductible recoveries come to mind.
- Bodily injury helps funds action by acting council members injured or hurt while performing their duties. Remember that council member bitten by a dog while he was responding to a noise complaint?
- Strata council and owner disputes helps pay for defense costs in cases where a unit owner makes a claim against the strata alleging breach of by-laws or rules.

Too good to be true? Let's see, only time will tell how helpful this new insurance coverage will be to strata corporations and property managers.

Paul Duchaine

Vice President Claims.

BFL CANADA

USER FEES UNDER THE STRATA PROPERTY ACT

by SHAWN M. SMITH of

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The recent decision of the British Columbia Supreme Court in The Owners, Strata Plan LMS3883 v.De Vuyst 2011 BCSC 1252 dealt with the often overlooked issue of user fees. The decision itself dealt primarily with whether or not the court should allow and appeal from the decision of an arbitrator that the move-in fees charged by the strata corporation were unreasonable. In the end the court declined to grant leave to appeal because no question of law existed. However, the decision gives some insight into an issue that has not been the subject of much, if any, jurisprudence.

Besides strata fees, strata corporations routinely charge owners additional sums for a number of different things; move-in/move-out fees, rental of common property parking stalls, use of the common room, laundry, extra fobs and keys. The authority to do so arises under s.110 of the Strata Property Act (the "SPA") which provides as follows:

A strata corporation must not impose user fees for the use of common property or common assets by owners, tenants or occupants, or their visitors, other than as set out in the regulations.

Regulation 6.9 of the SPA sets the conditions under which such fees can be charged. It provides as follows:

"For the purposes of section 110 of the Act, a strata corporation

may impose user fees for the use of common property or common assets only if all of the following requirements are met:

(a) the amount of the fee is reasonable;

(b) the fee is set out

(i) in a bylaw, or

(ii) in a rule and the rule has been ratified under section 125 (6) of the Act."

It is interesting to note that before the fee can be charged it must be approved by the owners either through passing a bylaw or ratifying a rule. It appears that the strata council cannot simply set the fee by passing a rule.

In De Vuyst the strata corporation charged a non-refundable charge (ostensibly to defray the costs of installing the elevator pads and inspecting the common areas for damage) was charged each time some one moved in or moved out of a strata lot. The arbitrator considered that the question of whether a fee was reasonable was to be assessed objectively. It was also to take into account prevailing market conditions (ie. what other buildings charge) and the actual costs incurred by the strata corporation in providing the services to which the fees relate. In the end the arbitrator held that a $200 move-in fee was unreasonable.

What can be taken from this case is the fact that user fees cannot be viewed as a means of adding extra money to the strata corporation's coffers. While that may happen come the end of the day, there must be some sort of correlation between the amount charged and the costs to the strata corporation. If not, the fees will not be reasonable. (One exception to this might be the rental of parking spaces. The market value of a parking space – particularly in the down town core – may tend permit a higher charge than is relative to the cost of providing the space).

It is also important to remember that all fees (even those for use of the common room) must be set out in the Rules. Failing that, they cannot be collected.

Strata corporations must also keep in mind that charging excessively high user fees could make it subject to taxation under the Income Tax Act. Strata corporations are exempt from tax on the basis that it is organized for a purpose other than making a profit and that it is operated on that same basis and that its members do not receive a personal benefit in terms of receiving any part of the income earned. In an Interpretation Bulletin issued in 2009 the Canada Revenue Agency made the following statement:

> "In order to meet the requirement of operating exclusively for any other purpose except profit, a condominium corporation can only offer services for which the fees charged are approximately equal to the amount to condominium corporation expects to incur to provide such services. A condominium corporation cannot intentionally charge fees in excess of costs; to do so is operating with a profit purpose."

This further enforces the need to correlate user fees to the actual cost of providing the service and not view them as a revenue source.

The moral of the story is that user fees should not be a figure randomly plucked from the air. Thought and analysis must be given to the amount being charged.

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is lawyer whose practice focuses on strata property law. He frequently writes and lectures for a variety of strata associations. He is a partner with the law firm of Cleveland Doan LLP and can be reached at (604)536-5002 or shawn@clevelanddoan.com.

SPECIAL PROJECTS – THE PROPERTY MANAGERS' INVOLVEMENT

From time to time a strata will have a major project. By major I am referring to projects such as re-piping, roofing or building envelope challenges.

The service agreement between the strata and the management company usually sets out a provision for the management company to charge extra for special projects. The challenge for management companies is how to charge for the extra work required by and expected of the management company. There are a variety of options available and used in the industry. Some would charge a percentage of the contract. Others propose a fee for service based on an hourly rate.

Often times the clients (strata council's) have no idea of the work to be done by the management company and the property manager. The purpose of this article is to provide a very broad overview of some of the things management companies are asked to be involved in.

Before the contract to do the work the management company may be asked to or is required to:

- Participate in discussing the need for the work to be done
- Assist with getting quotes for the consultant/engineer
- Assist with contracting with the consultant/engineer
- Meet with the consultant/engineer on the scope of work
- Arrange meetings with Council and Owner's on the project and funding
- Review the specifications for the project
- Meet with contractors on site during the bid process
- Prepare notices for meetings, levy schedules and the like
- Participate in the bid opening and discussions around contractor selection

Once the contractor has been chosen the management company may be asked to or is required to:

- Prepare a letter of intent to the contractor chosen
- Do reference checks
- Do Worksafe BC checks
- Check the contractors insurance
- Advise the strata insurer
- Involve a solicitor to review the contract, if applicable

- Finalize the details with Council
- Set up and administer the Builder's Lien Account
- Set up and administer the Deficiency Trust Account (if applicable)
- Site start up with washrooms, parking, and other logistics.

One the project starts the management company may be asked to or is required to:

- Set up the office files
- Amend the financial statements to reflect the project
- Handle owners queries by phone, emails,
- Notices to residents
- Dispute resolution
- Payments of draws, tracking of costs, holdbacks
- Collection of levies not paid
- Potential emergency response

Once completed the management company may be asked to or is required to:

- Deficiency list distribution
- Site tear down and clean up
- Lien checks
- Documents for project closing including Statutory Declarations
- Warranty issues

Some or all of the above may apply to your project.

As you can see the range of services your management company may be involved in is extensive. Adequate compensation should be provided for these services. It is also important to note that the property manager still has their day to day duties to perform for their other clients.

by Jim Allison of Assertive Property Mgmt. & Real Estate Services Inc.

PREPARING FOR WINTER TO AVOID EMERGENCIES

Experienced property managers and Council's know that the fall season is normally the busiest time of the year for a strata. Council's will again meet regularly as the summer holidays fade into the memory banks. Energies will be spent wrapping up the summer projects (painting, fencing, roofing, landscape upgrades for example) and planning on work to be done inside (carpet cleaning/replacement, interior painting, elevator upgrades for example) are on the agenda's.

Now is the time to focus on the fall maintenance requirements for your strata. An annual maintenance schedule should be developed for your strata. And it need not be complicated. A simple excel spreadsheet can be developed where everything that has to be done is listed down the left side. Each month is listed across the top and the contractors who normally do the work are listed down the right side.

So what would be on the list for the next few months? Some of these may apply to your building, others may not.

If you have a hydraulic elevator you probably have a baseboard heater in the elevator machine room. On cold winter days the cold hydraulic fluid does not work too well, especially first thing in the morning. Make sure the heater is on.

Are the drains at the bottom of your driveway ramp, in the parkade, on patios and balconies cleared? How about putting a memo out to the residents to check the drains on their patio's and balconies? Can your caretaker check the drains on the roof to ensure they are clear? If you have gutters when are they cleaned? Get it scheduled now. (you may not want to do it until all the leaves fall but get the contractor lined up in advance).

When was the last time you had someone (roofing company) inspect your roof to identify caulking that may be needed around skylights, flashing repairs that are needed, or other repairs? Why wait until the water starts pouring in and does damage? Invest now in preventing costly repairs by doing the proper maintenance.

Does your emergency generator have fuel?

Are all the outside lights working properly? Are they on a timer or photocell? If they are on a timer, who is adjusting the timer as the days get shorter?

Does your strata have an irrigation system? Have you arranged to have the pipes blown out and winterized?

Have you arranged to have the fire sprinkler system in your parkade winterized?

Does your strata have taps on the outside on the patio's or in the car wash bay? Do they need to be turned off or winterized?

Who cleans the leaves off the sidewalks in October and November when it is raining and the sidewalks are slippery as a result?

Now would be a great time to have your Boiler/Mechanical contractor check out your heating system. If your building has hot water heat, perhaps post a notice and ask people to check their heating system to make sure it turns on or off. It is far less expensive to have a contractor come out and replace several zone valves at the same time during a normal work schedule. (Does your strata have a policy on who pays for the zone valve?)

Does the heater for the roof top hallway pressurization system work? When was it last serviced? Why wait until there is a cold weekend to find out?

Now would be a great time to have the sump in the parkade checked. Make sure it is clean and that the pumps are working. You will be amazed how quickly a garage can fill with water when the pumps do not work.

Who is going to shovel the snow? Where is the shovel? Do you have enough ice melt? Where is it kept?

I hope this helps your strata in preparing for winter. By doing those items that are listed that are relevant to your strata will help avoid costly emergency call outs and inconvenience.

by Jim Allison of Assertive Property Mgmt. & Real Estate Services Inc.

DISCLOSURE – TELLING WHAT YOU KNOW

a glimpse into the future?

Meslin v. Lee, 2011 BCSC 1208 (CanLII) is a case like innumerable cases before it arising from a contract for purchase and sale of real property that ended up going sideways. What is interesting about this case is the reason that the deal went sideways: a contingency reserve fund study.

A contingency reserve fund study is contemplated in the Strata Property Act ("SPA") in section 94 discussing "Depreciation Reports". In the regulations, this depreciation report is described as a "report prepared to assist a strata corporation in determining the appropriate amount for the annual contribution to the contingency reserve fund" and includes a potential review of the electrical; heating; plumbing; and roofing systems of a building.

The purpose obviously is to determine how much a strata corporation needs to 'save up' to cover the future repair bills it is likely to incur to keep the building maintained [repairing the building is something statutorily required – where the owners feel like they can afford it or not, See SPA s. 72]

Depreciation reports or contingency reserve fund studies are not yet mandatory in British Columbia. They are mandatory, as is the financing arising from the report, in Ontario.

In Meslin v. Lee, Mr. Meslin sought to sell his unit, and signed a Property Disclosure Statement on March 20, 2010 stating "no" to the question: Are the following documents available?" …one of which is "Engineer's Report and/or Building Envelope Analysis".

However, on November 17, 2009 the Owners had passed a ¾ vote at an SGM to hire RDH Engineering for the "purpose of completing a Contingency Reserve Fund Study of the complex."

Subsequent strata council minutes used different terminology as to the purpose of RDH preparing a report; but minutes from the April 2, 2010 strata meeting describe discussion of the findings of the Contingency Reserve Fund Study, including potential budgeting means to distribute the costs described in the report.

The finals study from RDH was signed and stamped by an Engineer on April 5, 2010.

On April 12, 2010, the buyers, not having seen or having known ofthe RDH report, signed an offer to purchase Mr. Meslin's unit. Mr. Meslin's agent made representations that he could assist the buyers with some short term accommodation to them allow to move out of the leased premises they were in (and which the lease was about to run out) until they were able to move into Mr. Meslin's unit. The buyers were satisfied they would have help to find an interim place to live and so signed the deal with Mr. Meslin.

The interim housing never materialized, and as the closing day approached, the buyers saw other indications that perhaps there was some sort of engineer's report connected to the home they were intending to buy.

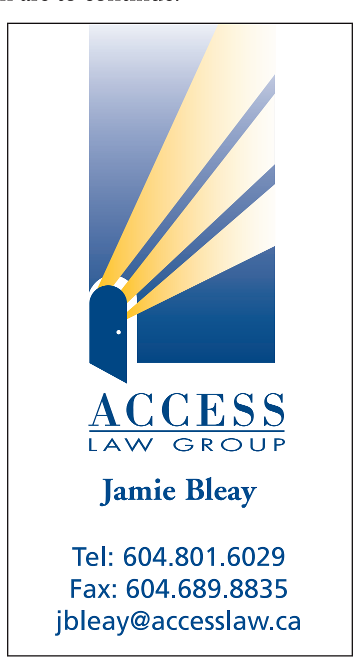
The day before closing, the buyers read the RDH report. The RDH Report's stated that, based on the current funding model for the strata, special assessments of over $400,000 over the next five years will be required and a further special assessment of almost $3 million will be required in 2020. Mr. Lee deposed that, based on this information, he and his wife would not have made an offer topurchase the Condo [53].

On the day of the closing the buyer's notary wrote to Mr. Meslin stating that the buyers: "hereby provide notice of rescission" of the Purchase Contract. The letter refers to Mr. Meslin's indication on the PDS that an "Engineer's Report and/or Building Envelope Analysis" was not available, and stated that it is the Buyers' position that Mr. Meslin fraudulently or innocently misrepresented the availability and existence of an engineer's report, and that as a result, they were entitled to rescind the Purchase Contract. The Court found that Mr. Meslin had "innocently misrepresented" the existence of the report as it was possible that Mr. Meslin considered the Contingency Reserve Fund Report or Depreciation report to be something other than an 'engineering report'.

However, the court upheld the buyers' right to rescind the contract and provided for the buyers to receive back their $20,000 deposit with interest.

Thus, it is clear that if there is any information relevant to a sale, it must be disclosed, otherwise a seller runs the risk of losing the sale and being found responsible for that loss, and not getting the "damages" that are otherwise allowed from a failed contract of purchase and sale– that the seller can keep the deposit.

Clearly also, if and when Depreciation Reports or Contingency Reserve Funds Reports be mandatory, they will be absolutely critical documents to potential buyers. These documents are intended to budget out future expenses expected for the strata corporation. Older, or under- repaired or badly maintained buildings will become pariah's for potential buyers as the depreciation report will set out in advance for the buyer all the special levies that may be coming in the next few years. In the Meslin case this meant levies of $40,000 to $70,000 per unit. It is not hard to understand why the buyers did not want to complete the sale. In the future, a clear depreciation report setting out the costs coming to owners, and a clear plan as to how those costs will be addressed will be essential if sales of units in a strata corporation are to continue.



Lack of disclosure, or lack of planning to deal with future costs are likely to have a significant impact of resale values in strata complexes.

by Phil Dougan of Access Law Group

ALWAYS WASH YOUR HANDS AFTER . . .

Apparently washing your hands after using the toilet is not just good sanitary advice from our mothers but also a legal benefit if you should find yourself in court defending yourself against a $25,000 insurance deductible claim from your strata corporation. So it would seem based on an August 12, 2011 decision in the Supreme Court of British Columbia (File No: 09-26611, Vancouver Registry), in an action advanced by Strata Plan LMS 2446 as the claimant against one of its owners whose toilet overflowed. It is a very instructive decision in several respects.

The owner used his toilet in the morning and then departed immediately for work. He had activated the toilet flush lever but, unknown to him, the toilet did not flush properly and it plugged.

Additionally, due to a malfunctioning valve within the toilet tank, the water supply did not shut off and continued to flow. The toilet bowl overflowed and caused some $42,000 of damages to units below. The insurance water deductible for this strata corporation was $25,000 and the strata council sought recovery in court for the deductible amount from the owner who was "responsible" for the incident.

The owner's defence was that the sewer system was at fault and that the strata corporation should accept the full liability for the damages.

The Court did not agree and found that the owner's actions (or inactions) were the cause and that he should be held liable for the $25,000 deductible caused by the "blockage".

First, and in our view very important, it appears that the strata council did not simply charge the owner's account for the deductible based the Mari decision. Strata councils across BC are charging owners' accounts for insurance deductibles based on what they believe to be allowed by the Mari decision. It is a widely misunderstood decision. It does not say that a strata corporation can charge a deductible to an owner. It says that the standard of proof is not negligence but ratherwhether or not an owner is "responsible" for on an incident giving rise to an insurance claim. This is a much lower threshold to cross.

In this case, the strata council did the right thing by going after the owner through the judicial process which is prescribed in Section 158 of the Strata Property Act. That done, it was up to the Court to decide whether or not the deductible should be assessed against the owner. As stated above, the judge in this case did come to that conclusion. The evidence was circumstantial but overwhelming that there was nothing wrong with the building's infrastructure and that the only possible cause of the blockage was the owner's personal waste. The Court found that the owner was negligent and awarded the strata corporation recovery of the $25,000 deductible.

In respect of the unfortunate owner who has to pay $25,000 (plus his own legal costs) the judge observed, somewhat unkindly, that the owner would not have intentionally left his unit before leaving for work knowing the toilet bowl was overflowing but surely would have noticed the overflow had he taken time to wash his hands after using the toilet and flushing. Seems like Mom was right after all.

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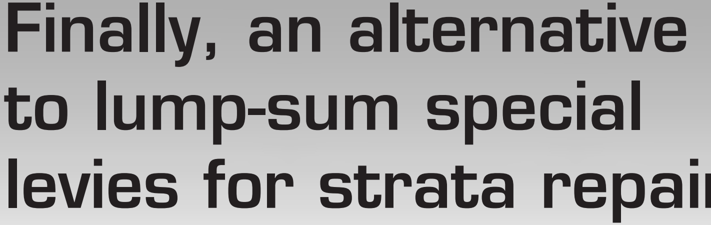

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Maintenance Matters

As a strata owner, you have a responsibility to maintain your building – but what should be maintained and how?

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VANCOUVER CHAPTER

ATTENTION STRATA COUNCIL MEMBERS, STRATA MANAGERS AND STRATA LOT OWNERS

ON SATURDAY NOVEMBER 19, 2011, CCI VANCOUVER WILL HOST A ½ DAY SEMINAR FOR MEMBERS AND NON-MEMBERS ALIKE. THE TOPICS WILL INCLUDE:

- **THE NEW LEGAL EXPENSE INSURANCE PLAN – WHAT DOES THIS MEAN FOR YOUR STRATA CORPORATION?**
- **APPRAISALS – WHAT ARE THEY AND WHY DO YOU NEED THEM?**
- **FIRE SAFETY AND FIRE PREVENTION;**
- **BUILDING ENVELOPE MAINTENANCE; AND**
- **A NEW SESSION WHICH WE CALL "THERE IS NO SUCH THING AS A STUPID QUESTION" – THERE WILL BE AN OPPORTUNITY FOR A Q & A SESSION TO ASK QUESTIONS OF THE PANEL OF SPEAKERS**

LOCATION: UBC ROBSON SQUARE, 800 ROBSON STREET, VANCOUVER

REGISTRATION: STARTS AT 8:300 A.M. WITH THE SEMINAR RUNNING FROM 9:00 A.M. TO APPROXIMATELY 12 NOON. THERE WILL BE COFFEE, TEA & MUFFINS & PASTRIES AVAILABLE AT THE SEMINAR.

REGISTRATION FEE: $25.00 FOR MEMBERS AND $50.00 FOR NON-MEMBERS

YOU MUST PRE-REGISTER AS THERE WILL NOT BE ANY REGISTRATION AT THE DOOR. SPACE IS LIMITED SO DO NOT DELAY!

REGISTRATION FORM: CCI SEMINAR NOVEMBER 19, 2011

Name: (individual, strata company or strata plan # and name and address of management company if the invoice is to be paid by the management company)

________________________________ **Seminar fee: Member ___ x 25.00**

Non-Member ___ x $50.00

____

FAX COMPLETED REGISTRATION FORM TO 604-689-8835 AND MAKE CHEQUE PAYABLE TO CCI VANCOUER AND MAIL TO 1700 – 1185 W. GEORGIA STREET, VANCOUVER, B.C. V6E 4E6. FOR MORE INFORMATION INQUIRE AT contact@ccivancouver.com OR CALL CINDY LAW AT 604-689-8000

MEMBERSHIP APPLICATION

MEMBERSHIP TO JUNE 30, 2012

How/from whom did you hear about CCI?: ______________________________

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❒ Townhouse
❒ Apartment Style
❒ Other

Condominium No.: ______ No. of Units: ______ Registration Date: ______

Management Company: ______ Contact Name: ______

Address: ______ Suite #: ______

City: ______ Province: ______ Postal Code: ______

Phone: (   ) ______ Fax: (   ) ______ Email: ______

Condo Corporation Address: ______ Suite #: ______

City: ______ Province: ______ Postal Code: ______

Phone: (   ) ______ Fax: (   ) ______ Email: ______

President: ______
Name *Address/Suite* *Email*

Treasurer: ______
Name *Address/Suite* *Email*

Director: ______
Name *Address/Suite* *Email*

Please forward all correspondence to: ❒ Management Company address ❒ Condo Corporation address

Annual Fee: ❒ **1-50 Units:** $110.00 ❒ **51-100 Units:** $150.00 ❒ **101-200 Units:** $200.00 ❒ **201+ Units:** $250.00

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Company: ______

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Annual Fee: ❒ $300.00

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City: ______ Province: ______ Postal Code: ______

Phone: (   ) ______ Fax: (   ) ______ Email: ______

Annual Fee: ❒ $110.00

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