



President's Message

PRESIDENT'S MESSAGE – FALL 2013

Much has happened with the CCI Vancouver Chapter since the last President's message. On October 26, 2013 CCI Vancouver held its last educational seminar for 2013 which was presented by Kevin Grasty of Hasall Associates. Hasall has been a wonderful supporter of CCI Vancouver for many years and Kevin, who is an engineer, has routinely volunteered his time and services to present on a wide variety of topics involving building repairs and maintenance. On October 26 Kevin spoke on the topic of depreciation reports, which are now mandatory in B.C. unless a strata corporation "opts" out and what having one means and what not having one can mean. We had over 40 people in attendance who listened intently while Kevin went provided a detailed overview of the implementation actions required for the purpose of not only coming up with a depreciation report but obtaining a quality report that clearly identifies the relevant capital planning/repair/replacement requirements and the available funding models. The feedback received from those in attendance confirmed that the topic was of critical importance to strata corporations, especially those with capital components reaching the end of their serviceable life.

Kevin's presentation was immediately following by the 2013 CCI Vancouver annual general meeting. We were able to report that membership numbers were up by approximately 15 % over last year although at the time of writing of this message our membership numbers are now up over 50% from last year! At the AGM the following members were elected to the CCI Vancouver Board of Directors:

Jim Allison, Phil Dougan, Iris McEwen, Alexine Law, Paul Murcutt, Janice Pynn, Fern Barker, Paul MacFayden, Azadeh Nobakht, Gerry Fanaken, Jamie Bleay and Steve Page

This is the largest Board elected to date and we are excited about the collective energy and talent our Board members bring to the table.

On November 21, 2013 we held our fifth and last lunch & learn with Jim Steve Page and Jim Allison speaking on the topic of asbestos in condominiums and who to do and not do when dealing with its removal. Asbestos is known as the "hidden killer" and given the many questions asked by those in attendance the topic of asbestos will, if it is not already, become an ongoing topic for discussion at strata council meetings.

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CCI Vancouver is proud to announce that Paul Murcutt has been appointed as the CCI Vancouver representative to the CCI National Board while our very own Jim Allison, who seems to take on more responsibilities each year, was elected as a member at large to the CCI National executive on November 15th at the CCI National AGM in Toronto. Paul will be reporting to our chapter Board from time to time about National initiatives for our chapter while Jim will be busy working with the National executive to develop those initiatives and provide our chapter with the tools to implement those initiatives.

I would be remiss if I did not take the opportunity to welcome Janice, Fern and Gerry to our CCI Vancouver Chapter Board. While many of you know that Gerry was the owner of Vancouver Condominium Services for approximately 30 years with a clear passion for professional strata management and education, he was also one of the founding members of CCI Vancouver. Gerry has introduced many of us to his unique style of strata management and I think it is safe to say that his passion for all things "condominium" was sufficiently contagious that many of our chapter members and Board members alike are involved in CCI Vancouver because of Gerry. We welcome Gerry back to CCI Vancouver now that he has "retired" and has more time on his hands!

Janice comes to us after spending more than 30 years in the management field in Ontario. In July Janice became the President and CEO of Baywest Management. A dedicated educator, Janice developed numerous courses for the Association of Condominium Managers of Ontario on topics ranging from Strata Council responsibilities to insurance, law and first year operations. A well-known condominium personality in Greater Toronto, Janice holds the designation of Fellow of the Canadian Condominium Institute and in November, 2003 she was acknowledged by her industry peers in receiving CCI's highest honour, the FCCI designation, making her a Fellow of the Institute. She is the Past President of the Canadian Condominium Institute Toronto Chapter and Past President of the CCI National Board. We are happy and fortunate to have Janice join our team.

Fern Barker Fern is a seasoned professional having been involved in property management since 1983. Fern was first introduced to community housing by living and volunteering in a co-op. Fern is a Regional Director at Baywest Management, bringing a strong skillset in accounting functions learned in the treasury department for the government of Alberta. Fern has made her home in Vancouver for the past 23 years, serving the Vancouver and Whistler communities of Residential & Commercial Strata's, Residential Rental, Commercial properties, Co-op and Non-Profit Housing, Societies Housing and

the unique experience of resort stratas.

Fern's responsibility at Baywest is providing leadership and guidance to a team of professionals who specialize in providing service to strata communities in their infancy, starting up new buildings, sections, types and phases. This specialization of start-up service is unique to Baywest.

In the coming weeks the CCI Vancouver Board will put the finishing touches on its 2014 educational seminars, lunch & learns and any other initiatives the Board proposes to move forward with in 2014. One of those initiatives will be to significantly increase our membership base while another will be to identify how to reach out to all our constituents and make the educational seminars accessible. Please continue to check our website for more updates in the coming weeks.

Jamie Bleay – President CCI Vancouver

CASE LAW UPDATE

The Owners, Strata Plan VR 94 v. Sally Graham, BCSC 130743 (unreported as of December 2, 2013)

Like many strata corporations in the Lower Mainland Strata Plan VR 94 had a pet prohibition bylaw; in fact the pet prohibition bylaw had, in some form or another, been in place since 1975. Several current owners in the building had made the decision to give up their pets in order to live in the building. Ms. Graham, a retired stockbroker had, between 2008 and 2010, bought and sold a unit in the building without, in her evidence, being aware of the pet prohibition bylaw. In October, 2010 Ms. Graham purchased another unit in the building. Initially it was not her intention to live in the unit but as her circumstances changed she made the decision to reside in the unit and in March, 2012 moved into the unit with her dog. Shortly thereafter the strata council became aware of the existence of the pet and instructed the agent for the strata corporation to write to Ms. Graham and put her on notice of the pet prohibition bylaw. Ms. Graham's position in response was that she had not been aware of the pet prohibition bylaw when she purchased the unit but that she needed her dog, which she ultimately had certified as a therapy dog, to assist her with her anxiety disorder. Needless to say over a period

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of time further warning letters were sent to Ms. Graham while at the same time the strata corporation levied fines against Ms. Graham for breaching the pet prohibition bylaw. Ms. Graham failed to respond to the strata corporation's correspondence for several months and when she did, efforts to negotiate a resolution to the bylaw breach was unsuccessful.

Madame Justice Dillon was tasked with deciding whether the pet prohibition bylaw was enforceable against Ms. Graham and if so, what was the appropriate order to be made with respect to the removal of Ms. Graham's dog from the unit and the building. Madame Justice Dillon considered the submissions presented on behalf of the strata corporation and on behalf of Ms. Graham, including Ms. Graham's evidence that there had only been one complaint about Ms. Graham's dog and an allegation that Ms. Graham had not been given a reasonable opportunity for a hearing before the strata council to respond to the strata corporation's allegations that she was in breach of the pet prohibition bylaw. It was also argued on behalf of Ms. Graham that the pet prohibition bylaw was overly broad, ambiguous and unenforceable pursuant to section 121(1)(a) of the Strata Property Act (the "Act"). The Judge was referred to several cases from Ontario dealing with the enforcement of pet bylaws, including the therapeutic value of pets in today's society. This case law and case law relating to limitations on the discretion of the strata council to enforce pet restriction bylaws were considered in light of the wording of section 123(1) of the Act which states "a bylaw that prohibits a pet does not apply to a pet living with an owner, tenant or occupant at the time the bylaw is passed and which continues to live there after the bylaw is passed".

At the conclusion of the hearing Madame Justice Dillon concluded that Ms. Graham was in breach of the pet prohibition bylaw and could not be saved from its application and enforcement regardless of whether she was aware of the pet prohibition bylaw and her "defences", including her need for her dog to assist her with her anxiety disorder. The Judge concluded that the strata corporation was entitled to enforce the pet prohibition bylaw, ordered that she be prohibited from having or keeping her dog in or on her unit and the common property of the strata corporation and ordered Ms. Graham to pay the sum of \$3,800.00 in fines to the strata corporation for breaching the pet prohibition bylaw.

RISK MANAGEMENT FOR DAUNTING DISCOVERIES: HIDDEN STRESSORS CAN MAKE CHAOTIC DEBUTS

By Sean Allman, P.Eng. Halsall Associates

Many structural risks or systemic weaknesses are easily identified – a leaky roof, a poorly functioning heating system, deteriorating concrete. Such issues are usually readily apparent, easily quantified and can be remedied with a fairly high degree of confidence using common repair techniques and tools.

More problematic for building owners and managers are so-called building ghosts that may be lurking undetected. They include systems and components that:

- may be perceived negatively in the market place;
- degrade or deteriorate faster than other materials or systems;
- are very expensive or complicated to repair if problems do develop; and/or
- can have serious problems without showing any outward signs of distress for a long time.

Single-family homeowners might be haunted by discoveries of urea formaldehyde foam insulation (UFFI), aluminum or knob-and-tube wiring, vermiculite attic insulation or lead water pipes while building ghosts in larger, more complex buildings can present even more problematic functional, financial or safety risks. Gaining a better understanding of these issues will enable the industry to develop more effective management strategies in the long run. Potential sleeper surprises include:

Post Tensioned (PT) Concrete Slabs

PT cables are sometimes used to reinforce concrete in conjunction with or in lieu of reinforcing steel, known as rebar. The protective sheathing on the earliest version of these cables was prone to water penetration, causing the cables inside to corrode over time and possibly rupture. Newer generations of PT cables have been generally more water-resistant, although the cable ends, which are typically grouted near the ends of floor slabs, can also corrode if not adequately protected from exposure to water.



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Even when not a structural risk, the mere presence of PT slabs can be perceived negatively in the marketplace. For owners/managers the first step is to identify the type and extent of PT that has been installed.

To check the condition of cables in older generation systems, consultants will open a sample or samples at typically vulnerable locations along the length of cable and at the ends. This allows a visual review of the condition of the cables and conduits, and a simple slide hammer test to help determine whether the cable is fully stressed.

It is not practical to check all cables, but the survey should be wide enough to provide a statistically relevant test, and the sample size should increase over time.

Copper Domestic Hot-Water Piping

Copper piping found in the hot water systems in many high-rise residential buildings can be subject to erosion. A flow-rate of five feet per second for circulating hot water is the common standard so that it will arrive in any occupant's unit when it is needed. If the distribution system is designed with flows above this threshold, or if the system has become imbalanced over time with excessive flow in some pipes and low flow in others, the piping can develop pin-hole leaks.

Unfortunately, the appearance of pin-hole leaks usually means that a significant amount of erosion has already occurred. However, those leaks tend to start in the section of piping returning hot water back to the main storage tank, known as the re-circulation return piping.

Flow rates in the entire system should be measured and monitored. If leaks have occurred, piping can be visually inspected by cutting out sections.

Overlaid Roofing

When re-roofing, one alternative to replacing the entire roof is to install a new roof over the existing membrane. This would typically be done where there is an exposed, versus a protected, membrane system.

Although this approach can be very cost-effective, there are some extra risks in applying an new roof over an old one. Often the surface of the old roof is uneven. If the original roof had poor drainage this must be rectified before a new roof is overlaid as water trapped beneath the existing membrane could be trapped further under the new roof. It's also critical to ensure the fastening or adhesion to the existing roof is adequate to resist wind uplift forces.

Roof overlays are not readily apparent through visual inspection. Generally, the first step in due diligence would be to look to the documentation such as a contract detailing the scope of work or inspection reports. If documentation is not available, intrusive test cuts must be done.

If it's revealed that the roof has been overlaid, the next steps are to evaluate the construction and the quality of the new membrane, whether there is any water trapped below the membrane and the performance of the drainage system. Thermographic scanning and additional test cuts might assist in the evaluation, but, depending on the thickness of an overlaid roofing assembly, may also prove ineffective.

If entrapped water is localized, sections can be cut out and replaced. However, owners/managers should balance the cost of this approach against the quality of the roofing and the risks of additional water seeping below the membrane.

Masonry Veneer Steel Stud Walls (MVSS)

In these assemblies, the steel studs provide lateral load carrying resistance, primarily from wind loads, and form an important part of the overall structure. Steel-stud framing is vulnerable to corrosion damage and structural inadequacies, particularly in older buildings constructed before the mid-1980s, which generally do not meet the design specifications now in place.

Steel-stud walls are not always problematic, but they require diligent management, including regularly monitoring through wall openings and ensuring weather seals remain intact to minimize water entry into the wall cavity.

Concrete block back-up walls are more common so MVSS framing is often overlooked. If architectural drawings are not available to confirm the presence of structural steel-stud framing, opening the walls is the only way to find out.

Glass Balcony Guards

Glass balcony guards have gained popularity for the open views they allow. However, other risks became very apparent in the summer of 2012 when cracked and fell off several buildings in downtown Toronto. Largely as a result of these failures, the Ontario Building Code has been amended to require various glass treatment approaches, including heat soaking, heat strengthening and/or lamination.

Owners/managers of buildings that have older vintage glass balcony guards should be mindful of the risks, which are related to quality of manufacturing. As a construction material, glass is naturally brittle and susceptible to breakage. Surface flaws or impurities in the glass create isolated points of weakness making it prone to crack when the glass panels are loaded - such as when people press against the panels or, more commonly, because wind is constantly acting against them.

If older glass balcony guards have remained intact that is probably an indicator that the glass is good. Nevertheless, there should be a maintenance plan and any reasons for concern should be promptly investigated. Testing is available to assess the risk of failure.

The changes to the building code don't retroactively apply to existing buildings, but they do impact reserve fund or capital planning. When the guards are eventually replaced, they will have to meet the new code requirements and it will cost more to provide the type of treated glass the code now mandates.

Sean Allman is a Professional Engineer with Halsall Associates (www.halsall.com). He has conducted hundreds of physical condition assessments and has been involved with multiple building restoration projects.

A slightly modified version of this article originally appeared in the September 2013 issue of Canadian Property Management (www.reminetwork.com)

DIFFICULT PEOPLE

Many people became aware of the reality of difficult people living in strata buildings this month with the release of the Court of Appeal reasons in *The Owners, Strata Plan LMS 2768 v. Jordison*. In that case, Ms. Jordison and her son Jordy were found to have harassed and intimidated other owners in the building in over 1000 incidents over the course of more than six years.

Reading the judgment and the previous court hearings, it would be easy to think “This is ridiculous” or “How very odd!”

Unfortunately, difficult people abound in strata corporations. To be honest, while the Jordisons’ behaviour was very irrational and childish (spitting, calling names, banging on floors and walls, throwing water on people), it is not, in our experience, the most bizarre or the most invasive behaviour that we have seen.

Incidents abound of truly obnoxious behavior in strata living: answering the door to the property manager with the resident holding a submachine gun comes to mind. Or perhaps trying to deal with the stench of flies arising from the bathroom of a unit where the toilet stopped working so the residents began defecating in the bathtub; that’s pretty unusual!

The examples abound. But what can be done if you find yourself as the council member, trying to deal with such a problem; or perhaps worse, you are the neighbour of the difficult person?

A few things about living in condos, and stratas generally, that arise out of the Jordison case help clarify how these communities are expected to work:

1. Everyone must obey the bylaws.
2. The strata corporation must enforce the bylaws.
3. The strata has a number of statutory tools to enforce the bylaws.
4. The Court will provide injunctive relief to order a difficult owner to obey the bylaws.
5. If a difficult owner ignores all demands to comply, the Court may impose far more stringent penalties.

Let’s look at each of those principles in turn:

1. Everyone must obey the bylaws:

In the *Jordison* case, as with many stratas in B.C., the bylaws began with a preamble that states:

These bylaws bind the strata corporation, and the owners, tenants and occupants to the same extent as if the bylaws had been signed by the strata corporation and each owner, tenant and occupant and contained covenants on the part of the strata corporation with each owner, tenant and occupant and on the part of each owner, tenant and occupant with the strata corporation to observe and perform their provisions....

1.1 All residents and visitors must comply strictly with the bylaws and rules of the strata corporation adopted from time to time.



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This wording sets out the idea of a 'social' contract between all the owners and one another and the community, as represented by the strata corporation.

This social contract, explicit in the *Jordison* case, is implied in all stratas. Many people are aware of buying a home with 'subjects' attached to the contract of purchase and sale. The contract will not complete without all the "subjects" being met (i.e., obtaining financing, receiving a satisfactory house inspection, etc.). In law, these types of terms are called condition precedents. They mean that there is no contract until those matters are dealt with satisfactorily first. Similarly, through the disclosure process of buying a condo or other strata, through the *Strata Property Act*, its regulations, the bylaws of the strata being bought into and the due diligence of a prudent buyer, not to mention case law, it should be self evident to a new buyer that they buy a strata on the condition that they buy promising to keep to the bylaws. There is no ownership of a strata separate from the bylaws. The Act says:

119 (1) The strata corporation must have bylaws.

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.

This is not nearly as unusual as it may sound. Homeowners have accepted restrictions on their ownership for years; perhaps without realizing it, but restrictions nonetheless. Just as a strata has bylaws to control one building, municipalities have bylaws to control all the buildings in one city. Homeowners know that zoning prohibits them from knocking down a bungalow in a residential neighbourhood and building a ten story apartment building or a factory. The City bylaws can get very nit-picky. Just ask anyone who has overstepped a setback allowance and has been forced to knock down their house!

So, the strata bylaws also are non-negotiable, whatever they say. Most in B.C. incorporate all or the majority of the standard bylaws which can be found in the *Strata Property Act*. If your strata "doesn't have bylaws," then the standard bylaws are your bylaws.

2. The strata corporation must enforce the bylaws.

So the strata corporation must have bylaws, and if the strata does not write its own, the standard bylaws apply. However, a logical maxim of law is that "an unenforced law is no law at all." Have you ever seen a blatant traffic infraction and said to yourself, "Where's a cop when you need one!"

Laws that are broken disrupt the social contract we have with one another. Even worse is when the law has been broken, but those empowered to uphold the law, do nothing about it.

Perhaps even worse than that is when a law is enforced only against some and not against others (because the lawbreaker is either a friend or foe of some council members?).

Both of these circumstances, unenforced bylaws and unevenly enforced bylaws are in breach of the *Strata Property Act*. Section 26 says the strata must enforce the bylaws and s. 164 prohibits a strata corporation from acting as owners in a way that is 'significantly unfair' to the owner. Ignoring one person's breach of the bylaws but penalizing another for exactly the same infraction is bound to attract a judge's attention.

Strata councilors have a fiduciary duty to all the owners to enforce the bylaws equitably and in the best interests of all the owners. This means infractions of the bylaws must be dealt with head-on by the council.

What can the strata corporation do then to ensure compliance by all the owners with all the bylaws?

3. The strata has a number of statutory tools to enforce the bylaws.

Section 129 of the *Strata Property Act* sets out the basic enforcement tools the strata may employ to ensure compliance from owners.

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.



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The *Act* and *Standard bylaws* set out the following; the *Regulations* to the *Act* state:

7.1 (1) For the purposes of section 132 of the *Act*, the maximum amount that a strata corporation may set out in its bylaws as a fine for the contravention of a bylaw or rule is

- (a) \$200 for each contravention of a bylaw, and
- (b) \$50 for each contravention of a rule.

(2) Despite subsection (1), the maximum amount that a strata corporation may set out in its bylaws as a fine for the rental of a residential strata lot in contravention of a bylaw that prohibits or limits rentals is \$500 for each contravention of the bylaw.

(3) For the purposes of section 132 of the *Act*, the maximum frequency that a strata corporation may set out in its bylaws for the imposition of a fine for a continuing contravention of a bylaw or rule is every 7 days.

The *Standard bylaws* state:

23 The strata corporation may fine an owner or tenant a maximum of

- (a) \$50 for each contravention of a bylaw, and
- (b) \$10 for each contravention of a rule.

The exception to those restrictions is a breach of a rental restriction bylaw which can create a fine of \$500 per week for a breach if the strata is going to impose a fine. For a strata to impose a fine, it must follow the procedure set out in s. 135.

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.

(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.

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In the *Jordison* case, over a total of seven years, the Jordisons were fined about \$30,000, which had no effect at all on their behaviour!

Obviously this is not ideal, and in fact the Courts have said endless fining is not appropriate.

In *Willson v. Highlands Strata Corp.*, 1999 CanLII 2900 (BC SC), at 28, the Court described a long line of fines as ‘punishment,’ not ‘enforcement’ of the bylaws. The Court expunged those fines.

The implication is clear. Fines are primarily a deterrent, not a fundraiser. If a difficult owner is not changing their behaviour with a few repeated fines, then the strata corporation must consider Court assistance to enforce the bylaws.

If the owner breaching the bylaws is very keen on a facility the strata has in its complex, then denying access to the pool or gym for a time can be an effective enforcement tool. However, in our experience, it is rare that such an amenity and passion for the use of that amenity will align; so that enforcement tool is rarely helpful.

The other option a strata has under s. 129, to remedy a contravention under s. 133 usually goes to doing actual work on a strata unit or common property to repair something or remove something. Examples of this might be illegally installed sun canopies, or second bathrooms. The strata is empowered to remove such items and charge the cost back to the owner who breached the bylaw.

The strata, obligated to enforce its bylaws, then must enforce the bylaws with the tools it is provided with in the *Act*. The strata cannot take the law into its own hands to ‘fix’ a problem.

However, what can a strata do if the normal remedies and enforcement procedures provided for in the *Act* do not work to change the behaviour of a difficult person?

4. The Court will provide injunctive relief to order a difficult owner to obey the law.

An injunction is a court order that requires the person the order is directed to, to do something or to stop doing or not to do something else.

In the *Jordison* case, Mr. Justice Blair in the B.C. Supreme Court gave the following injunction:

While in possession of the unit, Ms. Jordison and her son, Jordy Jordison, shall abide by the Strata Property Act, its regulations and the Bylaws and rules of Strata Plan LMS 2768, and they are specifically restrained from making loud noises such as has been described in the affidavits supporting the petition filed herein, making obscene gestures or uttering any abusive or obscene comments directed at any member of Strata Plan LMS 2768 or their families.

Notice that in essence, it does not say very much. It says to obey the *Strata Property Act* and the bylaws (things strata owners are required to do anyway) and to stop doing all these things that breach the bylaws and the *Act*, such as spitting, causing a nuisance or a disturbance.

It does not seem like very much. The difference though is simple and profound. We are expected to obey the law; but often through ignorance, accident or misinformation many people break the law. Sometimes, the Courts will consider the whole circumstance and give such a law-breaker a second chance.

However, if a person has clearly been told by the Court that they are breaking the law and the law-breaker ignores the Court, then an injunction may be imposed. If the law-breaker continues to ignore the law when they have been specifically told what to do, or not to do, by a judge (as the Jordisons were), then such a disobedience, rather than just an inadvertence or mistake, can be characterized as contempt of Court.

Contempt of Court – not doing what the Court orders you to do – is ordinarily punishable by either a fine or imprisonment.

This was what happened with the Jordisons. Judge Blair specifically ordered the Jordisons to behave; they did not, so he found them in contempt of Court.

At the hearing that was to determine what remedies might arise for the strata in light of the Jordisons’ misbehavior, the strata argued that while a fine and the prospect of jail time might intimidate more rational owners, this was not the case with the Jordisons. Huge fines had done nothing to change their behaviour and while the idea of putting difficult owners in jail is appealing, it is really only a short-term fix for the problem and the strata argued it would likely be back to square one when the Jordisons were released from any incarceration. Stronger remedies were needed.



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5. If a difficult owner ignores all demands to comply, the Court may impose far more stringent penalties.

Mr. Justice Blair reviewed the options available to him in contempt and determined that neither fining nor imprisonment would actually assist in 'fixing the problem' that the strata actually faced – trying to make difficult owners obey the bylaws.

This is where the law has changed. Now if the injunction against an owner can be shown to be in line with s. 173(a) or (b), now 173(c) can mean the Court will order the sale of the difficult owner's suite and they must move. Section 173 says:

173 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).

Thus an injunction ordered under s. 173(a) or (b) to prohibit an act or require compliance with a law can be enforced by any other order 'necessary' to give effect to that order including an order for sale.

This is a tremendous breakthrough for strata communities. What it means is that no longer can one difficult owner hold the rest of the community hostage to their bad behaviour. If they do not comply with the community standards as set out in the strata's bylaws, then the Court can show them the door.

So, how should stratas use this new tool? Well, sparingly. It will not be handed down as the remedy at the first sign of trouble.

Stratas are still obligated to use all the statutory powers (and common sense) they have to deal with difficult people through letters, warnings, fines after proper procedure, and other simpler remedies before going to Court.

With a record in hand of having tried all the 'ordinary' remedies, a strata may then confidently approach the Court to seek an injunction under s.173(a) or (b). We believe, at that point, a strata will receive an injunction from the Court without much fanfare as, as we have said, the injunctions themselves are not especially unusual or forceful in their wording. We believe the Court will easily assist a strata with an injunction that says nothing more than "obey the law."

At that point in a proceeding will come the really defining moment. If the difficult person has read the *Jordison* case, they would be wise at that point to moderate their behaviour and keep out of trouble. If they do, the strata has what it needs – compliant owners.

If the difficult owner ignores the injunction, then in collecting evidence to prove that breach, the strata will be free to return to Court to seek an order under s. 173(c) for something that will make the injunction effective.

This may turn out to be a number of different remedies such as contempt or conduct of sale. The decisions of the Court of Appeal and the B.C. Supreme Court do not limit the remedies available to a strata under s. 173(c) but we believe the *Jordison* ruling will provide

the Courts with far more latitude and creativity that will allow them to craft orders and remedies that will fix the problem of difficult people in stratas. The Courts can choose appropriate remedies to match the nature of the difficulty faced by the strata.

In any event, the law now allows that if good behaviour cannot be persuaded, cajoled or forced from strata owners, they will be forced out of the community altogether.

We trust with difficult owners removed, the rest of a strata community can simply enjoy their homes in peace.

Phil Dougan

PARKING AND LOCKERS:

A. Introduction:

Historically parking stall allocations (and to a lesser extent, storage locker allocations) have been a thorn in the side of strata corporations (see *Hill v. Strata Plan NW 2477*, *Jacobucci v. Strata Plan BCS 1299*, *0795520 B.C. Ltd. v. 0720073 B.C. Ltd.*, *B.P.Y.A 1163 Holdings Ltd. v. Strata Plan VR 2192*, among other cases that have dealt with parking allocations). Generally strata corporations have relied on parking/storage allocations "handed down" from owner to owner which, in some extreme examples such as in some of the above-noted cases, has come back to haunt them.

As of January 1, 2014 section 59(3) of the *Strata Property Act* (the "Act"), which deals with the Information Certificate or Form B as it is often referred to, will be amended. The Form B will be required to include, in addition to all of the other information to be disclosed, which parking stalls and storage lockers have been allocated to a strata lot (see s. 59(3)(l.1).

As of January 1, 2014 section 59(3) of the Act will read:

(3) The certificate must disclose all of the following in respect of the strata corporation and the strata lot for which the request is made:

- (a) the monthly strata fees payable by the owner;
- (b) any amount that the owner owes the strata corporation, other than an amount paid into court or to the strata corporation in trust under section 114;
- (c) any agreements under which the owner takes responsibility for expenses relating to alterations to a strata lot, the common property or the common assets;
- (d) any amount that the owner is obligated to pay in the future for a special levy that has already been approved and the date by which the payment is to be made;
- (e) any amount by which the expenses of the strata corporation for the current fiscal year are expected to exceed the expenses budgeted for the fiscal year;
- (f) the amount in the contingency reserve fund minus any expenditures which have already been approved but not yet taken from the fund;

(g) any amendments to the bylaws that are not yet filed in the land title office;

(h) any resolution passed by a 3/4 vote or unanimous vote that is required to be filed in the land title office but that has not yet been filed in the land title office;

(i) any notice that has been given for a resolution that has not been voted on, if the resolution requires a 3/4 vote or unanimous vote or deals with an amendment to the bylaws;

(j) any court proceeding or arbitration in which the strata corporation is a party and any judgments or orders against the strata corporation;

(k) any notices or work orders received by the strata corporation that remain outstanding for the strata lot, the common property or the common assets;

(l) the number of strata lots in the strata plan that are rented;

(1.1) which parking stalls and storage lockers, if any, have been allocated to the strata lot;

(m) any other information required by the regulations.

The revised Form B is attached.

B. What does this change?

As of January 1, 2014 all strata corporations will be expected to identify and disclose on the Form B which parking stalls and storage lockers have been allocated to a strata lot or is part of a strata lot, designated as common property or as limited common property. That task may be easily manageable IF:

1. All stalls and lockers are part of a strata lot (quite unusual);
2. All stalls and lockers are separate strata lots (somewhat rare);
3. All stalls and lockers are designated as limited common property for each individual strata lot on the registered strata plan; or
4. All stalls and lockers are identified as common property (as noted on the filed strata plan), there are no 99 year lease agreements known to exist AND the strata corporation has a parking/storage locker register (expressly or otherwise) that shows what parking stall/locker is assigned to each strata lot owner (short term per section 76 of the Act or by the strata council).

C. How can a strata corporation gather the necessary information?

1. The developer and the disclosure statement:

More and more often developers disclose in a disclosure statement that each owner may/will be entitled to the exclusive use of one or more parking stalls and/or storage lockers pursuant to some form of partial assignment of a parking/storage locker lease. Generally speaking the storage lockers and parking stalls remain designated as common property. The “usual” form of disclosure statement indicates that a copy of each of the parking/storage locker assignments by the tenant will be given to and be kept by a strata corporation which will maintain a register of the assignments.

2. The Strata Plan and land title documents, bylaws, strata corporation records:

A registered strata plan may contain information regarding parking and storage locker allocations. In some older strata corporations the bylaws may contain a register of parking/storage allocations. Limited common property designations will be registered in the land title office. Short term exclusive use agreements and lease/licence agreements, if they exist, may also provide information about the availability and allocation of parking stalls and storage lockers.

3. Survey the ownership:

Owners will generally be able to identify which parking space and storage locker they believe they are entitled to use. Their responses to a survey regarding allocations can be checked against the documentation provided by the developer/the disclosure statement and the information filed in the land title office. This will also give you an opportunity to identify any agreements, verbal or written, between owners to ‘swap’ a stall or a storage locker. Leases, or in Mr. Jacobucci’s case, a series of e-mail exchanges with the strata council, may be produced. Having such information, even if there may be a conflict regarding “ownership”, is a good starting point.

D. What to do with the information?

Once the information has been accumulated the strata corporation will need to reconcile it in order to create an accurate inventory register for parking stalls and storage lockers. Care will need to be taken to try to eliminate any discrepancies between what has been reported by owners (and perhaps occupants) when compared to the original disclosure statement/partial assignment agreements/the registered strata plan/the filed bylaws. To be sure discrepancies will be found. Dealing quickly with those owners whose information is not supported by the disclosure statement/partial assignment agreements, etc. will help eliminate problems for the strata corporation down the road. Swapping arrangements can be formalized if permitted by the bylaws, allowed under the Act or the parking/storage locker leases and documentation provided to the strata corporation. Elimination of disagreements and discrepancies may be an ongoing issue but what is sought is not perfection but disclosure of information that is, to the best of the knowledge of the person signing the Form B (consider whether in some instances two members of the strata council should sign the Form B), correct.

E. Reporting Requirements:

Schedule 3 has certain reporting requirements when it comes to parking stalls and storage lockers:

1. Parking stalls:
 - a. Are they allocated to a strata lot, yes or no?
 - b. If no, check the appropriate box.
 - c. If yes, check and complete the correct boxes;
 - d. Under “details”, provide details for the boxes checked, even if the “no” boxes are checked and attach any supporting documentation to the Form B.

2. Storage lockers:
 - a. Are they allocated to a strata lot, yes or no;
 - b. If no, check the appropriate box;
 - c. If yes, check and complete the appropriate boxes.
 - d. Under "details", provide details for the boxes checked, even if the "no" boxes are checked and attach any supporting documentation to the Form B.

Documentation may include:

1. Disclosure Statement;
2. Parking stall/storage locker signed assignment agreements;
3. Registered strata plan;
4. Filed bylaws (to identify allocation);
5. Limited common property sketch plans and resolutions;
6. Agreements between owners granting rights of use;
7. Common property short term exclusive use agreements (Note- the Form B warns the reader of the Form B that the short term exclusive use allocation may be subject to change in the future);
8. Rental agreements/user fee agreements;
9. Common property lease agreements (ie. less than 3 years);
10. Purchase and sale agreements (Note: caution should be used when placing reliance on this documentation UNLESS it is the only documentation that exists [which may be the case in older and/or smaller strata corporations]).

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Due diligence does not, in my view, require perfection when the lack of documentation is such that 100% accuracy cannot be guaranteed. If there are disputes that cannot be addressed before January 1, 2014 legal proceedings may be required. If there are no disputes but there are discrepancies that can be explained use the "details" portion to clearly enunciate the discrepancy and the current arrangement regarding allocation. Use of the words "To the best of my knowledge as of today's date the information contained in the Form B" in the "details" portion of the Form B is likely a useful caveat on the Form B. Time will tell if this caveat will allow a strata corporation and/or strata manager to avoid liability for the contents of the Form B but it is a good place to start.

By Jamie A. Bleay, LLB, ACCI, FCCI

Access Law Group

FIVE WAYS TO GET THE MOST OUT OF YOUR HOME WARRANTY INSURANCE

Buyers of new homes in B.C. are fortunate to be protected by the country's strongest construction defect insurance. Those who learn as much as they can about their home warranty insurance will get the most out of their coverage.

The tips below can be found in the B.C. government's Homeowner Protection Office's (HPO) Guide to Home Warranty Insurance in British Columbia, available as a free download from www.hpo.bc.ca.

1. Make note of, and act on, each coverage expiry date.

The home warranty insurance provided on new single-family and multi-family homes built for sale in B.C. protects against different construction defects for specific periods of time:

- Two years on labour and materials for defects related to delivery and distribution systems (such as electrical or plumbing). For general materials and labour defects, coverage is for 12 months on detached homes and non-common property in strata units (including fee-simple homes), and for 15 months on common property of strata buildings.
- Five years on building envelope defects (including water penetration). This covers components that separate the indoors from the outdoors, such as exterior walls, foundation, roof, windows and doors.
- Ten years on labour and materials defects that result in failure of a load-bearing part of the home, or causes structural damage.

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Before each expiry date, inspect the home to identify any problems in areas still covered by the warranty. Strata properties may have different expiry dates for their individual unit and common property.

2. Act on defects immediately.

As soon as you find a possible construction defect covered by the policy, immediately report it in writing to the warranty provider and the builder. (For strata homes, report problems with the unit to the warranty provider and problems with the common property to the strata council and/or building manager.) Keep copies of all correspondence related to defects and claims.

It's also important to take reasonable steps to minimize further damage to the home from any defect. Coverage may be withheld if an owner fails to prevent or minimize damage.

3. Know what's covered and what isn't.

Not all aspects of a new home are covered by the warranty. For example, the insurance may not cover things like normal wear and tear, insect or rodent damage, acts of nature, landscaping, fencing, patios, surface drainage and non-residential detached structures such as sheds, carports or garages.

Did you make any improvements after taking possession of your home? Design, materials or labour supplied by the owner or someone other than the builder, their workers or subtrades may not be covered.

Make sure you understand the extent and limitations of your coverage by reading through your insurance documents.

You can also search or download the HPO's free Residential Construction Performance Guide at www.hpo.bc.ca. It explains how

new homes should perform and which defects - including possible defects in design, materials or workmanship - are covered under home warranty insurance in British Columbia. Homeowners are using the guide to make more informed decisions and to self-evaluate possible defects.

4. Maintain your home.

Maintain your home to preserve your investment and to protect your insurance coverage.

The first owner of a new home may receive a copy of a maintenance manual from the builder or warranty provider that provides details on the care and maintenance of the new home, including common property for stratas.

If you receive a maintenance manual, read it and follow it. Warranty providers may deny coverage in cases of neglect or improper maintenance, particularly if a homeowner receives a manual and does not perform the recommended maintenance.

You can also check out the HPO's Maintenance Matters bulletins and videos that are designed to provide practical information on the maintenance of residential buildings.

5. Learn more.

For more information about home warranty insurance, visit the Homeowners and Builders & Developers sections of the HPO website, www.hpo.bc.ca, or download the free *Guide to Home Warranty Insurance in British Columbia*. The guide provides useful information for owners such as what's covered and what isn't, who's involved, exemptions, how to protect your coverage and how to make a claim.



WHAT CAN THE CCI VANCOUVER DO FOR YOU?

Strata lot Owners and Council members

- Practical examples and information about how to deal with the many thorny issues that arise within a strata corporation.
- Education on such matters as the legal interpretation of the Strata Property Act; Insurance for strata corporations; Council member's responsibilities; and the Management of Contingency Reserve Funds and Budgets.
- Lobbying various levels of government for favourable legislative changes;
- Provides an opportunity for networking with industry leaders and fellow council members.

Managers and Professionals

Through educational and accreditation programs professionals and managers gain recognition within the strata corporation community attesting that their skills and expertise make them the best choice for the job.

Developers and Trades

The opportunity for fellowship and the exchange of ideas and information with others from all facets of the strata corporation community will serve to broaden your own knowledge and keep you up to date with the latest developments. Membership also provides an excellent means to promote your company in the strata corporation community.

How Do I Join And What Are The Benefits?

Each applicant must complete the attached application form in full. All information is kept in confidence and is used only by CCI National and/or the Vancouver CCI Chapter. Our privacy policy is available online at our web site, or you may contact the Chapter for a copy to be mailed to you.

Applications with incomplete forms or that do not include payment will be returned. Accurate contact information is critical to maintain communication. For Strata corporation members we require at least one direct board member's contact information. This information is used as a contingency in the event your mail is returned. Please be sure to advise the Chapter of changes in your mailing address and/or property management.

Applicants' acceptance into the CCI is at the sole discretion of the Chapter. Members receive a certificate and seal on request when their membership is accepted.

Benefits

All members receive substantial discounts at CCI courses, seminars and other events.

Sponsor and Professional members receive discounts on advertising in the Condo News, a listing in our professional directory, and links on our web site.

The newsletter is distributed to one address of service for each member. Strata corporation members receive three copies each

quarter. Non-strata corporation members receive one copy. Members may request additional copies to a maximum of five in total.

Selecting Your Membership Type

The qualifications for membership in the Chapter are as follows:

- a) Strata corporation memberships shall be limited to any strata corporation, strata or equivalent corporation registered in accordance with the laws of any Province or Territory in Canada;
- b) Individual memberships shall be limited to any owner or occupant of a strata corporation, strata or equivalent corporation and any other person other than a person who would qualify as professional member interested in furthering the objects of the CCI;
- c) Sponsor memberships shall be limited to any corporation, partnership or sole proprietorship (other than one would qualify for Strata corporation or Professional Membership), government agency, investment firm, lending institution, insurance company, advertising company, development or construction firm or other business entity that is involved in the strata corporation industry. Sponsor membership is held by the company and for event discounts all employees are eligible; and
- d) Professional members are members where a portion of their income derives from serving the strata corporation industry and are in professions as established by the Corporation as eligible for ACCI designations now, and as may be revised. Professional membership applies only to the person in whose name it is held.

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THE PERFECT COUNCIL MEMBER

A strata council is somewhat analogous to a fourth level of government. The members of a strata council are elected by their constituents (strata lot owners), they are “recallable” to some extent, they are tasked with and responsible for the management and operational control of millions of dollars of other peoples’ property. Councils are subject to a wide range of specific laws, the most predominant of which is the extensive *Strata Property Act of British Columbia*. Councils have the power to initiate litigation but, conversely, they are equally subject to legal action against themselves by their owners and others. They are subject to Provincial and Supreme Court of B.C. decisions and orders. In fact, if they do not properly manage the affairs of the corporation, the Supreme Court of British Columbia can remove them from office and appoint a third-party administrator to replace them (Section 174). Notwithstanding the Court’s ability to set aside their elected status, the courts are most reluctant to interfere with the governance of a strata corporation, preferring instead to let councils and owners work things out for themselves first. It is important, therefore, for elected strata council members to understand that they have a very high standard of conduct to achieve in order to ensure that the governance of the strata corporation complies fully with the legislation. Indeed, there are many aspects of strata corporation governance that are not prescribed by the statute so it becomes necessary for councils to also apply common sense, compromise and a deep and genuine sense of fairness to its administration.

Section 31 of the Act requires a strata council member to “act honestly and in good faith”. A council member must also act “in the best interests of the strata corporation”. Council members must also “exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances”. These are all undefined terms and expressions; however, courts understand what is required and will expect strict compliance. Persons joining strata councils to simply advance their personal agendas, particularly if they stand to benefit from certain decisions, should be extremely wary of the implications of their personal conduct, ethics and involvement as elected representatives. Very honest council members sometimes operate with unnecessary anxiety when analyzing the meaning of Section 31. They need not worry about making mistakes. As long as they make their best efforts, remain honest and transparent in their conduct, and operate the strata corporation as directed by the Act, they should not be overly concerned about Section 31. Strata council members should, nevertheless, always ensure that their strata corporation insurance policies contain adequate coverages and provisions for errors and omissions for its directors. Council members should also rely on professional advice from engineers, accountants and lawyers. Admittedly, there are practical and financial limits to such reliances as cost is a factor; however, it will be readily apparent to the average person on a strata council that certain issues will require third party, independent professional advice. If a council receives “heads up”

advice from a professional and chooses to ignore it, that certainly will compromise any comfort from the concept of “just doing my best”. Ignoring professional advice, or even failing to obtain professional advice when it is obviously required, may have negative implications on the benefits of the insurance policy. Also, just because the strata corporation’s insurance policy provides E&O coverage, there is no reason to disregard the responsibility vested with a council member to meet the “standard of care” required at Section 31.

Being on a strata council is generally viewed as a “thankless task”. While that may be somewhat true, it should never be a reason to not act properly, ethically and professionally or to ignore or short-cut the duties and obligations prescribed by the Act.

Most of the above article derived its content from Gerry Fanaken’s book Understanding the Condominium Concept: An Insightful Guide To The Strata Property Act

CCI – A NATIONAL PERSPECTIVE FROM YOUR COUNCIL REPRESENTATIVE

This past November, Toronto hosted the 2013 CCI Leaders forum alongside the 17th annual Condominium Conference. As the National representative from the Vancouver chapter, I had the opportunity to check this out first hand. Before I provide some input on this I want to back up a little.

Your Vancouver Chapter board of directors has been very active with many initiatives for education over the past number of years and I must firstly admit, being part of the local board, you do get caught up in our own little bubble “the strata world”. In many respects we forget the CCI is a National association with presence in most provinces across the country, all facing similar issues.

What does CCI National do for the individual chapters? This is a question we hear from time to time and after my trip to Toronto to meet with other chapters first hand I began to realize and understand the benefits of being part of a national association. The Canadian Condominium Institute is the voice of Condominiums with CCI National leading the charge. One of the overriding qualities I saw, there was one common goal – let’s try to make life easier for people in Strata and Condo Corporations.

CCI National has formed a number of committees in which each local chapter take part of. These are:

Education, Membership, Chapter Relations, Communications,

Constitution, Finance and Government Relations. Each one of these committees is focused on national delivery and they aid the local chapters by creating infrastructure and resources that we here in Vancouver can utilize to achieve maximum value to our members .

I was part of the education committee and one of their functions is to create a consistent approach. Whether you’re in New Brunswick, Calgary or Vancouver the message should be unified. We gather material from across the country to develop common themed education. Whilst the content may differ slightly due to legislation, the message is generally the same and by creating a consistent delivery, the process for each chapter becomes streamlined and efficient.

Another key goal CCI National is tasked with for 2014 is creating an effective communication strategy to the various chapters and to its members. All this in addition to keeping these committees moving forward. The National Board of directors has their work cut out!

In closing, having seen the support system we have in place from the CCI, I only see positive things happening to the Strata Marketplace here in BC. We are certainly lucky to have this National support system and I invite you to find out more by checking out www.ccivancouver.ca

Paul Murcutt – BFL CANADA



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