



President's Message

PRESIDENT'S MESSAGE

As we end one fiscal year and commence another CCI Vancouver is now entering its 13th year! Time has certainly flown by. We had steady membership growth and seminar attendance over the past 12 months and look forward to continuing growth as we continue to reach out to more and more strata councils, strata managers and individual owners as we work to grow our membership base and expand our condominium seminar programs.

Inside the newsletter is our "Year at a glance" that will identify the educational seminar events we have planned for the 2015/2016 fiscal year starting off with an educational seminar on insurance on September 19, 2015 that should not be missed. Insurance claims are on the rise and can be quite intimidating. Our panel of experts, including Tony Esposito, Claims Advisor for BFL Canada, Steven Page from Service Master Restore and Craig Segaric of ClaimsPro will walk us through an insurance claim from start to finish from the perspective of the broker, adjuster and the restoration company retained to perform the required repairs. Space is limited and you will need to pre-register (the registration form is included in this newsletter and can also be found on the website) so register early!

While May, 2016 is a long way off the highlight of the 2015/2016 year for CCI Vancouver will be when it hosts the Spring 2016 CCI Leaders Forum and Conference in Vancouver on May 26, 27 and 28th. Plans are well underway for this event which will include both social and educational events culminating in a Vancouver chapter seminar on Saturday, May 28th. Mark your calendars for what we are sure will be a wonderful event and an opportunity to showcase Vancouver to the rest of the CCI chapters across the Country.

Jamie Bleay – President CCI Vancouver

CASE LAW UPDATE

In a 50 page judgment issued on August 25, 2015 the Honourable Mr. Justice Armstrong of the B.C. Supreme Court appears to have put to bed a dispute between The Owners, Strata Plan NW 499 and Roderick Louis that dated back to 2008. The Judgment, which is cited as Strata Plan NW 499 v. Kirk, 2015 BCSC 1487, considered and addressed issues relating to strata fees and levies due and owing and the enforcement of a certificate of lien, the infringement of Mr. Louis's rights under the Canadian Charter of Rights and Freedoms

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(the “Charter”) and non-compliance by the strata corporation of the Strata Property Act (the “Act”).

Mr. Louis considered the strata lot at NW 499 to be his primary residence and he was solely responsible for payment of strata fees and special levies, property taxes, mortgage payments, utilities etc. Mr. Louis was not the registered owner of the strata lot but it was understood that he was the primary occupant of the strata lot and responsible for the costs associated with the use and occupation of the strata lot. Although not the registered owner Mr. Louis had been given an indefinite proxy as permitted under the Act by Nancy Kirk, who was the executrix of the estate of the will of Patricia Louis, deceased, who had owned the strata lot and who had bequeathed it to Roderick and his brother Timothy. The proxy appointed Roderick as her proxy to attend annual and special general meetings and stated

“I, Ms. Nancy J Kirk, owner of the strata lot described above, appoint Mr. Roderick Louis to act as my proxy beginning January 31, 2011 until indefinitely”.

By letter dated October 27, 2012 she advised the strata corporation that she was one of two parties on title to the strata lot and advised that the mailing list for all strata-related documentation was to be mailed to the strata lot address at the building, including council minutes, financial statements and notices of upcoming meetings and that the strata corporation was to consult Roderick regarding issues relating to the strata lot.

Subsequent issues arose over Roderick’s right to vote his proxy when the strata corporation formed the opinion the proxy was not valid. An issue also arose regarding delivery of annual general meeting notices, including the annual general meeting to occur on May 3, 2012 at which several bylaw amendments were approved. Notice of this meeting and other meetings and minutes of the meetings were sent to Timothy Louise but not to the address given by Ms. Kirk as the mailing address for strata-related documentation. The strata corporation chose not to send notices to that address because Mr. Louis was not the registered owner of the strata lot in question. Issues also arose regarding the delivery of post-dated cheques for strata fees. Mr. Louis had provided post-dated cheques to one property management company who was subsequently replaced by a second property management company. Mr. Louis became concerned that cheques that were to be returned to him might be cashed and

demanded return of the cheques provided to the first management company along with demanding that certain other conditions be met before he resumed making strata fee payments. These conditions were not met and he withheld his strata fees. Shortly thereafter the strata corporation commenced proceedings to collect the unpaid strata fees and associated costs.

Several defences were raised by Mr. Louis including the breach of his Charter rights, the lack of approval obtained by the strata corporation to commence forced sale proceedings against him and wrongly excluding him from the administration of the affairs of the strata corporation by not providing him with general meeting notices and minutes of those meetings and strata council meeting minutes which amounted to non-compliance with the Act such that all meetings, votes, etc. ought to be set aside.

With respect to the issue of non-compliance with the Act the Judge conducted an exhaustive review of a significant number of sections of the Act dealing with notices, voting rights, proxies, forced sale legal proceedings, preventing or remedying unfair acts and other court remedies against the strata corporation. The Judge also considered sections 2 and 7 of the Charter.

The Judge, after finding that Mr. Louis had standing to proceed to court pursuant to section 165 of the Act, made the following findings in connection with the breach of the Act by the strata corporation:

1. The strata corporation was in breach of the Act when it failed to give notice, as directed;
2. The strata corporation breached the Act by not allowing Ms. Kirk’s proxy to represent her at meetings and so doing denied a fundamental right of ownership and as against Mr. Louis prejudiced him, as the beneficial owner of the strata lot, to attend meetings, receive notices and minutes, etc.;
3. The strata corporation did not comply with section 171(2) of the Act in connection with the forced sale legal proceedings (and the Judge stayed the forced sale proceedings until the strata corporation complied with section 171(2) of the Act);
4. While the strata corporation acted badly against Mr.

CCI - Vancouver Board of Directors - 2014/2015

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Homeowner Protection Office
Lumon Canada Inc
Silvano Todesco
Strata Plan LMS 0744
Strata Plan LMS 1816
Victor Chan

Louis and was motivated by an animus such that the conduct was significantly unfair to him the Judge accepted as a fact that it would be “exceedingly prejudicial” to the strata corporation to set aside all of the votes and elections of the strata corporation since 2011/2012 because Mr. Louis did not receive the required notices and was not allowed to exercise Ms. Kirk’s proxy;

5. The Judge ordered the strata corporation to comply with its obligations and duties under the Act and to begin providing Mr. Louis with notices and other documents required under the Act to his strata lot address in the building and deliver copies of all minutes since 2011 to Mr. Louis;

6. The Judge ordered the strata corporation to recognize Mr. Louis as the lawful holder of Ms. Kirk’s proxy; and

7. That the Charter does not apply to the governance of residential strata properties, being regulated by the Act which the Judge stated “is intended to facilitate private individuals living in a community like scheme and regulating behaviours to facilitate management of the strata property. This is a private relationship that is not government or government-controlled activity.” The Judge went on to state that the Charter did not assist Mr. Louis’s claim that he was entitled to withhold paying strata fees and levies on the basis that the process undertaken by the strata corporation infringed his rights under the Charter.

The Judge adjourned the strata corporation’s application for judgment against Mr. Louis for strata fee arrears and an order for sale and conduct of sale pending approval of that legal proceeding by the strata corporation based on his interpretation of section 171(2) of the Act.

Editor’s note: This decision is quite interesting and informative for a number of reasons the least of which is that the Judge considered how a person, although not an “owner” as that term is defined in the Act, can seek redress from the court for perceived significantly unfair actions and prejudicial treatment by a strata corporation in connection with the exercise and performance of its powers and duties under the Act. Unfortunately it appears the Judge did not consider and apply the decisions of Strata Plan VR 1008 v. Oldaker, 2003 BCSC 1900 and Strata Plan VR 1008 v. Oldaker (2004), 29 B.C.L.R (4th), 121 (S.C.) which held that section 171 of the Act did not apply to a strata corporation’s petition commenced pursuant to section 117 for a forced sale order of the strata lot of an owner who defaults in making strata fee payments.

A REVIEW OF THE VOTING THRESHOLD

By Cora D. Wilson, J.D.

Many strata corporations question how to raise money to obtain a depreciation report or to address depreciation report recommendations at a general meeting of owners and whether related resolutions may be amended at general meetings.

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STRATA PROTECT

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There could be consequences if a resolution is struck down since the resolution forms the funding foundation and confirms the scope of work. If the resolution falls, then so does the mandate, including the ability to collect the assessments. Contractors and others rely upon this mandate for payment. The process could become a house of cards.

Legislative Amendments

Recent amendments to the Strata Property Act ("Act") make it easier for strata corporations to repair and maintain their buildings. Effective April 9, 2014, the Strata Property Act (the "Act") was amended to change the threshold vote from a $\frac{3}{4}$ vote to a majority vote to fund expenditures out of the contingency reserve fund (the "CRF") to obtain a depreciation report and to pay for the work recommended in the most recent depreciation report (ss. 96(b)(i) (A) (I) & (II), Act). A further amendment permits a strata corporation to include expenditures to obtain a depreciation report as part of the annual budget which requires a majority vote for approval. Special levy resolutions and other non-emergency CRF expenditures still require a $\frac{3}{4}$ vote of owners at a general meeting (s. 108, Act).

The objective of the legislation was to make it easier for strata corporations to proceed with repair programs recommended in a depreciation report in a planned, reasonable and timely fashion to meet the mandatory statutory duty to repair imposed by the Act.

Resolutions

There are essentially 3 different types of resolutions at issue when addressing owner approval for the above expenditures at a general meeting, summarized as follows:

- (a) Budget Resolution: A resolution to approve the annual budget by majority vote at an annual general meeting ("AGM") which includes a line item to obtain a depreciation report payable out of the operating fund (annual or greater than annual expenditures);
- (b) CRF Resolution: A resolution to approve funding to obtain a depreciation report or act on the recommendations set out in such a report payable out of the CRF (greater than annual expenditures) by majority vote at a general meeting; and,
- (c) Other Resolutions: A resolution to approve funding for all other greater than annual repair expenditures by special levy or out of the CRF requiring a $\frac{3}{4}$ vote of owners.

It is important for strata corporations to distinguish between operating expenditures which "usually occur either once a year or more often than once a year" (the budget) requiring a majority vote and other expenditures which "occur less often than once a year or that do not usually occur" (s. 92, Act). Prior to the legislative amendments, the latter expenditures with limited statutory exceptions required a $\frac{3}{4}$ vote for approval. The legislation created exceptions to the general rules by lowering the threshold vote to address depreciation report matters to a majority vote. Currently, if the CRF is inadequate to

cover depreciation report expenditures and such expenditures are not included in the annual budget, then a special levy requiring a $\frac{3}{4}$ vote would be necessary to provide funding approval.

Prior to the recent legislative amendments, only expenditures that "usually occur either once a year or more often than once a year" could form part of the operating fund and CRF expenditures that "usually occur less often than once a year or that do not usually occur" required a $\frac{3}{4}$ vote (s. 92, Act). The Act previously prohibited the inclusion of CRF type expenditures in the budget.

There is a significant difference between a majority vote and a $\frac{3}{4}$ vote. For example, if there are 100 strata lots in the strata corporation and everyone attends and votes (no abstentions), then majority vote approval requires 51 votes in favour as compared to 75 for a $\frac{3}{4}$ vote. Legislative amendments lowering the threshold vote is viewed as a major and a welcome change.

In order to illustrate the impact of the legislative changes, we will review typical situations facing many strata corporations.

Scenario 1: Budget

The strata corporation wishes to obtain a depreciation report for the first time. The budget sent to the owners as part of an AGM Notice Package budgeted \$10,000.00 for this purpose, being the amount paid by a neighboring strata corporation. Prior to the AGM, the council received confirmation that the cost to obtain a depreciation report is \$15,000.00.

The strata corporation prepared and send a notice package for the AGM to the owners in the customary course of events, including an Agenda and a draft budget. A line item in the budget included \$10,000.00 to obtain a depreciation report. Otherwise, no specific resolution was included on the Agenda or in the Notice of Meeting to address this expenditure. After the notice package was sent to the owners, but prior to the AGM, the strata corporation received a quote of \$15,000.00 to prepare the depreciation report from a qualified person being \$5,000.00 more than the line item amount set out in the draft budget.

Can the depreciation report costs be included as part of the annual budget, and if yes, can the budget be increased by \$5,000.00 at the AGM to cover the costs to obtain the report?

In this case a depreciation report has never been obtained by this strata corporation. Therefore, this expenditure may be characterized as a "one-time non-emergency expenditure" or a "greater than annual expenditure". Before April 9, 2014, the Act required the owners by $\frac{3}{4}$ vote to approve such expenditures out of the CRF or by special levy at a general meeting. After April 9, 2014, the legislative amendments permit funding out of the operating fund to the extent "necessary to obtain a depreciation report under section 94" (s. 92(a) (ii), Act). In other words, this expenditure can form a line item in the annual budget which requires a majority vote for approval as long as it is "necessary" for the purpose intended. A majority vote is much easier to obtain as compared with a $\frac{3}{4}$ vote.

Can the owners amend the budget at the AGM to increase the line item to obtain the depreciation report from \$10,000.00 to \$15,000.00? Yes, as long as the budget does not exceed what is "necessary" to obtain the depreciation report and the amendment to the budget is addressed before the budget itself is put to a vote (s. 103(3), Act).

If the amendment and the budget are both approved by a majority vote of owners, then the expenditure to obtain a depreciation report will be authorized. Thereafter, the strata corporation may make the expenditure out of the operating fund in the ordinary course.

What if the cost to obtain the depreciation report is actually \$15,500.00, or \$500.00 over the approved budget amount. How does the strata corporation address the additional cost?

The easiest process is for the council to authorize the additional funds as an unbudgeted unauthorized expenditure payable out of the operating fund pursuant to s. 98 (2) of the Act. The expenditure must be “necessary” to obtain the depreciation report and subject to the bylaws, the expenditures cannot exceed “\$2,000.00 or 5% of the total contribution to the operating fund for the current year, whichever is less” (s. 98(2)(a) & (b), Act).

Strata corporations should consider amending its bylaws to ensure that such expenditures are reasonable given the size, complexity and age of the complex. It is not unusual to see a \$10,000.00 ceiling for a 25 unit complex or \$20,000.00 ceiling for a 50 unit complex.

Scenario 2:

The strata corporation is concerned that the roof has lived out its service life and requires replacement. An owner who paints for a living estimated that the roof replacement cost would be around \$300,000.00. The depreciation report recommends immediate replacement of the roof. The lion's share of owners indicated a willingness to authorize this expenditure. The strata

corporation called a special general meeting (“SGM”) to approve the roof replacement costs recommended in the depreciation report by majority vote. After calling the meeting, the strata corporation received three estimates to replace the roof from qualified roofers. The lowest quote was \$450,000.00. The owners are shocked. What should the strata corporation do to address this situation?

The strata corporation should seek legal advice immediately. There are many questions, including whether the meeting should proceed since the roofing quote has increased by a substantial amount. Can the resolution be amended at the general meeting? From a political perspective, will the owners support the increased expenditures? What is the process?

First of all, a specific resolution authorizing expenditures out of the CRF must be included in the notice package. The resolution should address in sufficient detail the nature and the scope of the mandate for the expenditures. In other words, a resolution merely authorizing expenditures for “roof replacement” is not sufficient. The resolution should address the scope of the work. The roof replacement scope may also include work to the building envelope, wall to roof interfaces, soffits, eavestroughs and landscaping, for example. It should include a contingency for unforeseen expenditures to address mold, rot or other unforeseen work, together with an approval structure for change work orders. Moreover, it should authorize expenditures for permits, warranty, professionals and legal. There are many other considerations.

A strata lawyer should be retained to draft the resolution and address

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whether the CRF expenditures qualify for approval by a majority vote. If a portion of the scope of work is not recommended in the depreciation report, then payment for such expenditures cannot be authorized out of the CRF. For example, one must ask whether landscaping costs to remedy damage from scaffolding during a roof replacement project is related to the roof replacement. It likely is. However, if scaffolding is not required to access the roof, then such an expenditure cannot be included as part of the proposed CRF expenditure by majority vote. A $\frac{3}{4}$ vote would be required to authorize this expenditure.

There is no case law yet on this issue. However, it is anticipated that owners will challenge the jurisdiction of the strata corporation to make expenditures by majority vote out of the CRF which exceed the legislative mandate. Caution is recommended.

The proposed expenditure must meet the following test in order to qualify as a majority vote for expenditures out of the CRF:

“the expenditure is related to the repair, maintenance or replacement, as recommended in the most recent depreciation report obtained under section 94, of common property, common assets or portions of a strata lot which the strata corporation has taken responsibility for under section 72(3), ...

There could be a question regarding whether a limited common property rooftop area for a penthouse owner is “common property”. Are the costs to remove, dispose of and possibly replace improvements such as a hot tub, decking and other improvements constructed over the roof and the roofing membrane qualifying expenditures? These are complex considerations.

A strata corporation must comply with the statutory preconditions set out in the Act to the letter. The roof replacement resolution qualifies since roof replacement to common property was recommended in the current year by the most recent depreciation report. However, it is not clear whether other expenses which appear to be related to the roof replacement project qualify for approval by a majority vote. More information is required.

What happens if the CRF is insufficient to pay for the proposed remedial work? In my view, the strata council may be in breach of its standard of care if it presents a resolution for approval knowing that there are insufficient funds available in the CRF to cover the proposed expenditures on the date the resolution is presented for approval. Such action could expose the strata corporation and its council to unnecessary and unquantifiable liability. For example, a properly worded agreement could grant a contractor the right to walk off the job if there are insufficient funds available to pay the progress draws as they fall due. If the contractor walks after the roof is removed, then the consequences could be catastrophic to the Strata Corporation particularly if the building envelope is exposed to the elements during the rainy season.

If funds are limited, the strata corporation could consider phasing the work. This would be feasible where there is more than one building in the project. In this event, the strata corporation could perform the most urgent work now within the available CRF budget and perform the remaining work at a later date. The resolution should reflect an intent to phase the work and delegate decision making authority regarding the phasing plan to the council.

Can the resolution authorizing expenditures out of the CRF by majority vote be amended at the special general meeting (“SGM”)?

Section 50(1) of the Act prohibits amendments to the proposed wording of a $\frac{3}{4}$ vote if the amendment substantially changes the resolution. In my view, increasing the expenditure from \$300,000.00 to \$450,000.00 is a substantial change. If the amendment reduced the proposed expenditure to \$250,000.00, for example, then some argue that this is not a substantial change. In my view, an “insubstantial change” is limited to correcting a typo or punctuation.

However, the proposed resolution calls for a majority vote – not a $\frac{3}{4}$ vote. In my view, an amendment to the resolution is not caught by section 50(1) of the Act. Section 50 only applies to a $\frac{3}{4}$ vote resolution. It does not apply to a majority vote. Therefore, the amendment is permissible, but the change would not be acceptable if the CRF funding is otherwise inadequate.

It is now easier to obtain a depreciation report and to raise the funds for recommended major repairs. However, this is not a licence for short cuts. The qualified professionals should be brought in at an early stage, including the strata lawyer, building envelope professional and others, to assist with the planning and implementation process to ensure a smooth and successful outcome which minimizes disputes and liability.

CONDOMINIUM FRAUD

What can you do about it?

Fidelity claims have risen over the last 10 years. Often, the average loss is quite high because theft of funds has taken place over a number of years. For example: September 2011 in Toronto, a property manager conned several condominium corporations out of a total of \$20 million dollars. May 2011, a group of BC condominium owners are upset because Canada’s largest Credit Union allowed the treasurer of their complex to cash about \$50,000 in cheques that were payable to others. May 2007, a strata management company in BC was under investigation for a shortfall of hundreds of thousands of dollars from corporation trust accounts.



Why does fraud occur?

- **Pressure** – what motivates a person to commit fraud? Unexpected emergency costs, spouse losing a job, the desire to keep up with “The Jones”
- **Opportunity** – the circumstance that arises in which a person believes they can commit fraud without detection.
- **Rationalization** – the ability of a person to justify their actions to some standard of acceptable behavior. This is

evidenced by statements such as “I will repay it and no one will know;” “it’s such a small amount nobody will miss it;” or “I have worked so hard that I deserve a little bonus;” Once reasoning is satisfied, the person doesn’t think they are committing a fraud.

The combination of pressure and opportunity can make seemingly honest employees, or Board members turn to criminal acts.

What can a Board do to protect itself from fraud?

1. Do thorough reference checks on all parties that the Corporation is engaging, including the property manager.
2. Ensure cheques are pre-numbered, so they can be filed in chronological order and easily tracked.
3. Pay the administration fee to have your cashed cheques returned to you.
4. Do NOT pre-sign cheques and trust that all cheques are safely locked up.
5. Do NOT make cheques payable to “CASH” but rather to the person who should receive the cash.
6. Record the purpose of the cheque on the face of the cheque.
7. The Corporation should not give the property manager sole authority to sign cheques. At a minimum, all cheques should be signed by one board member along with the manager.
8. Before paying any invoice, confirm that the Board has approved the expenditure.

9. Ensure that any cheques to be signed are accompanied by supporting documentation, such as an invoice.

10. Confirm before signing the cheque that the goods and/or services have been received in proper condition, or work completed to the reasonable satisfaction of the Board.

11. Check to see that the invoice has been properly calculated before paying.

12. Once paid, mark the invoice “PAID” and record the cheque number on the invoice. File the invoice and cheque stub in order of the cheque number.

13. Ensure that the person who receives the banking records and carries out the reconciliation is different than the person who prepares or signs the cheques.

14. Financial statements should be prepared on a monthly basis and compared to budget, which will allow the Board to identify unfavorable variances, trends and unusual expenditures.

15. Verify the monthly reconciliations with the actual statements from the Bank. When in doubt, ask questions until you get satisfactory answers.

16. Minutes provide a historical record of decisions made and proof that the Board has met its responsibilities. Ensure sufficient details are recorded pertaining to approval of the monthly reconciliation in the Minutes, as well as other information such as names of contractors that have provided bids on a job along with their pricing and the Board decision. A common fraud where condominiums have been affected is



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HOUSING MATTERS

through work related contracts. A corporation in Toronto was the victim of a fraudulent bid for major repair work on the condominium. It is alleged the corporation, controlled by the manager, submitted the lowest bid, but once work started, the contract price escalated. The work was performed by a subcontractor for half of the bid price. Apparently the manager was able to land the management contracts with the condominium corporations by submitting bids that were lower than others.

17. Have your accounts independently and professionally audited, at least annually.

18. Consult with your insurance broker to confirm that the corporation has the appropriate fidelity bond and endorsements on employees, directors, officers, property managers and/or anyone else handling condominium funds.

Who's responsible to insure and/or protect condominium funds?

Corporation:

- The funds for an individual corporation belong to the corporation, and as such should be insured by the Corporation. Will your property manager place the insurance for the Corporation's building(s) on their policy? No, and nor should they place the insurance for the theft of corporation's funds under their policy.
- By placing coverage under the corporation's policy allows for protection of theft of corporation funds from an employee, director, officer, or a property manager.
- The Corporation owns the policy and therefore as the Policy owner, is the only entity that has rights to cancel this policy.



- The Corporation can ensure that the correct limit is insured, and make changes to the limit at any time.

Property Manager:

- Your property manager, as an agent to the Corporation, manages Corporation Funds, as authorized by the Board.
- Your property manager may have a fidelity bond, of which the intent is to protect the owner of the management company from his employees stealing from him.
- A fidelity bond provided by the manager will not protect the Corporation if a director or officer absconds with Condominium funds.
- A fidelity bond provided by the manager may not have a limit that reflects the exposure of the individual condominium.
- A fidelity bond provided by the manager can be changed or cancelled by the manager at any time, without notice to the corporation.

It becomes easier for fraud to occur when those in charge don't ask questions and blindly trust those handling the funds. A key factor in strengthening a condominium's system of internal controls is having a diligent board of directors that does not believe in simply "rubber stamping" its financial transactions. Carry out an in depth review of the monthly financial statements and carefully examine supporting documentation before signing cheques.

More controls in place won't eliminate all fraud; however, it will make everyone aware and make it more difficult for theft of condominium funds.

DIRECTORS HEED YOUR DUTIES OR BEWARE!

Being elected to the board of a condominium corporation comes with many duties and obligations. Directors have a duty to act in good faith and in the best interests of the all of the owners. The Board as a whole has a duty to ensure compliance with statutory responsibilities, including maintenance and repairs of the common elements. Where board members fail in their duties, unit owners pay the price. Two recent cases highlight this point.

Wu v. Peel Condominium Corporation No. 245

In the case of *Wu v. Peel Condominium Corporation No. 245*, the complainant owned a unit on the top floor of a high-rise condominium. Her unit was directly under the level which houses the building's mechanical, elevator, and HVAC equipment. She claimed that she started experiencing an unacceptable level of noise and vibration in her unit. Others made the same or similar complaints.

PCC 245 retained experts who confirmed that there was a problem but the board did not take meaningful steps to correct the problem. The problem persisted. The board eventually told the complainant that it would not address the problem because it had determined that an alteration in her unit might not comply with a city by-law. The allegation was factually and legally without merit. The alteration at issue had been done years ago by a current board member and the board's president had knowledge of the alteration shortly after the work had been done. The status certificate issued to the complainant when she purchased the unit did not mention the alteration.

The owner brought an application in court for relief from oppression which PCC 245 vigorously defended. PCC 245 claimed that it simply had not had time to fix the problem, that it had followed its engineer's advice, blamed the complainant for causing the problem, claimed its \$400,000 elevator refurbishment program was done to appease the complainant, and, finally, attacked the complainant's credibility.

The court found that PCC 245's conduct amounted to oppression, unfair prejudice, and disregard for the owner's interests. The Court ordered PCC 245 to pay the complainant's damages for oppression in the amount of \$30,000 and ordered PCC 245 to return to court to outline its repair plans. In the end, the owners of PCC 245 ended up paying the cost of repairing the elevators (repairs that it had been avoiding for so many years) as well as a \$30,000 damage award, its own legal costs, and \$20,000 of the complainant's legal costs. The majority of these costs could have been avoided if the board had simply dealt with the problem instead of finding reasons not to.

This and a few recent cases from British Columbia and Alberta show that courts are taking steps to ensure that management and boards of directors carry out their obligations to maintain and repair the common elements.

Ballinal et al v. Carleton Condominium Corporation No. 111 et al

In the case of *Ballinal et al v. Carleton Condominium Corporation No. 111 et al*, four unit owners brought an application against their condominium corporation relating to enforcement of the single family use provision in the corporation's Declaration. They also applied for oppression remedies against the corporation as well as against individual board members. Despite having a single family use provision in its Declaration, many owners rented out their units to groups of students. There were attempts to pass a rule defining "single family use". The issue was discussed at owners meetings and letters were sent to owners in breach of the rule. Emotions ran high and board members resigned.

The board president was one of the owners who rented out units to students. He vigorously fought and campaigned against the enforcement of the single family use provision.

The court made findings against the board president, holding that he had breached the standard of care as a director by not acting honestly and in good faith. The court found that in his campaign against one of the proposals to define "single family use", the president misled unit owners, undermined the board, and criticised the corporation's solicitor on his website.

The board president claimed that those acts were done in his capacity as an owner and not as the president. The court did not accept this explanation. The court looked at his behaviour as a whole and found that it did not meet the standard of a reasonably prudent director. The court however did not award damages for the conduct.

Being a board member is not easy. It often involves overseeing a large budget and making tough decisions that will affect fellow owners and neighbours. These two cases illustrate the need for board members when carrying out board duties to act in a business-like manner, not to promote their own self-interest, and to ensure that their decisions are made after considering the best interests of the all of the unit owners.

This publication is provided as an information service and may include items reported from other sources. We do not warrant its accuracy. This information is not meant as legal opinion or advice.

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CIVIL RESOLUTION TRIBUNAL (CRT) UPDATE

On Tuesday June 2, 2015 the Honourable Suzanne Anton, Minister of Justice and Attorney General of British Columbia formally announced the appointment of the 18 tribunal members to deal with and decide strata property and small claims cases that fall within the jurisdiction of the B.C. Civil Resolution Tribunal, Canada's first online tribunal, once the tribunal becomes fully operational. The appointees include:

1. Maureen C. Abraham
2. Maureen Baird, Q.C.
3. Wendy A. Baker, Q.C.
4. Kathryn A. Berge, Q.C.
5. Jamie Bleay
6. Colleen Cattell, Q.C.
7. Bonnie S. Elster
8. Andrew Gay
9. Julie K. Gibson
10. Angus M. Gunn, Q.C.
11. Richard Hoops Harrison
12. Kamaljit K. Lehal
13. Michael Litchfield
14. Barry Long
15. Elaine T. McCormack
16. Andrew Pendray
17. Patrick A. Williams
18. Cora D. Wilson






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A list of past Strata Education Seminars is available on the CCI Vancouver website at ccivancouver.ca

2015	
September 19th	½ Day Seminar and AGM Understanding an insurance claim from beginning to end
November 12th	Evening Seminar The rights and wrongs – how to deal with smoking in a strata
2016	
January 21st	Evening Seminar Who does what? Responsibilities and the Strata Council's Role
February 20th	½ Day Seminar Financial Management for Strata Councils
March 10th	Evening Seminar Nomination and Elections in Strata Corporations
April 21st	Evening Seminar Meeting Minutes
May 21st	½ Day Seminar Repair and Maintenance
June 23rd	Evening Seminar Strata Council Members' Code of Ethics

More information for each seminar will be available on the CCI Vancouver website as each seminar date approaches. If you would like to be notified of seminar details via e-mail, please subscribe to our e-news on the website.

All topics and dates are subject to change.

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- **Steven Page**, ServiceMaster Restore
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CCI Vancouver Half Day Strata Seminar and AGM

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INFORMATION BULLETIN EARTHQUAKE

It is important as a Unit Owner, that you know the Strata Corporation's earthquake deductible and the amount you may be assessed in the event of an Earthquake loss.

A discussion with your Personal Insurance Broker regarding Earthquake coverage is where you should start. To facilitate the process, it would be a good idea to have a copy of the **Strata Corporation's Certificate of Insurance** or **Summary of Coverages** for the current policy period at hand.

An earthquake deductible can be significant: **10%; 15% or higher of the Building Replacement Limit**. This amount would be shared amongst the strata lots based on unit entitlement. **All Unit Owners must pay their share of the Strata Corporation's deductible.** Repairs will not commence until the Strata Corporation can pay the deductible.

CALCULATION - Example Earthquake deductible	
Based on a Townhouse complex; 50 units; 5 building; 10 units per cluster	
Total Building Replacement limit: \$20,000,000	(5 buildings may be of equal value \$4,000,000 each)
Total Deductible (10%) Earthquake = \$2,000,000	(10% Deductible per building \$400,000)
Divided by 50 Unit Owners, each could be faced with an assessment for as much as \$40,000.	
With a policy provided by BFL Canada the Earthquake deductible applies to each building separately. That means if only 1 of the 5 clusters is damaged. The deductible would <u>only</u> apply to that building.	

KNOW YOUR RISK:

You should clearly understand your obligation to manage your risk and what you can do to protect yourself as a Unit Owner and as an entire Strata Corporation. It is ideal to know the following:

REMEMBER

1. Review your unit entitlement.
2. Review what your portion would be for repairs on the Strata Corporation in the event of an Earthquake.
3. **Talk to your Insurance Broker**
4. Review your Unit Owner policy
5. Review the deductible on the Strata Corporation's policy deductible assessments is enough to cover the Strata Corporation's earthquake deductible.

CHECK

1. Do you have earthquake coverage on your contents?
2. Do you have resources for your personal deductible or a special levy?
3. Confirm what is INCLUDED
4. Confirm what is EXCLUDED

This bulletin is for information purposes. Please check all resources and talk with your insurance broker

INFORMATION BULLETIN EARTHQUAKE

EARTHQUAKE DAMAGE IS BELOW THE STRATA CORPORATION'S DEDUCTIBLE:

If the damages are below the deductible amount, the Strata Corporation would convene a special general meeting once the estimates for repairs are established, and pass a 3/4 vote special resolution approving a special levy for that specific amount **out of your own pockets**. **Some insurance policies MAY help with repairs that are lower than the Strata Corporation's deductible. All insurance policies differ. Please confirm what is covered with YOUR PERSONAL Insurance Broker**

You have to purchase earthquake coverage on your Personal Insurance policy, as earthquake is not an automatic inclusion and does not automatically cover your potential limits. Your own Personal Insurance Policy will also have a deductible for earthquake. You may have significant damage to your contents. Deductibles on contents coverage may range from 8% - 15% (e.g. with a \$40,000 limit for contents coverage, the deductible would be \$3,200 - \$6,000).

YOUR PERSONAL POLICY

Personal Property: in general terms, this coverage includes all the content items a unit owner brings into the unit and move in and out of your unit or keeps in a storage locker on premises, such as furniture, electronics, clothing, jewelry, art collections etc. Most policies will also cover the personal property

while it is temporarily off premises, on vacation for example.

Additional Living Expenses: This coverage helps unit owners and their families deal with the extra expenses which can often result if the home is made unfit for occupancy due to an insured loss or damage. Whether it is a fire or significant water damage due to no fault of their own, unit owners may have to move out while their unit is being repaired. In the case of an investment unit, this coverage helps pay the owner's rental income loss due to the tenant moving out. An example would be if you had to live in a motel while your home is being fixed after a claim.

Betterments & Improvements: Many unit owners spend considerable money making the unit their own; old carpet is replaced with hardwood flooring, cabinets and counter tops are updated and fixtures modernized to the 21st century. The unit owner's personal insurance policy provides coverage for these items, which are specifically excluded from coverage under all strata corporations' insurance policies.

Personal Liability: At home or pretty much anywhere in the world, unit owners' policies also provide comprehensive protection for claims against them for property damage and bodily injury. (i.e. if you left a candle unattended and the entire complex burned down as a result). Personal Liability coverage would pay for everyone else's lost possessions.

This bulletin is for information purposes. Please check all resources and talk with your insurance broker

BEFORE THE EVENT - Know your needs and have a family disaster plan in place for your unique situation and practice it. Know what it means to Drop, Cover and Hold On. Know where you and your family will reunite following an Earthquake

October 16, 2014 is "ShakeOut British Columbia Day "

Practice how to **Drop, Cover, and Hold On** at 10:16 a.m. during **Great ShakeOut Earthquake Drills!** Register at <http://shakeoutbc.ca/>. If you cannot hold your ShakeOut drill on October 16, 2014 select another day and time.

1. **Make an appointment now with your insurance broker to talk about your earthquake insurance.** Check your coverage... it will affect your loss after an earthquake.
2. **Identify all the safe spots in your home and surrounding complex.**
Safe: under heavy tables or desks; inside hallways; corners of rooms or archways.
3. **Have an emergency preparedness kit and make sure your family knows where it is kept.** Prepare to survive for at least 72 hours.
Items should include:
 - First aid kit and instructions
 - Blankets; tarp; or a small tent.
 - Non Perishable Food and nutritious snacks
 - water purification tablets
 - Manual Can opener
 - Flashlight and spare batteries
 - Portable radio AM/FM and spare batteries
4. **Other items you may wish to include:**
Essential meds; toiletry items; fire extinguisher; Wrench; gloves, clothing-winter/summer; waterproof matches; candles; money, bottled water; cooking utensils.
5. **Know First Aid & CPR – at least one person in the family**

DURING THE EVENT - The best thing to do is stay where you are and take cover.

INDOORS

- If you are indoors, take cover under a heavy table, desk or any solid furniture that you can get under and hold onto. Protect your head and face. *Safe places are inside halls, corners, in archways. Avoid areas near windows.*
- If you are caught in an elevator hit all floor buttons and get out as soon as possible. *High rise building residents will hear fire alarms go off and electricity may fail.*

OUTDOORS

- If you are outside your home, stay clear of buildings, overhead wires .
- If you are in a vehicle, pull over and keep away from bridges, overpasses and buildings. **Stay in your vehicle.**

IN GENERAL – Remain in a protected place until the shaking stops. Anticipate aftershocks; Do not use open flames; Try to remain calm and help others.

AFTER THE EVENT - Remain Calm. Check and follow your family plan you have in place. **Be careful.** There may be danger from aftershocks, fires, falling building materials, debris, etc.

- Check yourself and others for injuries.
- Administer first aid.
- Check utilities.
- Check your home for structural damage and other hazards. sturdy shoes, gloves and protective clothing for weather & e.g broken glass.
- Secure your home against possible intruders.
- Keep your phone handy. Use only if necessary.
- Turn on your portable radio to hear or follow emergency information.
- Place a HELP sign in windows if you need extra assistance.
- Nearby sewer lines may be broken. Do not flush toilets
- Stay away from fallen power lines.
- Avoid waterfront areas due to threat of large waves (tsuna

RESOURCES

Local information on how to prepare for an earthquake is available from **your Municipal Emergency Program Coordinators at your City Hall, Municipal Hall, or District Office.** Assistance also available from Officials at your local hospital, police and fire station.

For further information contact: Your Local Emergency
<http://embc.gov.bc.ca/em/index.html>

Other sources for additional information include:

- **Emergency Management BC**
Victoria (250) 952-4913 or an [EMBC Regional Office](#)
- **Emergency Preparedness Canada**
Victoria (250) 363-3621
- **Insurance Bureau of Canada**
Vancouver (604) 684-3635
- **Red Cross**
www.redcross.org Mobile applications (**Social Tool Emergency**) are available for download on the AppleS Apps and Google Play.
- **Canadian Red Cross** <http://www.redcross.ca/where-work/in-canada/british-columbia-and-yukon>
- **The Great British Columbia ShakeOut** - Participate www.shakeoutbc.ca
- **If you require more information, please send a written request to:**

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Vancouver, B.C V6C 3A8 Fax: (604) 294-1524



Canadian
Condominium
Institute



Institut
canadien des
condominiums

Vancouver Chapter

Your Condo Connection to Education

**Your CCI Strata Membership Offers Access to Information, Education and
the Expertise of Hundreds of Strata Professionals**

Strata Council Members have a substantial responsibility to govern and manage their Strata Corporation properly. They are called upon daily to make prudent and effective business decisions that affect the lives of all their strata residents. Through membership in CCI Vancouver, Strata Council Members need not feel alone. The knowledge and information they will gain from other Strata Council Members and Industry Professionals will not only benefit them, but their entire strata.

Membership Benefits to:

Strata Council Members

CCI Vancouver offers opportunities to attend Educational Seminars and Courses designed to inform you of your duties and responsibilities as a Strata Council and understand how your Strata Council should operate and function.

Strata Owners

CCI Vancouver will enable you to keep informed and up to date on changes in government legislation. Newsletters, seminars and educational materials will provide you with knowledge and information needed to protect your investment and live in harmony with your fellow owners.

When a Strata Corporation becomes a CCI Vancouver Member, **all the Owners and Council Members** in the strata benefit from the membership which includes:

- Registration for CCI Vancouver **Strata Educational Seminars** at a discount rate
- Access to the resources in the **Members Only** area of the CCI Vancouver website, including the Chapter's **Condo News Publication** archives
- Access to the resources in the **Members Only Area** of the CCI National website, including the **National News Publication** and legal case archives

**Your Strata Corporation could be the winner of the Strata of the Year Contest
(only members of CCI Vancouver are eligible for nomination)**

To be notified of our upcoming Strata Educational Seminars and Courses subscribe to our E-News

For More Information or to Become a Member

email: contact@ccivancouver.ca or

Call: 1.866.491.6216

www.ccivancouver.ca



Canadian Condominium Institute – Vancouver Chapter Advertising Opportunities in Condo News Publication

Condo News is a quarterly publication of CCI Vancouver Chapter circulated to all members of CCI Vancouver via e-mail. Read the President's Message, case law updates, strata articles, interesting feature articles and much more. All **Condo News** issues (archived and current) are available to CCI Vancouver Members for downloading in PDF format from the Members Only area of the chapter's website. Advertising and article submission opportunities are available only to members of CCI Vancouver.

Advertising Submissions

- Please provide your photo quality advertisement in either an electronic format or camera-ready, suitable for scanning. (Inkjet print-outs are not acceptable).
- Scanned images must be in a high resolution of at least 300 dpi.
- Electronic files must be submitted in .tiff or .pdf format.
- PDF files should not be converted from colour to black & white.
If the ad is to be in black & white, the original file must be in black & white. If the ad is to be in colour, the original file must be in colour.
- Ad copy submitted should be sized to the ad requirements (see ad sizes below).

Advertising Rates 2015 / 2016

Size	Members Black & White	Members Full Colour
Business Card - 3.33" w x 1.83" h	\$ 75.00	\$ 100.00
¼ Page - 3.5" w x 4.75" h	\$ 150.00	\$ 350.00
½ Page 7" w x 4.75" h (Landscape) 9.5" w x 3.5" h (Portrait)	\$ 350.00	\$ 750.00
Full Page - 7" w x 9.5" h	\$ 600.00	\$ 1,150.00
Back Cover		\$ 1,200.00

Rates are based on a per issue basis.

Contact us at contact@ccivancouver.ca for special discounted rates for 4 quarterly issues.

Please send advertising submissions to the chapter's e-mail address: contact@ccivancouver.ca

Payment must be received by CCI Vancouver Chapter prior to printing.

Condo News Ad Payment for Size

Colour or B&W

Contact Person _____
 Company Name _____
 Address _____
 Phone () _____
 E-Mail Address _____
 Fax () _____

For more information email: contact@ccivancouver.ca

or go to www.ccivancouver.ca

Note: Charges will appear on credit card statement as Association Concepts.

MAKE CHEQUE PAYABLE TO CCI VANCOUVER AND MAIL TO:

P.O. Box 17577 RPO, The Ritz, Vancouver, B.C. V6E 0B2

or BY CREDIT CARD:

Credit Card: ☐ Visa ☐ Mastercard

Credit Card Number _____

Expiration Date _____ / _____

Name on Card _____

Signature _____



CCI VANCOUVER 2015 / 2016 EDUCATIONAL SPONSORSHIP OPPORTUNITIES

CCI Vancouver regularly hosts well-attended Educational Seminars providing knowledge, information and networking opportunities to equip strata council members and individual owners with the skills and knowledge necessary to conduct the affairs of a strata corporation.

Sponsorship opportunities are available for these events providing Business Partner members with an excellent opportunity to gain industry-wide recognition while supporting CCI Vancouver.

Continental Breakfast Sponsorship (½ Day Seminars) Includes:

\$500

- Sponsor's logo on event promotional e-blasts
- Logo linked to the sponsor's website on the seminar page of the CCI Vancouver website
- Name and logo on event signage
- Two complimentary guest registrations
- Opportunity to introduce the seminar speakers at the beginning of the seminar
- Recognition from time to time during the course of the seminar
- Recognition in the post-event write up in the next issue of Condo News Publication

Coffee Break Sponsorship Includes:

\$300

- Sponsor's logo on event promotional e-blasts
- Logo linked to the sponsor's website on the seminar page of the CCI Vancouver website
- Name and logo on event signage
- Two complimentary guest registrations
- Recognition from time to time during the course of the seminar
- Recognition in the post-event write up in the next issue of Condo News Publication

\$3400

Special Sponsorship Package for all 8 Seminars Includes:

~~\$3,900~~

- **\$500 discount**
- Sponsor's logo on event promotional e-blasts
- Logo linked to the sponsor's website on the seminar page of the CCI Vancouver website
- Name and logo on event signage
- Two complimentary guest registrations
- Recognition from time to time during the course of the seminar
- **Half page colour ad in one issue of Condo News Publication (Sponsor needs to provide the ad) (\$750.00 value)**
- Recognition in the post-event write up in the next issue of Condo News Publication

Half Day Seminar

September 19 ☐ Continental Breakfast ☐ Coffee Break
February 20 ☐ Continental Breakfast ☐ Coffee Break
May 21 ☐ Continental Breakfast ☐ Coffee Break

Evening Seminar

November 12 ☐ Coffee Break April 21 ☐ Coffee Break
January 21 ☐ Coffee Break June 23 ☐ Coffee Break
March 10 ☐ Coffee Break

Contact Person _____
Company Name _____
Address _____
Phone () _____
E-Mail Address _____
Fax () _____

MAKE CHEQUE PAYABLE TO CCI VANCOUVER AND MAIL TO:

P.O. Box 17577 RPO, The Ritz, Vancouver, B.C. V6E 0B2

or BY CREDIT CARD:

Credit Card: ☐ Visa ☐ Mastercard

Credit Card Number _____

Expiration Date _____ / _____

Name on Card _____

Signature _____

For Registration or more information email: contact@ccivancouver.ca
or go to www.ccivancouver.ca

Note: Charges will appear on credit card statement as Association Concepts.