CCI Vancouver Chapter
Condo News

President's Message

President's Message – June 2013

As I put the finishing touches on this segment of the President's message Vancouver is experiencing an early summer heat wave while our CCI friends in Calgary and area are only just starting to uncover the devastation left by the raging flood waters that ravaging Calgary, Canmore and other communities in Southern Alberta. This unfortunate event is a grim reminder of the damage that Mother Nature can inflict on us how little we can do to stop it. Now thousands of home owners, including so many condominium owners living near the Bow and Elbow rivers, face the monumental task of cleaning up their homes which may very well be done without the help of any real help from their insurance companies. Is this a time for the Canadian Condominium Institute to look to the insurance industry for overland flood insurance coverage for our members or at least start to focus more attention on the importance of mandatory homeowner's insurance for betterments, improvements and contents? How many people in Alberta living in condominiums will face financial devastation because they did not see the need to purchase homeowner's insurance coverage? This is an unfortunate wake up call for those people and a sober reminder to strata corporations and strata councils in B.C. that there should be no such thing as optional homeowner's insurance coverage in the *Strata Property Act*.

Switching topics CCI Vancouver held a successful lunch and learn on Friday, June 14, 2013 and a successful full day seminar on Saturday, June 15, 2013. Given the amount of focus recently regarding the Civil Resolution Tribunal Act and the increasing cost of legal and litigation services in B.C. it was timely to listen to our speakers at both events identify the growing importance of utilizing "appropriate" dispute resolution options rather than simply look to the traditional adversarial court process for dispute resolution. Thank you again for the insight of Deborah Howes, Patrick Williams and Phil Dougan for agreeing to speak on this topic. Thanks also to our sponsors, Dong, Russell & Co., Access Law Group and Power Strata Systems Inc. for sponsoring the two events. Once again it is important to know that without our sponsor members we would not be able to produce such high quality educational seminars.

Speaking of educational seminars our board recently held a strategic planning workshop to look at the delivery of our educational programs and who our target market for these programs is. We will be working with the Real Estate Council in the coming months to become an accredited educational service provider for strata managers and intend to promote to our strata managers not only the importance of our educational programs to strata managers but to each elected strata council member. While we know that so many strata council members are already too busy to be able to do all this

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is required of them as volunteer strata council members we cannot emphasize enough that one of the goals of our educational programs is to provide strata council members with the necessary tools to perform their strata council roles more efficiently and effectively.

At this time of year we are in membership renewal mode; if you have not yet received your renewal notice please send us an e-mail and we will be happy to send you a renewal notice. If you are not sure if you will be renewing your membership we want you to know that we value your membership and would appreciate it if you could e-mail us to let us know of any concerns you have with being a member of CCI Vancouver so that we can reach out to you and find out what other services and benefits we can provide to you as a valued CCI Vancouver member.

Lastly we are in the process of finalizing our 2013/214 year at a glance for our seminars, lunch & learns and other CCI Vancouver events. Stay tuned for more as we will be using the website to provide you with this information.

Enjoy your summer!

Jamie Bleay – President of CCI Vancouver

CASE LAW UPDATE – JUNE 2013

Linda Chorney and Marilyn Carey v. The Owners, Strata Plan VIS 770, BCSC 2013

At issue in this case was whether or not the strata corporation was in breach of its statutory requirement to enforce its bylaw in connection with renovations undertaken by certain owners that allegedly contravened certain regulations relating to asbestos and asbestos removal.

The relevant bylaws before the court were as follows:

Repair and maintenance of property by owner

> *3(5) An owner must comply with the British Columbia Building Code established by the British Columbia Building Code Regulation, any applicable provincial laws or regulations, and any applicable municipal or regional district bylaws when altering, repairing, or renovating any part of the owner's strata lot or the common property.*

Use of Property

> *4(1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets contrary to any of the following bylaws:*
>
> *a) in a way that causes a nuisance or hazard to another person,*

The two petitioners were owners of two strata lots located in a heritage building in Victoria, B.C. Their building had been the subject of numerous court proceedings and the appointment of Gerry Fanaken as a court-appointed administrator for approximately 4 years.

The facts identified by the court as being relevant involved the discovery of asbestos found in drywall joint compounds and pipe insulation during the course of a hazardous materials survey undertaken by Mr. Fanaken as part of a building envelope repair. The survey contained the following statement as it related to asbestos:

> Prior to the performance of any work that may disturb asbestos containing materials it is a regulatory requirement that a qualified person perform a Risk Assessment...
>
> ...
>
> The removal of asbestos containing **drywall joint compound from the ceiling** should be conducted using **High Risk** asbestos abatement procedures. [The minimum requirements were then specified]
>
> ...
>
> The removal of asbestos containing d**rywall joint compound from the original walls** should be conducted using **Moderate Risk** asbestos abatement procedures. [The minimum requirements are then specified].

It was brought to Mr. Fanaken's attention that some homeowners had, in the past, made interior renovations involving removal of wall and ceiling materials. Mr. Fanaken advised all owners in a memo that "Other owners may be planning renovations in the future that could result in the release of airborne asbestos particulates when removing existing walls or ceiling drywall. These asbestos particulates will be a risk to the owner as well as other owners though air circulation in the building. Also, the removal of any drywall or ceiling materials may expose materials containing asbestos that are currently hidden behind the walls and ceiling.

Welcome New Members

Kevin O'Connell

The Wynford Group

There are specific guidelines for working with asbestos set out by WorkSafe BC. In particular, WorkSafe BC has a booklet entitled Safe Work Practices for Handling Asbestos. A copy of this publication is available online at:

http://www.worksafebc.com/publications/health_and_safety/by_topic/assets/pdf/asbestos.pdf

Sections 6.01 to 6.32 of Part 6 of the Occupational Health and Safety Regulation deal with the handling of asbestos. These sections should be reviewed and followed by anyone undertaking renovations in their unit which could release asbestos particulates from the drywall joint compound."

Mr. Fanaken followed up his memo with an e-mail to all owners on October 3, 2011, at which time he stated:

"Compliance with Regulations

Failure to comply with the requirements for dealing with asbestos or lead resulting In the release of particulates containing asbestos or lead into the common area or the strata lots of other owners when conducting renovations in an owner's strata lot will be a breach of bylaw 4(1)(a) which provides that:

A owner, tenant, occupant or visitor must no use the strata lot, the common property or common assets contrary to any of the following bylaws:

(a) In a way that cause a nuisance or hazard to another person, ...

Such breach will result in action by the Strata Corporation.

I urge each owner for their own health and safety, and out of concern for the health and safety of the other owners, to comply with the requirements for the safe handling of materials containing asbestos or lead should they plan to undertake renovations in their strata lots which could result in the release of asbestos or lead particulates.

Shortly before Mr. Fanaken's retirement as court-appointed administrator the subject of interior renovations was addressed at a May 25, 2012 strata council meeting. The minutes stated that an owner confirmed that he had commenced interior renovations without first obtaining a hazardous materials assessment and advised the strata council that he had been given approval by Mr. Fanaken to do so. The minutes also stated Mr. Fanaken "had not issued a consent letter but rather a letter stating that the strata corporation "had no objection" to the contemplated renovations and that asbestos protocols must first be produced."

When the petition was filed on August 17, 2012 alleging that the strata corporation had failed to enforce its bylaws the contrary position taken was that this was in fact not the case. However, the owner in question who had undertaken certain interior alterations conceded at the court hearing that "there had been numerous violations of the regulations, a concession virtually compelled in light of the history of violations reported in the Inspection Reports from WorkSafe BC." He went on to state that he and others, while being well-intentioned during the course of undertaking their renovations, were not fully aware of all of the requirements for the purpose of complying with the strata corporation's bylaws. Based on the evidence before the Judge these submissions supported rather than refuted the allegation that the strata corporation had failed to enforce its bylaws in connection with the interior renovations.

In light of the evidence before the court the Judge found that "the strata corporation has failed to enforce bylaws 3(5) and 4(1)(a) in relation to the circumstances surrounding the renovations undertaken by Messrs. Whittingham and Vilnis. The presence of asbestos in the Building is well documented. The risks posed by asbestos are also well documented. I find that the failure of the council to enforce the bylaws is in breach of its duty to protect residents, visitors and workers at the Building from the hazards posed by asbestos. Accordingly, I grant the declarations sought by the petitioners" and made the following orders:

1. An order pursuant to section 165 of the Strata Property Act that the respondent strata corporation perform its duty under bylaw 3(5) by ensuring compliance with all laws regarding asbestos assessment and abatement whenever renovations or repairs are undertaken in the strata corporation's building;

2. An order pursuant to section 165 of the Strata Property Act that the respondent strata corporation perform its duties by taking all reasonable measures to ensure that residents of and visitors to the strata corporation's building are protected from the asbestos hazard posed whenever renovations or repairs are undertaken in that building;

3. An order (by consent) that the strata corporation be required to provide owners with copies of all present and future WorkSafe BC Inspection Reports and Hazardous Materials Surveys, or similar assessments issued in relation to the Building within seven days of receipt.

The Judge also awarded costs against the strata corporation.

Editor's note: More and more strata corporations are identifying the presence of asbestos in their buildings. This case confirms that strata corporations (and homeowners doing renovations) must be vigilant when it comes to any asbestos assessment and abatement during renovations (to the interior of strata lots or common area remediation) or face the consequences like those imposed on Strata Plan VIS 770.

COURT PROTECTS DISABLED MAN; MENTAL HANDICAP CANNOT BE GROUNDS TO DISALLOW A RENTAL

In *Silver Campsites Ltd. v. James,* 2013 BCCA 292 (CanLII) the Court of Appeal reviewed a case in which a mentally handicapped man had sued a mobile home park owner under the *Human Rights Code* because, he alleged he had been discriminated against because of his mental impairment and because of his only source of income; his Provencal disability pension.

The disabled man, through his mother applied four times to be allowed to rent the 'pad' upon which the mobile home that he had bought, sat.

Primarily this would have been through an assignment of the lease of the previous owners. The Campsite owner tried to use part of the legislation that controls rentals of manufactured homes to say that the site owner was entitled to dis allow the assignment of the lease (and therefore stop the man from living in the Campground; because they did not, among other things think he could pay the rent. There was evidence before the original tribunal that he had paid the rent in cash from his pension cheque without fail for many years.

Quoting the Human Rights Tribuanl ruling the Court of Appeal noted with approval that:

> The Appellant's housing options are realistically extremely limited. In my view, Mr. James is a member of one of the most vulnerable and historically disadvantaged groups in B.C. society. I agree that discrimination against persons with a mental disability like Mr. James in the area of housing is one of the most egregious forms of discrimination. The victims by nature of their disability in relation to landlords have very little power and the issue of procuring a home is of fundamental importance. The conduct of the Respondents had no regard for Mr. James' vulnerability or his sense of dignity. I find that the Respondents' conduct, in these circumstances, exacerbated Mr. James' vulnerability to injury to his dignity, feelings and self-respect and supports a large award.

The Court allowed the appeal, overturned the lower court's decision that the actions of the Campsite were not discriminatory – thus reasserting they were discrimination against the appellant on the grounds of his mental disability and his source of income (both disallowed in the *Human Rights Code*) and allowing the award of $10,000 to the Appellant to stand. The Court concluded this was fair compensation for the damage to the Appellant's dignity, feelings and self-respect.

This case is a clear warning that pretending to disallow a rental, wherever it may be, based on grounds that clearly are not the actual grounds – ie. that a potential tenant is mentally handicapped - if caught by the courts, will be treated very seriously and will be characterized as "one of the most egregious forms of discrimination."

STRATA ALERT: BCSC CONFIRMS THAT STRATAS ARE NOT REQUIRED TO ENFORCE THE BYLAWS IN ALL CASES

Abdoh v. Owners of Strata Plan KAS 2003, 2013 BCSC 817

A strata has a legal duty to enforce its bylaws under the *Strata Property Act*. Generally speaking, when a strata fails to enforce the bylaws any owner can apply to the court for the appropriate relief. But does the strata have a duty to enforce every bylaw infraction? In this case, the answer was no.

The plaintiffs owned a residential strata lot at Sun Peaks. Strata lot 80 was leased to a long term tenant had had operated a restaurant since occupancy of the strata in 1998. The strata plan designated the underground parking area as LCP for the exclusive use of the residential strata lots. In 1998, the strata approved a unanimous resolution to designate a portion of the parking area as LCP for use by strata lot 80 as a storage area. The developer also allowed strata lot 80 to place cooling equipment on a small portion of the residential parking area, and a sign for the restaurant above the entryway to the building.

The plaintiffs objected to the sign and the storage of the cooling equipment on the residential LCP and they brought an action against the strata corporation to enforce the bylaws. In dismissing the action, the court confirmed that the legal maxim "*de minimus non curat lex*" applies. The latin phrase translates as "the law does not concern itself with trifles" and is used by courts to relax the enforcement of the law in some cases.

In this case, the court found that no residential owner was adversely affected by these matters, including the plaintiffs. The court concluded that the strata corporation was not required to enforce the bylaws simply for enforcement sake, where there was no benefit to any owner, and substantial costs would fall on a single owner. There was also evidence before the court that the strata was planning to have the area where the cooling equipment was stored designated as LCP for strata lot 80 and there was also evidence that the re-designation of the area would be approved. With respect to the signage, the court agreed that the sign did not comply with the bylaws but it also refused to make any order respecting the sign because it acknowledged that the owners may wish to amend the bylaws to allow the sign. The court preferred to leave the matters for the owners to decide.

The court obviously took into account the nature of the development as a resort property and the benefits conferred on the property by the long term tenant in strata lot 80. In resort properties and strata hotels, the interests between residential and non-residential strata lots should be weighed differently than in conventional mixed use developments. The fact that there was evidence that the strata was proactively dealing with the issue by other means, i.e. LCP designations and bylaw amendments, was also important. The court may have reached a different conclusion if the strata was ignoring the complaints and doing nothing.

WHAT WE DO: Lesperance Mendes is a leading firm in the area of strata property law. We advise and represent strata corporations, owners and tenants on a wide range of strata property law matters. If you require legal advice on a strata property law matter, please contact Paul G. Mendes at pgm@lmlaw.ca or by telephone at 604-685-4894. WWW.LMLAW.CA.

STRATA ALERT: COUNCIL AND SECTION EXECUTIVE ELECTIONS

Over our years of attending general meetings we have observed some common practices during strata corporation and section elections that, surprisingly, do not comply with the *Strata Property Act* (the "SPA"):

(1) elections by acclamation;

(2) "first past the post" elections; and

(3) bylaws that reserve a certain number of spots on council for certain owners.

Some of these practices are informed by our experience with elections generally, and some of them are motivated by perceived fairness.

The starting point is s. 50 which says that all matters at a general meeting must be decided by majority vote "…unless a different voting threshold is required or permitted by the Act or the regulations". This section has two obvious implications:

(1) since an election is a "matter" being decided at a general meeting, there must be a vote; and

(2) to be elected to council or the executive you must have a "majority" of votes, which means 50% +1 of the votes cast (note: abstentions are not counted).

Many stratas have trouble getting enough people to run for council and usually the same people end up being elected by "acclamation" each year. In those cases, the correct way to elect the council will be to call for a motion from the floor to elect or appoint those individuals to the council. That motion must be approved by a majority vote to pass. But what if the motion is defeated? This can happen if one or more of the candidates are unpopular. In such a case the chair must call for an election and the owners will have to cast a vote for their preferred candidates.

Again, because the election is a "matter" being decided, only the persons with 50% +1 or more votes will be elected. People who do not get the required votes are not elected.

This can cause confusion in stratas where elections are hotly contested. In those stratas, the practice has been to run "first past the post" elections. In those cases the "top seven" candidates are elected to council even when one or more of them fails to get the requisite majority vote. Under s. 50, that practice is clearly wrong and candidates who do not get a majority vote are not elected to council.

If s. 50 is applied correctly to contested elections, this can result in vacant positions after the election.

If some positions remain unfilled, the chairperson of the meeting has three options:

(1) leave the positions vacant;

(2) call for a motion to appoint those candidates to council who finished in the top 7 but failed to get a majority vote; or

(3) call for a runoff election to fill the vacant seats.

It would also be a good idea to reopen nominations to fill the vacant positions.

Everything I say above applies to section executive elections too.

Speaking of sections, however, the other implication of s. 50 is that bylaws providing for automatic appointments for certain owners to council do not comply with the Act. I call those "special privilege" bylaws.

The most common special privilege bylaws are those that say "…one position on council is reserved for the commercial owner" or "the council shall consist of at least 4 residential strata lot owners". Special privilege bylaws remove some owners' right to vote on what can be one of the most important matters at a general meeting. This clearly contravenes the Act.

Where those bylaws are in existence, the chairperson should call for a majority vote to ratify the appointment of the special privilege candidate and the council should be advised to obtain a legal opinion on whether the special privilege bylaws are valid. This same procedure should be followed when the bylaws or past practice says that the representatives from the section executives are appointed to council. Any bylaw that restricts an owners' right to vote is unlawful under the Act. The only permitted bylaws that may restrict voting are those passed pursuant to s. 53(2) which allows the strata to have a bylaw stating that the vote for a strata lot may not be exercised, except on matters requiring a unanimous vote, if the strata corporation is entitled to register a lien against that strata lot under section 116 (1).

Introducing these changes to elections sometimes meets with resistance. Some owners will protest that they have always conducted their meetings a certain way and they do not wish to change. Those owners must be reminded that doing things contrary to the Act is fine, until there is a legal dispute about the outcome of a meeting. When a legal dispute happens, the Court's preference will always be to uphold the Act.

Minority owners who benefit from the special privilege bylaws will also protest that changing the past practice is unfair because they may not get sufficient votes to be elected to council. Those owners must be reminded that every owner is in the same boat. The Act treats all owners the same in respect of most things but not all. When it comes to elections, however, all owners are created equal.

WHAT WE DO: Lesperance Mendes advises strata councils and property managers on a wide range of strata property law issues, including how to run and plan for contentious general meetings. We are also skilled at chairing hotly contested or controversial general meetings. If your strata has a meeting coming up that may benefit from an "outside person" act as the chairperson, consider having one of our lawyers attend. For more information about this or any other strata law topic or question, contact Paul G. Mendes at 604-685-4894 / PGM@LMLAW.CA

VOLUNTARY RESOLUTION DISPUTE IN STRATA CORPORATIONS

Strata Corporations are creatures of statute. While a strata corporation has the responsibility for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners (see section 3 of the SPA) this responsibility (at least in the first instance) falls on the shoulders of the elected strata council. Section 4 of the SPA says "The powers and duties of the strata corporation must be exercised and performed by a council, unless this Act, the regulations or the bylaws provide otherwise.

The elected strata council, which is typically comprised of individuals from all walks of life, is tasked with many obligations and at every strata council meeting will generally need to consider how to address and deal with a "complaint" (which is the word used in section 135 of the SPA with respect to an allegation of a bylaw contravention), deal with non-payment of strata fees or a special levy by an owner, negotiate with a contractor for payment of an invoice when the work attributable to the invoice was less than acceptable or decide whether to grant an owner an exemption from a rental bylaw on the basis of hardship. Strata councils are, whether they know it or not, routinely resolving disputes; sometimes they are resolved before they really reach the "dispute" stage but sometimes (and more often than not) they are required to work through the "dispute", with or without legal assistance, and try to come up with a resolution that will best serve the strata corporation and the community of owners.

Sometimes the resolution requires the use of severe sanctions imposed by our court system. Perhaps that is why we have 10 of the SPA. While our courts are so often looked to as the most appropriate form of dispute resolution there are other dispute resolution options, including mediation and arbitration available to strata corporations and strata lot owners alike. Sometime in 2014 we will see the addition of the Civil Resolution Tribunal which will provide one more option for dispute resolution.

But what else can be done before, or as an alternative to, the use of these dispute resolution models?

1. Voluntary dispute resolution bylaw:

In its wisdom the legislative drafters of the current SPA included, as part of the schedule of standard bylaws, the following bylaw:

Division 6 — Voluntary Dispute Resolution

Voluntary dispute resolution

29 (1) A dispute among owners, tenants, the strata corporation or any combination of them may be referred to a dispute resolution committee by a party to the dispute if

(a) all the parties to the dispute consent, and

(b) the dispute involves the Act, the regulations, the bylaws or the rules.

(2) A dispute resolution committee consists of

(a) one owner or tenant of the strata corporation nominated by each of the disputing parties and one owner or tenant chosen to chair the committee by the persons nominated by the disputing parties, or

(b) any number of persons consented to, or chosen by a method that is consented to, by all the disputing parties.

(3) The dispute resolution committee must attempt to help the disputing parties to voluntarily end the dispute.

There are a number of pre-conditions to the availability of this bylaw (interestingly enough I cannot recall a single client who has wanted me to remove this bylaw when I am doing a bylaw review) which include:

1. All parties to the dispute must consent to the dispute which must involve the Act, the regulations, the bylaws or the rules; and
2. A dispute resolution committee must be organized.

While it sounds simple enough it would appear based on my experience, that strata corporations and/or owners are not willing to invoke this bylaw for the purpose of resolving any manner of disputes that involve the Act, the regulations, the bylaws or the rules. The process seems simple enough; each party to the dispute nominates someone and those two people choose a third person to be the chair OR the parties all consent to some other method of choosing the dispute resolution committee.

Note: Who here has used this bylaw and if yes, has it been successfully used?

When might this bylaw be used? I can think of a number of situations, based on the current wording of this bylaw that might benefit from the use of this bylaw:

- Complaints regarding contravention of a bylaw (if parties consent to its use rather than a section 135 hearing BEFORE any fines are issued;
- Disputes concerning alteration requests;
- Disputes concerning payment of strata fees, special levies, fines and penalties;
- Disputes between owners/tenants over such things as loud music, barking dogs, barbecue smoke, cigarette smoke;
- Disputes over decision-making and governance by the strata council.

With such a mechanism in place why does it not seem to be more readily used? Perhaps it's the way the bylaw is worded or perhaps there is too much skepticism over the ability of the bylaw to actually resolve disputes! One strata corporation has taken it upon itself to create its own version of a voluntary dispute resolution bylaw which is as follows (this is registered in the land title office):

Voluntary Dispute Resolution

1. Voluntary dispute resolution

1.1 In any dispute which may arise between residents, council and the strata corporation, or the employees, agents, representatives or invitees of any of them, residents must conduct themselves in the same manner as they themselves would wish to be treated in the same circumstances.

1.2 Where a resident believes another resident or that resident's visitor is contravening the Act, its regulations, or these bylaws or rules in a manner which affects the resident's use and enjoyment of a strata lot or common property, such resident must first attempt to seek an end to the perceived contravention by way of direct contact with the offending resident. If such contact is impossible or unsuccessful, the resident may request action or a decision from the strata corporation to end the perceived contravention.

1.3 Where a resident wishes to request an action or a decision from the strata corporation in respect of that resident's use and enjoyment of a strata lot or common property, such resident must as a first step give written notice to the strata corporation's property manager, with a copy to the current council chair and to any other resident who may be materially affected by the requested action or decision.

1.4 If a resident is unsatisfied with an action or decision of council, or with a lack of action or decision, such resident, or council, may refer the unresolved dispute to a "dispute resolution committee", but only if

(a) the dispute involves the application of the Act, the regulations to it, these bylaws or the rules;

(b) the initiating party describes the matter or matters in dispute, and the requested action or decision, in writing; and

(c) all the other parties to the dispute accept the description of the dispute and agree to have it referred to a "dispute resolution committee".

1.5 A dispute resolution committee must consist of three owners who do not have a special interest in the dispute: one chosen by each party to the dispute, and one additional owner selected by the first two committee members.

1.6 The dispute resolution committee must, as part of its procedure, meet in person with all parties to the dispute, but may otherwise adopt any method or procedure it chooses.

1.7 If the strata corporation is a party to the dispute or is interested in it, it may be represented at any meeting of the dispute resolution committee by up to two strata council members. The dispute resolution committee must attempt, in good faith and without compensation, to assist the disputing parties to voluntarily settle the dispute, but without having any power to make a binding decision.

1.8 No settlement reached under this voluntary dispute resolution process, and no statements made by any party, may be used in a court of law, in an arbitration or in any other legal proceeding.

1.9 No settlement reached under this process may be used by any party as a precedent for the resolution of other similar disputes.

1.10 At the request of any participant in a dispute resolution process, all participants must keep all statements, discussions, settlements or other resolutions in strict confidence.

1.11 The use or attempted use of this voluntary dispute resolution process does not affect a person's powers, duties or rights including, without limitation, the right to commence legal proceedings.

Regardless of which "template" is used it seems logical to consider relying on such a bylaw to try to resolve a dispute before it gets out of hand and could in many instances eliminate the need to have a section 135 hearing or for that matter a section 34.1 hearing (or at least hold such hearings in abeyance for disputes between a strata corporation and an owner or tenant) until the dispute resolution committee has attempted to resolve the dispute.

In my experience strata councils and owners (and tenants) alike appear to be fearful and/or hesitant to use this bylaw (or some other form that may have been adopted). Concerns about bias, conflict of interest and the lack of knowledge or expertise of those chosen to be part of the dispute resolution committee have been identified as some of the reasons why this voluntary dispute resolution option is very much under-utilized. That being said the adoption of a bylaw that more clearly identifies how the process will be administered and applied may make such a bylaw a more useful tool to resolve any manner of disputes within a strata corporation.

2. Section 34.1 hearings:

At one time section 15 of the Schedule of Standard Bylaws (repealed in 2009) stated:

Requisition of council hearing

15. (1) By application in writing, stating the reason for the request, an owner or tenant may request a hearing at a strata council meeting.

(2) If a hearing is requested under subsection (1), the council must hold a meeting to hear the applicant within one month of the request.

(3) If the purpose of the hearing is to seek a decision of the council, the hearing must give the applicant a written decision within one week of the hearing.

Section 34.1 of the SPA (meaning a strata corporation cannot now remove the "council hearing" bylaw from its bylaws) states:

Request for council hearing

34.1 (1) By application in writing stating the reason for the request, an owner or tenant may request a hearing at a council meeting.

(2) If a hearing is requested under subsection (1), the council must hold a council meeting to hear the applicant within 4 weeks after the request.

(3) If the purpose of the hearing is to seek a decision of the council, the council must give the applicant a written decision within one week after the hearing.

Other than the changes from "one month" to "4 weeks" the two sections are identical. So why would an owner or tenant request a hearing? The question is perhaps rhetorical; the owner or tenant has a "dispute" of some description, perhaps with the strata corporation, perhaps with another owner that they want the strata council to "hear". Pursuant to section 4.01 of the regulations to the SPA a "hearing" means an opportunity to be heard in person at a strata council meeting! In my view this is also an opportunity for the strata council to look at the options available to it to resolve (in the case of almost any type of dispute) matters through the use of a voluntary dispute process before the matter escalates.

Practically speaking there must first be a written application stating the reason why the owner or tenant is requesting the hearing. Some recent reasons I have come across include:

- Video surveillance camera location complaints;
- Alterations in one unit affected another unit;
- Noisy neighbours;
- Time requested to pay a special levy;
- Foregoing interest on an outstanding special levy;
- Payment of an insurance deductible.

While the obligation imposed by section 34.1 is limited to allowing the applicant to appear at a strata council meeting held within a specified period of time and providing the applicant with a written decision within one week of the hearing. Such a hearing may, in many circumstances, allow the strata council and the applicant to participate in an ad hoc voluntary dispute resolution process. Section 34.1 of the SPA affords the strata council with an opportunity, while preparing its written decision, to think "outside the box" for the purpose of resolving the problem/situation/dispute that gave rise to the hearing request in the first instance. A written decision is not always going to result in the successful resolution to the matter at hand but it does provide an opportunity for an applicant to truly be "heard". It has been my experience that many disputes fester because one of the parties feels that they have not been heard; sitting across the council meeting table may be the first time the applicant can say that he or she has been given such an opportunity. Given that it takes very little to upset the equilibrium that exists within a strata community (and with almost 70% of all home owners in B.C. living in strata corporations) the time is right to identify dispute resolution mechanisms that will allow you to resolve many disputes (you will never be able to resolve all disputes – such as a "Jordison" type of dispute using the dispute resolution mechanisms in the SPA and in the bylaws.

By Jamie A. Bleay, LLB, ACCI, Access Law Group

LETTERS TO THE EDITOR:

Dear Editor:

Life in a strata can be disconcerting, especially when the daily news appears full of stories of strife and bad blood among strata owners. So I thought you would appreciate a story of a strata success.

A couple looked at a newly renovated two-bedroom condominium. The renovations were beautifully completed and the unit was ideal for their purposes. They made an offer and sought disclosure of the Strata Corporation's records regarding the suite and the bylaws etc.

A great deal of material was provide to them including an indemnity agreement that was required for them to sign should they purchase the unit to 'take responsibility' for the renovations. The disclosure package however included building permits and letters from the previous owner and the strata setting out that everyone was content with the renovations.

The buyers' therefore assumed they were taking on very little risk. They signed the contract.

By chance, once the owners were in possession, there was a small problem in the suite and the owners called the Property Manager to come and look at the issue. While there, he said "I thought this unit was only a one bedroom!"

Ultimately the Strata got involved, and it became clear that the permitted and approved renovation, and what had actually been completed, were not the same thing. A 'balcony' had become a bedroom! Balconies do not belong to the strata unit owner, but are limited common property, thus often enjoyed by a single owner, but still legally the property of the Strata Corporation as a whole.

The Owners sought help; and found out that if the bedroom had to be removed; the cost of that further renovation and the ultimate loss of space would cost them more than $100,000!

They had no stomach for that cost! Neither did the Strata, nor the previous owner. Working with their lawyers; the three parties agreed to share the costs of a 'retro-approval' process with the City. If the City would go for that, the Strata was prepared to support that application, and the previous owner was willing to assist with payment to remedy the error.

Unfortunately in the meantime the City had reduced the allowable extra square footage of development allowed on the Strata property, so such an approval would not come without a variation of the current development permits.

With all this in mind; the owners applied to the City; explaining they had been innocently left with a problem, but that all parties were keen to settle. Could the City allow the change retroactively? Upon consideration, the City staff disallowed the claim, but left the door open for the owners to seek approval from the Board of Variance. With the assistance of a City bylaw consultant, a successful application to the BOV has now lead to the 'retroactive' approval being all but completed.

In a situation that could easily have been a $100,000 plus, law suit; cooperation and clear headedness has seen the problem fixed, and the unit now legal! Nice work you guys.

Phil

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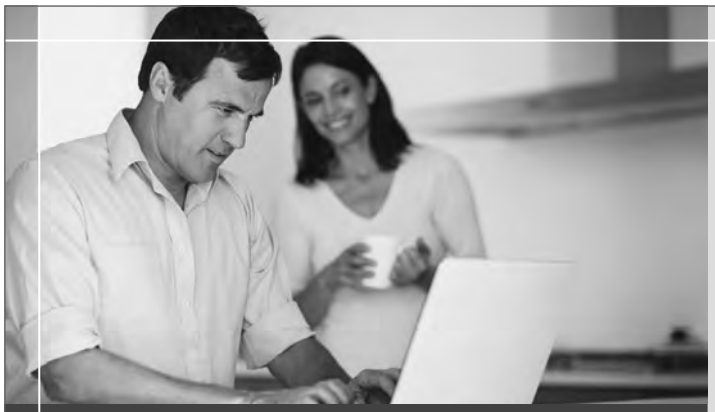

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Owners of homes with home warranty insurance can search the new Residential Construction Performance Guide to find out whether concerns they have with the quality of their homes may be covered by home warranty insurance.

View the *Residential Construction Performance Guide* to find:

- criteria to help consumers self-evaluate possible defects
- the minimum required performance of new homes
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This Guide can be viewed on the Publications section of the B.C. government's Homeowner Protection Office website.

It's free, easy and available online.

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