CCI Vancouver Chapter
Condo News

President's Message

PRESIDENT'S MESSAGE – SPRING 2014

In a little less than two weeks we will hold our second educational seminar of the year. On May 31, 2014 Paul Mendes, a partner with the law firm of Lesperance Mendes and Phil Dougan, an associate with the law firm of Access Law Group, will lead a lively interactive session on proxies and general meetings. Strata corporations will, at the very least, hold one general meeting per year and invariably issues arise with the validity and use of proxies. We invite you to visit our website and register for what will surely be an entertaining Saturday morning.

Over the past few months there have been some recent important court decisions and several important amendments to the *Strata Property Act*. CCI Vancouver knows how important it is to keep our members well informed on both of these topics and we are pleased to have been able to almost instantaneously put the amendments on our website for our members to see. We have also included an article on the recent amendments to the Act in this version of the CCI Vancouver newsletter in addition to our usual case law update.

As we near the end of our fiscal year we are pleased to announce that our membership has increased by almost 50% over the last year.

I want to congratulate our board members for their hard work in growing our membership and increasing the name and the brand of CCI Vancouver. Their hard work, along with the hard work of our part-time administrator, have truly benefited CCI Vancouver in terms of its growth and presence in the "marketplace".

Lastly and by way of an update our Strata 101 course is well underway. The feedback from our students has been very positive and we hope that we will be able to put together a fall session to give those who could not sign up for the current session an opportunity to participate in the fall. We will provide more of an update on this opportunity once we complete our discussions with Vancouver Community College.

Jamie Bleay – President CCI Vancouver

Inside this Issue

CASE LAW UPDATE

BEA V. THE OWNERS, STRATA PLAN LMS2138, 2014 BCSC 826

This case is the climax of six years of virtually pointless litigation. In 2006-2007 the Strata realized that they had no bylaw dealing with parking. Mr. and Mrs. Bea took advantage of this lacuna by parking numerous cars in the parking lot wherever they pleased. This meant owners and visitors were often left without a space to park.

To make the parking more equitable, the strata researched the original assignments of parking spaces by the owner-developer and proposed a bylaw that created a parking assignment list based on those assignments ensuring that each owner had at least one parking space. The resolution to amend the bylaw passed almost unanimously.

Mr. and Mrs. Bea filed a petition in 2008 complaining the bylaw amendment was unlawful and should be revoked. The court considered the matter on the merits and decided the bylaw was entirely appropriate and valid. The Beas petition was dismissed.

The Beas filed another petition. And another, and another. Altogether they filed seven law suites – all seeking the same thing – the revocation of the parking bylaw. The Beas created almost 50 court appearances for the Strata and appeared before 28 judges. All the judges refused to grant the Beas any of the relief they sought.

In 2010, Mr. Justice Grauer in the Supreme Court and Madam Justice Smith in the Court of Appeal both gave orders prohibiting the Beas from filing any more lawsuits against the Strata in their respective courts. The Beas filed three more lawsuits after these orders were made.

In 2014, Madam Justice Koenigsberg found Mr. and Mrs. Bea in contempt of court, and ordered a $10,000 fine be paid within two weeks of her order. The fine was not paid; and Mrs. Bea, who is the owner of the Beas' strata unit, was arrested.

Mr. Justice Grauer heard the application of the Strata as to what remedy should be imposed to punish the Beas for their contempt and for the massive cost they had needlessly imposed upon their neighbours.

In his judgment, His Lordship said:

> …We nevertheless are faced with circumstances in which, as in the Jordison litigation, the residents "have intentionally, wilfully, and in a blameworthy fashion disobeyed the order of this court" (per Blair J., 2013 BCSC 487 at para 34). Whereas the actions of the Jordisons were found to have amounted "to an assault upon those residents of the strata who have been for some years subjected to the Jordisons' misbehaviour in all its varied forms" (per Blair J., 2012 BCSC 31 at para 59), here, the actions of the Beas have amounted to an assault upon the finances of the residents of the strata who have had to pay the high cost of defending against the Beas' vexatious abuse of the court's process over many years. In both cases, the residents in question have abused their position vis-a-vis the strata council and owners, and have deliberately disobeyed court orders designed to remedy that problem. In both cases, the usual penalties for contempt — fine or imprisonment — were inapt in the circumstances (see 2013 BCSC 487 at para 37). … In this case, it appears certain that Mrs. Bea is destined to lose her property in any event through the enforcement of the many judgments for costs registered against it. The question is whether the owners should be put through the additional expense and frustration of proceeding in that way in the face of the Beas' unremitting pattern of abuse of the court process, and the ever mounting costs of dealing with them. I think not. The time to end their abuse of the court's process is now. [para. 64, 68]

Mr. Justice Grauer ordered the Beas to vacate their property and gave the Strata the right to sell the unit to recoup a portion of the legal costs. Even with this very strong order, the Strata incurred more than $100,000 of unredeemed legal costs.

What a waste of everyone's time and money!

PARRANTO V. BRUMMEL, 2014 BCSC 815

This case was about special costs. Special costs are a way for the courts to register disapproval of 'reprehensible conduct' and award a successful party far more in legal 'costs' than they would usually been entitled to had their opponent not behaved very badly.

Mr. Parranto behaved very badly. Madam Justice Fenlon described some of his antics and allegations:

[14] By way of example, in a letter to the Tribunal, Mr. Parranto accused counsel for the Co-op of forgery, fraud, and deliberate deception. He accused counsel of authoring documents that were not accurate, defaming members of the Court, being involved in a conspiracy, promoting untruths, making statements she knows clearly to be untrue, incompetence and so on.

[18] Similar allegations or statements were made about counsel for Ms. Brummell. It does not add a great deal to these reasons to go through the many examples, but as one example, Mr. Parranto alleged in the application record that Ms. Brummell had lied under oath, had been criminally charged, had forged documents, attempted extortion, embezzled money from the Co-op where she sits on the Board of Directors. He also said that Ms. Ellis, Ms. Brummel's lawyer, had taken part in this embezzlement which could lead to the end of Ms. Ellis' career.

[21] Mr. Parranto says that the two counsel against whom he has made these disparaging remarks are "poster children for the second Holocaust." He has given a number of reasons for that. He said that he is trying to prevent these young counsel from living a life without freedom, and helping them to avoid a fatwa, as Salman Rushdie has had to deal with.

These allegations and statements are highly inflammatory, racially motivated in some incidents, and very damaging to the party's reputation and to that of their legal counsels. Madam Justice Fenlon implied further though, that she considered Mr. Parranto to be somehow mentally unstable and not responsible for his actions and words:

[27]… But at the end of the day, the considerable difference between special costs and party and party costs is intended to reflect the Court's sense that the person who has been conducting himself in this way is culpable, is responsible for his behaviour, and has chosen to intentionally conduct himself in a way that is causing unnecessary harm and damage to the reputation of others.

[28]… It is apparent to me that, in some sense, he is not culpable in the sense that some people would be. Some of Mr. Parranto's comments are not coherent. In my view, anyone reading his correspondence or pleadings would recognize that, and therefore objectively would not think less of counsel or Ms. Brummell or the Co-op.

So, sometimes, being a bit nuts might save you from the wrath of the court!

By Phil Dougan, Lawyer, Access Law Group

LIMITATION ACT & COLLECTION PROCEDURES

By Cora D. Wilson

Many Strata Corporations believe that registering a lien against a defaulting owner is all that is required to collect arrears. Thereafter, the Strata Corporation simply waits for payment. This practice involves a minimal expenditure of money and administrative time once the lien is registered. This customary practice will change with the adoption of the *Limitation Act* on June 1, 2013 which shorted the limitation period for collections from six years to two years.

Since arrears could be unrecoverable after the expiry of the two year limitation period, Strata Corporation should budget sufficient funds to commence court proceedings to stop the limitation clock. Subject to transitional exceptions, an appropriate claim for arrears from June 1, 2013 must be filed with the court before June 1, 2015 failing which the limitation clock will run out for that month of common expenses.

This could be a tough bullet for cash strapped corporations. Strata fee arrears could be small in size and may not exceed more than a few thousand dollars even after two years of arrears. It is not unusual to find councils reluctant to budget sufficient legal costs to collect small amounts.

Will there be consequences for missing a limitation period? Some disgruntled owners might claim that the council failed to properly carry out its duty to manage, administer and govern the common assets (including strata fees and special levies). This could result in potential council exposure to liability for unrecoverable arrears.

A council reluctant to budget the necessary legal expenditures to collect arrears, including filing a petition in the Supreme Court, should assess the risk of personal liability related to the failure to act. It is not yet known whether council approval of legal expenditures on an emergency basis to "prevent significant loss or damage" meets the legal standard. The factual matrix will have to be reviewed in each case.

What is clear is that the practice of inserting a line item for legal expenditures in the budget avoids this whole debate and removes any constraints otherwise facing a council wishing to undertake legal proceedings to preserve collections rights.

The failure to adopt reasonably prudent fiscal practices to address collections could result in allegations of irresponsibility and possibly even negligence on the part of the council.

The *Strata Property Act* was designed to insulate compliant owners who religiously pay their fees against defaulting owners by granting extraordinary collection remedies for certain expenses. These remedies include the right to lien and sell an owner's strata lot for nonpayment. A strata corporation may also adopt bylaws to facilitate collections such as an interest bylaw. The interest bylaw shields the strata corporation to a certain extent against the lost time value of money created by arrears and legal expenditures.

Once a lien is registered, the lien takes first priority position over most encumbrances registered prior in time on title to the strata lot of a defaulting owner, including most mortgages, but excluding crown liens, Builders Lien and Strata Corporation judgments registered against a strata lot. This means that once a strata lot is sold or refinanced, the strata corporation with a valid lien will be paid out before the registered mortgage. This creates a significant legal advantage to the strata corporation.

Although the banks view strata fee arrears as an act of default on the mortgage, this does not mean that the bank will automatically take foreclosure proceedings if the mortgage is not in default. In this event, the ball will be placed directly in the court of the strata corporation and it must act to preserve its collection rights or face the consequences. The average cost of a strata corporation foreclosure is between $5,000.00 - $8,000.00. It could be more. Although not guaranteed, a good portion of these expenditures tend to be recoverable as part of the proceeding.

It is recommended that the strata corporation annually budget a reasonable amount to address anticipated collections based on historical default ratios. If significant increases to common expenses are anticipated, then the budget should be further revised to address any default-related projections.

What are the consequences of missing a limitation period?

1. The non-defaulting owners will be required to subsidize the defaulting owner. This drives the fixed costs up for every single owner, including those that are least able to afford to pay the increase such as retired persons living on a fixed income or the disabled living on a small pension. Increased costs could result in those least able to pay falling into arrears. Prudent fiscal action minimizes this risk and levels the fiscal playing field over time creating smoother operations from year to year.
2. Councils and individual council members could be exposed to lawsuits for any shortfall from owners alleging negligence while carrying out the financial duties of the strata corporation as elected officials. The council should make inquiries to determine whether Directors and Officers liability insurance is available to cover such allegations.
3. The proposed Dispute Resolution Tribunal may provide disgruntled owners with an inexpensive and streamlined process to air disputes against a strata corporation and council members. This could create a more litigious and disharmonious environment within the Strata Corporation with negative spin off effects on all owners. No-one wants to live in a place mired in conflict and negativity.

Such results can be virtually eliminated by creating well thought out fiscal policies and implementing solid and consistent financial, legal and budgetary practices.

Bylaw Amendments

1. Every strata corporation should ensure that it has the following bylaws:
   (a) interest bylaw not to exceed the maximum interest rate set by the regulations for arrears;
   (b) full indemnity legal bylaw;
   (c) Small Claims Court bylaw;
   (d) unapproved expenditure bylaw authorizing unbudgeted, unauthorized expenditures in an amount that is reasonable for that strata corporation (to address any legal shortfall); and,
   (e) a fine bylaw addressing arrears referring to a specific amount for a fine.
2. If a strata corporation has a bylaw that places a time limitation on collection proceedings, then it should repeal that bylaw. For example, some strata corporation have a bylaw which states that a strata corporation must not register a lien until the strata fees are at least three months' in arrears. This bylaw could create a financial loss to the strata corporation in the event of an intervening bankruptcy in circumstances where the lien has not been filed.

Customary practice related to collections will change as a result of the adoption of the *Limitation Act*. Those councils who adopt solid fiscal policies and practices will barely notice the changes. However, councils who fail to take appropriate steps may face the consequences.

NOISE COMPLAINT? NOW WHAT?

The existence of noise and the determination of whether noise constitutes a nuisance or contravenes a bylaw is common place in strata corporations. We as lawyers are frequently consulted on how a Council can best resolve issues of noise complaints.

Strata councils and managing agents often communicate that noise complaints and their resolutions are issues that the neighbors involved must address and that council need not insert itself into such confrontations. This manner of dealing with noise complaints is not appropriate. Councils have an obligation to enforce the bylaws of a strata corporation. That enforcement includes a determination of whether, in the opinion of Council, a contravention of a bylaw has occurred. A recent court decision has underscored that obligation. On March 25, 2014, Justice Masuhara rendered a decision in *Wolodko v. Zhang and VR2456*. While the facts are particular to the case, the situation is by no means unique. The Zhang's son was an

accomplished budding pianist who played frequently in a high rise strata building. The neighbors Wolodkos complained that the music was a contravention of the noise bylaw – there was the typical standard noise bylaw as well as a specific bylaw that prohibited playing of any musical instrument that caused or disturbance or interfered with the comfort of any other resident.

The Council, quite properly, requested access to the complaining owners' unit in order to help Council assess the merits of the noise complaint. The complainants wrote Council advising that they were opposed to providing access to Council members and stated that a delegation of that duty to an independent professional was more appropriate. Council's response was that the merits of the complaint was the purview of Council and that an independent assessment was not appropriate. (although it does not say so, these types of assessments can be expensive). This was the correct way to handle the matter. Council had not taken the view that the dispute was between owners – Council had not washed their hands of the matter. Instead they became involved. The complainants refused to permit Council access to assess the merits of the noise complaint. The Zhangs agreed their son was playing the piano, but not that there was a contravention of the bylaws. The complainants dropped their action against the strata before the case was heard by the Courts and proceeded solely against the Zhangs on the basis of nuisance.

The Court dismissed the claim because:

(a) The only complainants were the Wolodkos;

(b) There were no recordings of the complained of piano playing;

(c) There was an absence of any objective measures of readings of piano noise;

(d) The complainants refused to permit Council members to come to their unit to listen for themselves to determine if there had been a contravention of the noise bylaw.

The Court decision does not indicate why the complainants dropped their case against the Strata and proceeded solely against the Zhangs due to the piano playing. However, it is likely that if the Zhangs had continued their action against the strata corporation they would have been unsuccessful, since it seems clear that the council had acted reasonably.

What can we learn from this Court decision? Council cannot avoid the need to assess whether a bylaw has been contravened. Once they make sure an assessment on a reasonable basis, they have discharged their duty. Of course they might be wrong in their determination (they were not wrong in the Wolodko case), but the chance of being wrong should not mean that such a determination is to be avoided. Very seldom is a noise complaint in a strata complex simply a dispute between 2 owners.

Patrick Williams, lawyer, Clark, Wilson LLP

LIABILITY FOR RESULTANT DAMAGE/ REPAIRS TO STRATA LOTS:

Generally speaking strata corporations have been immune from the obligation to pay for resultant damages to an owner's strata lot. The case most often cited in support of the "immunity" is the 2001 Supreme Court of B.C. decision cited as *John Campbell Law Corporation v. The Owners, Strata Plan 1350*. At paragraph 18 of that decision the Judge said:

I do not believe that the obligation to maintain and repair imposed upon strata councils by the above legislation was intended to impose so strict a duty or responsibility. I conclude that if a strata corporation such as the defendant has taken all reasonable steps to inspect and maintain its common facilities, consistent with the practice of other such associations generally, they should not be held liable for damages arising as a result of any strict statutory liability nor should they be put in the position of acting as an insurer by default. The defendants have thus discharged the burden they had to inspect and maintain.

A recent case has thrown a bit of a curve ball at strata corporations in terms of generally being able to avoid liability for repairs within an owner's strata lot. In *Theresa Fudge v. The Owners, Strata Plan NW 2636* His Honour Judge Woods (after hearing evidence and submissions over a total of 6 days) was asked to rule on the liability of the strata corporation for damages to Ms. Fudge's strata lot (in August, 2007) when wastewater from the discharge hose attached to her washing machine following the completion of a washing cycle and backed up and out of the discharge pipe that was connected to the building's wastewater piping infrastructure. This occurred at a time when Ms. Fudge was not home. The wastewater spilled out and caused damage to part of her unit, including the carpeting.

Ms. Fudge took the position that the strata corporation owed a duty to her to repair and maintain the building's wastewater piping infrastructure and breached that duty such that they were responsible for the costs to remedy the damage to her strata lot. The Judge, when reviewing the evidence to determine the possible cause of the failure of the discharge pipe and the wastewater piping infrastructure to carry the wastewater from the washing machine away was that the " diameter of the pipes that eventually carry wastewater away from the laundry stacks in Ms. Fudge's unit, and others, is insufficient to cope with the volume of that wastewater that is generated by the owners who reside in the QT Complex. In a word, the WPI was under-designed. This design problem, and the effects it has had on various strata lot holders, is acknowledged repeatedly in the QT Complex's strata council minutes". Strata council meeting minutes going back to 2003 made mention of other water backups and evidence of an unwillingness on the part of the strata corporation to tackle remedy the under-designed wastewater piping infrastructure. The Judge found that the infrastructure was "oversubscribed and incapable of handling more wastewater". Despite evidence of a blockage in the line he found that the system itself, when overloaded with wastewater at the same time as Ms. Fudge's machine was in its discharge cycle was to blame for the damage.

On the issue of a breach of a duty of care the Judge stated that Ms. Fudge's claim implicitly invoked section 72 of the Act. The Judge found, based on the evidence, that "for the purposes of the statutory definition of common property, I find that the WPI comprises "pipes … and other facilities for the passage … of … drainage … located … within … wall[s] … that form … boundar[ies] … between … strata lot[s] … [and] between … strata lot[s] and the common property." Similarly, I find that the Discharge Pipe in Ms. Fudge's unit, being integrated with and thus a part of the WPI, is a pipe "…for the passage … of … drainage … located wholly or partially within a strata lot … [which is] … capable of being and intended to be used in connection with the enjoyment of … the common property [that is, the other components of the WPI]". He went on to say that "There is nothing novel or surprising about these findings. The definition of "common property" found in s. 1 of the ***Strata Property Act*** simply recognises the reality that the WPI is an integrated whole. Discharge pipes and other lines that handle wastewater all feed into the network for the purpose of aggregating that wastewater and then feeding it out to the municipal sewer system for final disposal. Because the WPI is common property, under s. 72, the QT Owners owed a statutory duty of care to, among others, Ms. Fudge, to "repair and maintain" it. Insofar as any failure to repair or maintain the WPI could expose strata lot holders, like Ms. Fudge, to an unreasonable risk of experiencing flood incidents, the QT Owners' duty of care to repair and maintain the WPI in my judgment included at all material times a duty to act reasonably to prevent flood incidents".

Based on this finding and the plethora of evidence about the ongoing occurrences of backups the Judge stated that the backups were a foreseeable consequence of decisions made over the years to defer undertaking the necessary repairs to the infrastructure. This failure to upgrade amounted to a breach of the strata corporation's duty to repair and maintain the common property given that "both terms contemplate intervention to correct a deficiency. Ms. Fudge was

awarded damages for the losses she suffered as a consequence of the breach of that duty of care. In his penultimate sentence regarding liability the Judge stated:

"I have found that by failing to "repair and maintain" the wastewater piping infrastructure, or WPI, as common property within the QT Complex, the QT Owners breached their statutory duty to Ms. Fudge, a strata lot owner in the QT Complex and a beneficiary of that duty. The duty to repair and maintain the manifestly under-designed WPI was cast upon the QT Owners by s. 72 of the ***Strata Property Act***. That duty required them to upgrade the piping forming part of the WPI to 6" diameter from the originally installed 4" piping when they became aware, or ought reasonably to have become aware, that the WPI as originally constructed was incapable of handling the load of wastewater fed into it by the owners in the ordinary course of use of, inter alia, the washing machines in their strata lots. The QT Owners were aware of the WPI's inadequate capacity since at least 2003, yet they failed to act on that knowledge. Their dithering redounded, ultimately, to the detriment of Ms. Fudge. The inaction of the QT Owners constituted a breach by omission of their statutory duty to repair and maintain the WPI. The QT Owners' breach of their statutory duty to repair and maintain the WPI in those circumstances amounts to negligence at common law. Their negligence was the cause in fact and in law of losses suffered by Ms. Fudge when a backup occurred on August 30, 2007 when her washing machine's wash cycle reached the point where the appliance attempted to discharge wastewater into the WPI via the Discharge Pipe in the wall of the laundry closet of her unit. The WPI, at that time, became overwhelmed with wastewater and so a backup occurred in Ms. Fudge's unit. The backup resulted in wastewater originating in Ms. Fudge's washing machine, combined with wastewater already circulating in the WPI, gushing out of the Discharge Pipe and spreading widely within her unit, soaking or wetting some area rugs, walls and floor boards as well as the installed carpets in her hallway, master bedroom, second bedroom/den and living room. That wastewater gave off a foul odour and it damaged Ms. Fudge's installed carpets sufficiently to require their replacement. That wastewater also damaged some area rugs sufficiently to require that they be cleaned by a professional restoration contractor. The flood event that caused these harms to Ms. Fudge also led to mould and fungal growth in the carpets, walls, baseboards, and so forth within her unit that require remediation on health grounds.

A 2012 Provincial Court decision cited as *Paul et al v. Riding & Strata Plan NW 612* and accepted and relied on the analysis in the *Fudge* decision and gave Judgment to the Claimants for damages associated with a water ingress problem which the Claimants had alleged the strata corporation knew about but failed to deal with it in a timely way leading to mould and other damage to their suite.

Editor's Note: Notwithstanding the question of whether the Provincial Court had jurisdiction to deal with each of these cases the fact remains that we now have at least two decisions which owners will undoubtedly rely when seeking to recover the cost of damages sustained to their units due to a failure to repair and maintain.

Jamie Bleay, Lawyer, Access Law Group

STRATA PROPERTY ACT/REGULATION RECENT AMENDMENTS:

1. Section 173 amendments:

On December 12, 2013 the Province brought into force a legislative amendment to allow strata corporations with majority support to apply to the BC Supreme Court to require strata owners to pay for certain repairs.

Under the amendment the court can issue an order to proceed with certain critical repairs necessary to ensure safety and prevent significant loss or damage as if the strata owners have passed a resolution endorsing a special levy.

Currently, the Strata Property Act requires a 3/4 vote to impose a special levy to raise money for needed repairs to common property. Without this amendment, a number of strata corporations would have remained deadlocked and deteriorating.

173 (1) On application by the strata corporation, the Supreme Court may do one or more of the following:

(a) order an owner, tenant or other person to perform a duty he or she is required to perform under this Act, the bylaws or the rules;

(b) order an owner, tenant or other person to stop contravening this Act, the regulations, the bylaws or the rules;

(c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

(2) If, under section 108 (2) (a),

(a) a resolution is proposed to approve a special levy to raise money for the maintenance or repair of common property or common assets that is necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise, and

(b) the number of votes cast in favour of the resolution is more than 1/2 of the votes cast on the resolution but less than the 3/4 vote required under section 108 (2) (a),

the strata corporation may apply to the Supreme Court, on such notice as the court may require, for an order under subsection (4) of this section.

(3) An application under subsection (2) must be made within 90 days after the vote referred to in that subsection.

(4) On an application under subsection (2), the court may make an order approving the resolution and, in that event, the strata corporation may proceed as if the resolution had been passed under section 108 (2) (a).

What is the purpose behind this amendment? In addition to the "threat" of a Tadeson order obtained under section 165 this section may convince owners in the first instance to vote "yes" to a ¾ vote special levy and avoid any kind of court/legal action.

2. April 14, 2014 amendments:

Perhaps a little insight into why these amendments were made, which were buried in the Natural Gas Development Statutes Amendment Act, 2014 – which Rich Coleman, in addition to Housing, is the Minister of, can be gained from an excerpt from the Hansard debate for Bill 12 on March 6, 2014 regarding the proposed amendments:

"That said, I would, first of all, like to acknowledge what the minister had said in his opening remarks. My understanding of the bill is that this amendment essentially makes it easier for strata councils to carry out their responsibilities by removing regulatory barriers for strata corporations and owners. It also provides for and explains requirements and clarifying definitions within the act. These items are rather technical in nature.

It does, though, allow for and confirm that paying for and accruing funds to pay for a depreciation report is, indeed, a legitimate operating fund expense and can be approved by a majority vote. This is, while technical in its nature, an important change that I know strata corporations have been asking for.

The Act also makes it easier for strata corporations to pay for repairs recommended by their depreciation report by reducing the required approval for contingency reserve fund expenditures from three-quarters to a majority vote — also an important change that I know strata corporations have been calling for."

(a) Regulation 6.11: this regulation was amended in its entirety and replaced with the following wording.

6.11 In addition to an investment permitted under the Act, for the purposes of section 95 (2) (a) or 108 (4) (b) (i) of the Act, as applicable, a strata corporation may invest money held in the contingency reserve fund or money collected on a special levy in one or more of the following investments:

(a) a savings account or chequing account with a financial institution outside of British Columbia insured by the Canada Deposit Insurance Corporation;

(b) a term deposit or a guaranteed investment certificate, if the deposit or certificate

(i) is insured by the Canada Deposit Insurance Corporation or the Credit Union Deposit Insurance Corporation of British Columbia, and

(ii) has a predetermined rate or predetermined rates of interest;

(c) a treasury bill issued by the government of Canada;

(d) any bond, debenture or other evidence of indebtedness issued by the government of Canada or a province, or issued by a corporation incorporated under the laws of Canada or a province, if, at the time of purchase,

(i) the bond, debenture or other evidence or indebtedness has a remaining term to maturity of 5 years or less,

(ii) the interest and principal of the bond, debenture or other evidence of indebtedness are payable in Canadian dollars, and

(iii) the bond, debenture or other evidence of indebtedness has a rating of A of higher from DBRS Limited;

(e) a fixed income exchange-traded fund traded on an exchange in Canada, if, at the time of purchase,

(i) the fund's portfolio does not contain securities other than bonds, debentures and other evidence of indebtedness,

(ii) the holdings in the fund portfolio are denominated in Canadian dollars,

(iii) the average remaining term to maturity of the holdings in the fund's portfolio is 5 years or less, and

(iv) 98 per cent or more of the value of the holdings in the fund's portfolio have a rating of BBB or higher as reported by the issuer of that fund.

Regulation 6.12 and 7.15 were repealed in their entirety.

In my view this amendment can be viewed as somewhat of "housekeeping" exercise. The amendment compresses 12 sections into 7 sections for the purpose of identifying permitted investments. That said given that section 6.11 of the regulations has been amended strata councils are cautioned to check to see that their investments comply with this amendment.

(b) Section 1(1) definition amendments:

Two of the definitions found in section 1(1) of the Act were amended. The definition of "contingency reserve fund" is now defined as:

> **"contingency reserve fund"** means a fund for common expenses as set out in section 92 (b)

A similar amendment was made to the definition of "operating fund" which is now defined as:

"operating fund" means a fund for common expenses as set out in section 92 (a);

(c) Section 35 amendments:

Strata Corporations are now required to track and identify parking stall and storage locker allocations/assignments. Section 35 of the Act has been amended to ensure that the records of a strata corporation will also identify parking stall and storage locker numbers. The amendment to section 35 is as follows:

Strata corporation records

35 (1) The strata corporation must prepare all of the following records:

(a) minutes of annual and special general meetings and council meetings, including the results of any votes;

(b) a list of council members;

(c) a list of

(i) owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, ~~parking stall numbers~~ **parking stall and storage locker numbers**, if any, and unit entitlements,

(ii) names and addresses of mortgagees who have filed a Mortgagee's Request for Notification under section 60,

(iii) names of tenants, and

(iv) assignments of voting or other rights by landlords to tenants under sections 147 and 148;

(d) books of account showing money received and spent and the reason for the receipt or expenditure;

(e) any other records required by the regulations.

In my view this is again a housekeeping amendment as this is information that is otherwise required to be included in a section 59 Information Certificate. It therefore makes sense to specifically require the preparation of this information as part of a strata corporation's record.

(d) Section 89:

Removal of claim of lien after purchase from owner developer

89 (1) If one or more claims of lien under the *Builders Lien Act* are filed against a strata lot purchased from an owner developer, ~~the purchaser~~ **the purchaser or, if the strata lot is conveyed to the purchaser and the purchaser becomes the owner of the strata lot, that owner** may apply to the Supreme Court for an order for permission to pay into the court the lesser of

(a) the total amount of the claims of lien filed, and

(b) the full amount of the holdback under section 88 (2).

(2) Payment into the court discharges the lien and releases ~~the purchaser~~ **the purchaser or, if the strata lot is conveyed to the purchaser and the purchaser becomes the owner of the strata lot, that owner** from liability to the owner developer or the lien claimant for the liens.

(3) The order under subsection (1) must provide that the claims of lien be removed from the title to the strata lot.

(4) The money paid into the court is security for the liens in place of the strata lot.

(5) If the full amount of the holdback has not been paid into the court, ~~the purchaser~~ **the purchaser or, if the strata lot is conveyed to the purchaser and the purchaser becomes the owner of the strata lot, that owner** must release the balance of the holdback to the owner developer.

These amendments clarify that both a purchaser and subsequently, the owner are, respectively, able to discharge a builders lien and are required to release the balance of the holdback if the full amount has not been paid into court.

(e) Section 92 amendments:

Operating fund and contingency reserve fund

92 To meet its expenses the strata corporation must establish, and the owners must contribute, by means of strata fees, to

(a) an operating fund for common expenses that ~~usually occur either once a year or more often than once a year, and~~

(i) usually occur either once a year or more often than once a year, or

(ii)are necessary to obtain a depreciation report under section 94, and

(b) a contingency reserve fund for common expenses that usually occur less often than once a year or that do not usually occur.

This amendment will allow strata corporations that have not had a ¾ vote to waive the requirement for a depreciation report (the "D.R") pursuant to section 94(3)(a) of the Act to use money from the operating fund (rather than a special levy) to pay for the D.R. – which means a majority vote approval for the budget funding for the D.R. (which seems at odds with the fact that the D.R. is otherwise an expense that would occur less often than once a year!).

(f) Section 96 amendments:

96 The strata corporation must not spend money from the contingency reserve fund unless the expenditure is (a) consistent with the purposes of the fund as set out in section 92 (b), and (b) approved or authorized as follows:(i) the expenditure is first approved by a resolution passed by

(A) a majority vote at an annual or special general meeting if the expenditure is

(I) necessary to obtain a depreciation report under section 94, or

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

(B) a 3/4 vote at an annual or special general meeting if the expenditure is not described in clause (A) (I) or (II);

(ii) the expenditure is authorized under section 98.

This amendment allows a strata corporation to use a majority vote rather than a ¾ vote to expend money from the CRF to obtain a D.R. or for money for related repair, maintenance or replacement as recommended in the most current D.R of common property, common assets or portions of a strata lot

Does it mean that a majority vote for repair, maintenance, replacement identified in years 5 to 10 of the D.R. or what is otherwise identified as "phase I" repair, maintenance or replacement?

It is likely that the "harm" that is being addressed is to avoid owners voting no at a ¾ vote special levy meeting for repairs identified by the D.R. as "current" repairs/maintenance/replacement. In my view this is the logical application of this section; otherwise strata corporations might try to dip into burgeoning CRF accounts to pay for "pet" projects that are not specifically due to be undertaken in the near future pursuant to the terms of the D.R.

(g) Section 109 amendments:

Payment of special levy when strata lot sold

109 If a special levy is approved before a strata lot is conveyed to a purchaser,

(a) ~~the seller owes~~ **the person who is the owner of the strata lot immediately before the date the strata lot is conveyed owes** the strata corporation the portion of the levy that is payable before the date the strata lot is conveyed, and

(b) ~~the purchaser~~ **the person who is the owner of the strata lot immediately after the date the strata lot is conveyed owes** the strata corporation the portion of the levy that is payable on or after the date the strata lot is conveyed.

While this is somewhat of a housekeeping amendment it does however clear up any confusion over who exactly is to "pay" by adding the words "the person who is the owner". The word "owner" is defined in the Act so the amendment makes this section more compatible with the definition.

Jamie Bleay, Lawyer, Access Law Group

THE RULES ABOUT POLICIES…

By Gerry Fanaken

Or is it the policy about rules?

Section 125 of the *Strata Property Act* sets out the procedure to be followed by a strata council in respect of "rules" that it makes from time to time during the council's term of office. This article will not delve into all aspects of Section 125; therefore, it is strongly suggested that strata council members read and study this section to become familiar and knowledgeable with its requirements. (It has been my observation over the years that many strata councils do not comply with the provisions of Section 125 in respect of having rules ratified by the owners at the next SGM or AGM.)

Rules are not bylaws. Only the owners can create bylaws by passing a ¾ vote resolution. A strata council, however, is given the authority to create rules but it must be noted that such rules are limited to "governing the use, safety and condition of the common property and common assets' of the strata corporation. As an example, a strata council could create a rule to say "Speed in the parking lot is 15 kph" or "Bicycles may not be transported in the elevator". These are common property elements of a strata corporation and the dictums of the council fall within the allowable realm of their authority – i.e. safety and condition of common property.

Such rules are enforceable but only to the date of the next SGM or AGM at which time they expire automatically, unless they are ratified by a majority vote of the owners at that meeting. Although the Act is silent on this point, it is my view that such ratification must detail in the minutes the specific rules that are under consideration. It is insufficient to record "The owners approved the parking lot rules proposed by the strata council".

Another issue to contemplate is that concerning policies that are created by a strata council. Again the Act is silent on the matter of "policies" as these do not directly relate to the safety, use and condition of common property and common assets. Policies are, in fact, simply practices or protocols followed by a strata council in the course of its administration. For example, a strata council could make a policy that its meetings are held on the second Wednesday of every month. That is neither a common property based rule or a bylaw governance issue. It is simply a practice or protocol that is employed at the discretion of the strata council. Readers are encouraged to conjure up other such policies.

The Act does not require that policies be ratified at the next SGM or AGM, as it does with rules. Notwithstanding this fact, I recommend that strata councils, when creating policies during the term of their office treat such policies in a similar, although not identical, fashion as the ratification of rules. By this I mean that:

(a) All policies first be published in the strata council meeting minutes

(b) A comprehensive list of created policies be maintained as a separate document – the policy manual

(c) The policy manual be turned over to the next (incoming) strata council at the AGM.

This process is beneficial to the owners generally as the circulated minutes provides transparency of the administration, and it ensures continuity and consistency from one administration to the next.

It takes a bit of effort but it is, in my opinion, well worth it.

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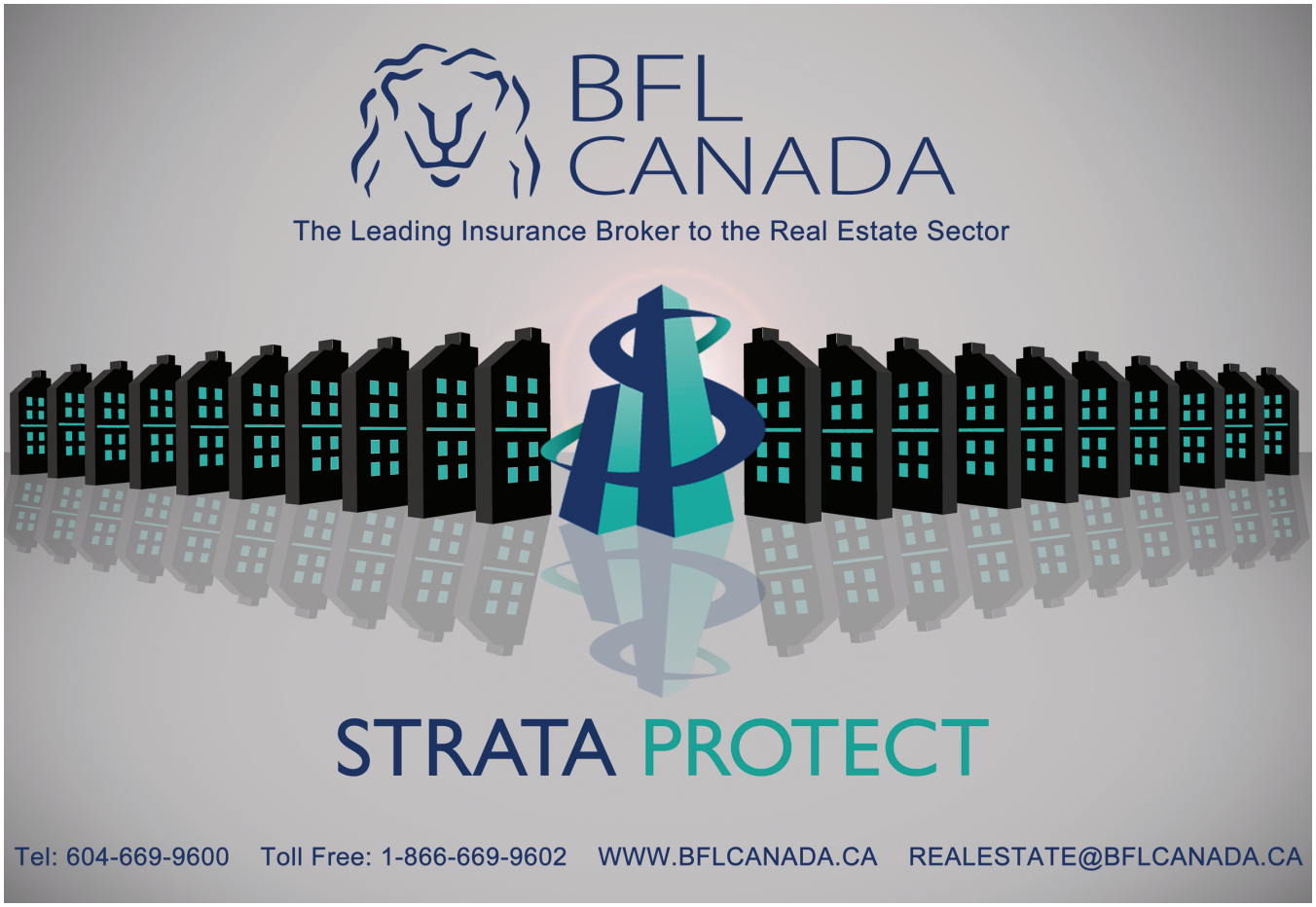

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