



## President's Message

Three years ago CCI Vancouver hosted the spring CCI conference. The rain managed to stop for 4 or 5 days and our guests were treated to the kind of weather that has, for the most part, escaped us for the past few months! Instead of record sunshine we have had record rain! Good thing we were not hosting this year's spring CCI Conference. That privilege fell on CCI Nova Scotia and the host City of Halifax. For anyone who has never visited Halifax, make sure you put it on your list of places to visit if you have plans to travel to the east coast! While the main purpose of the conference is to allow the National council to meet to conduct CCI business and in particular, to address governance issues and chapter issues (good and bad) across the Country, CCI Nova Scotia, its board members and chapter members warmly welcomed each and everyone who travelled to Halifax to a wonderful and fun-filled three days! Personally I don't think I could have eaten another lobster (much cheaper than at home) but enough cannot be said about the hospitality, friendliness and camaraderie of the Haligonians (I did not know there was such a word) while in Halifax. There was plenty of opportunity to sight see and find out how our brethren on the "other" coast work, live and play! We even had good weather (except for the first day which truly reminded me of a rainy Vancouver day in June!) which was an added bonus for those of us who have suffered through a soggy or cold (or both) spring!

As the Vancouver chapter representative on the National council I was asked to provide the rest of the council members with a status report on CCI Vancouver. I was very proud to report that 2010/2011 had truly been a great year for our chapter. This time last year we had 32 members; this year I was able to report that we had

grown to 45 members! This time last year we were struggling to increase attendance at our educational seminars. Since October last year we have held three educational seminars and our total attendance for those three seminars was 210, or an average of 70 people per seminar! Most recently we held an educational seminar on June 11th and heard from speakers representing the financing, restoration, insurance, strata management and legal sectors of the condominium industry regarding a myriad of hot topics. Many thanks go out to our attendees and to our speakers and event organizer for another great educational seminar.

The summer months are generally quiet; everyone goes away on vacation to take a well-deserved rest from work. While the CCI Vancouver board is very pleased with the results but does not plan to rest on its laurels and we will be working throughout the summer to put the finishing touches on another full day educational seminar that will be held at the end of September or early October. We will also be rolling out a 2012 calendar of events, which will include the dates of all of our 2012 seminars, the venue, the topics and the guest speakers. Lastly, we plan to offer, for the very first time, an educational course, likely to be offered as a one day course of over two ½ days, for all strata council board members. The course will cover such topics as:

- How to run council meetings, annual general meetings and special general meetings
- How to repair and maintain your condominium complex;
- Bylaw and rule enforcement;

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- Financial management;
- Recruitment and retention of volunteers for a strata council;
- Insurance;
- The powers and duties of a strata corporation; and
- What it means to be a good strata council member.

Stay tuned for more details in the weeks to come!

## CCI NATIONAL COUNCIL UPDATE

As many of you know, I have been appointed by the CCI Vancouver chapter board to be the National council representative for 2011. In that capacity I am required to participate in teleconference calls and face to face meeting with the entire National council and the National executive of CCI to identify issues of concern with our Chapter, to learn about initiatives put in place or being developed by CCI National for use by our chapter to help it grow its membership, identify and appoint new volunteers to our board and our chapter committees, to market the CCI message as “your condo connection” and to improve the educational mandate of CCI Vancouver. On June 16 and 17 I attended and participated in several meetings with the remaining National council representatives and the National executive to listen to hear about the good things and not so good things that other chapters are experiencing, to find out what initiatives the CCI National committees have been working on in 2011 and how those initiatives can work to make our chapter bigger, better and stronger and to learn about the tools that CCI National is developing for use by our chapter. Some of these initiatives and tools include:

- A membership application template that better identifies the membership categories for our chapter members;
- A best practices manual that will assist our chapter with the production of membership reporting statistics, newsletter preparation and distribution, how to run efficient board meetings, a “how to” guide for our various committees;
- Educational material for use by our chapter;
- The Ambassador program to help us with membership growth;
- Providing guest speakers from the National council and the National executive to attend our seminars;
- Financial assistance for any special projects/initiatives which our board thinks will improve and grow our chapter; and

- B.C. based exams available to lawyers, engineers and property managers who wish to obtain their ACCI (Associate of the Canadian Condominium Institute) designation. This designation, which will be available to our professional members, will confirm that the holder of the ACCI is an accredited and recognized professional member of CCI. The ACCI designation, once obtained, will be available to place on business cards, web-sites and letterhead of the professional who has obtained the designation.

There are more initiatives that are presently being developed by various committees and I will report on those after our next National council meeting.

*Jamie Bleay – CCI Vancouver President*

## LEGAL CORNER

### Case Law Update

**Recently in *Imbeau v. Owners Strata Plan NW 971, 2011 BCSC 801*, Mr. Justice Truscott said:**

[28] It is my conclusion that the vote was not conducted by secret ballot and the petitioners are entitled to a declaration that the vote and subsequent passing of Resolution “A” on March 29, 2010 is null and void and the Owners do not have to pay the special levy authorized by that Resolution.

The “vote” was regarding a special levy for repairs and renovations amounting to \$3 million. The vote was taken by secret ballot, in that each owner or proxy holder was given a ballot to mark – and then hand into adjudicators. The lack of privacy, or a little booth (much as are used by elections Canada for parliamentary elections,) made the vote, in the judge’s mind, not secret at all – and therefore null and void.

This may change the way we all vote at SGMs and AGMs!

## CASE COMMENT

*Dollan v. Strata Plan BCS 1589, 2011 BCSC 570 (CanLII)*

Recently the BC Supreme Court was again asked to decide if the actions of a Strata Corporation were “significantly unfair” to an owner in the building.

## CCI - Vancouver Board of Directors - 2010/2011

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 Barry Burko - Member at Large  
 Paul Murcutt - Member at Large

## Welcome New Members

The Owners, Strata Plan VR406  
 The Wynford Group

In Dollan, the issue arose regarding a “spandrel” window. Spandrel glass is opaque glass that you cannot see through, but that provides light and an exterior consistency to glass buildings. Its most common use is in glass towers to cover off the area that would otherwise show the outside edge of the floor or ceiling of each floor. Thus, the outside of a building is a clean glass line, but without views of concrete floor ends.

The Petitioners in this case had purchased the unit from the owner-developer based on plans providing for a view glass window. When the construction was complete, a spandrel window had been installed instead.

An added complication was that only four and half feet from the spandrel window, was a vision glass window of an adjacent unit. Privacy was raised as a concern if the opaque spandrel window was to be replaced with vision glass.

At the hearing, s. 71 and 164, 165 of the Strata Property Act were canvassed, but only s. 164, 165 arguments were sought to be the basis of a remedy.

Section 71 says:

71 Subject to the regulations, the strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless

- (a) the change is approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or
- (b) there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.

Section 164 and 165 state that:

164 (1) On application of an owner or tenant, the Supreme Court may make any interim or final order it considers necessary to prevent or remedy a significantly unfair

- (a) action or threatened action by, or decision of, the strata corporation, including the council, in relation to the owner or tenant, or
- (b) exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.

(2) For the purposes of subsection (1), the court may

- (a) direct or prohibit an act of the strata corporation, the council, or the person who holds 50% or more of the votes,
- (b) vary a transaction or resolution, and
- (c) regulate the conduct of the strata corporation's future affairs.

165 On application of an owner, tenant, mortgagee of a strata lot or interested person, the Supreme Court may do one or more of the following:

- (a) order the strata corporation to perform a duty it is required to perform under this Act, the bylaws or the rules;

(b) order the strata corporation 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).

The Petitioners applied to the strata council to make the change. Council decided that the change to the window might fall within the parameters of s. 71 so called an SGM to determine the views of the owners.

Rising from the SGM, the minutes state in part that, the Petitioners have requested to undertake a substitution of the spandrel glass panel to a clear vision glass panel. Described is the panel is approximately 17 inches wide and runs floor to ceiling. Approximately 24 inches away is a mirror image. The Strata Council has viewed the requested spandrel glass change as a significant change in the use of the common property. Strata Council determined that this was a privacy issue for the particular owners of the strata lots directly across, above or below. Brought forth was that if the glass would be switched to clear vision glass this would create a privacy issue that would create a significant change to owners, especially as privacy is such an important factor in society today.

The Strata Corporation is dealing with the issue at hand and not what [the owner-developer] did or did not install or change from original plans. Also the townhouse strata lot that had spandrel removed and glass inserted was done directly by the Developer and this change did not become before Council. The townhouse strata lot change has no privacy issue involved as the window is a street view only. Similarly, the owner of the Penthouse strata lot owns the whole floor and privacy at that strata lot was not an issue.

[The president] advised that the Strata Council has discussed this topic extensively in individual discussions and in groups and is attempting to come up with what is fair to all owners.

The application to make the change was defeated with almost ¾ of the owners voting against the replacement of the glass.

Madam Justice Loo reviewed the court's description of what “significantly unfair” means: “burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith”, “unjust or inequitable”, or unreasonable. Moreover, the word “significantly” means that a court should only interfere if the actions or decision of a strata council results in “more than mere prejudice or trifling unfairness”.

She then quoted at length from other case law:

[30] However, in this case the Strata Corporation acknowledges that in discharging its statutory duties to manage, repair and maintain the common property, it “must endeavour to accomplish the greatest good for the greatest number”: *Sterloff v. Strata Corp. of Strata Plan No. VR 2613 (1994)*, 38 R.P.R. (2d) 102 (B.C.S.C.).

[31] The challenges faced by living in close confinement with others in a high rise strata complex or “castles in the air” was discussed by Madam Justice Huddart for the Court of Appeal in *Shaw Cablesystems Ltd. V. Concord Pacific Group Inc.*, 2008 BCCA 234 (CanLII), 2008 BCCA 234. In dismissing the appeal from the decision of Mr. Justice Leask, she stated:

[9] [Leask J.] preferred a more democratic approach to the use of the common property than that proposed by Shaw; he wrote:

[10] In answering the two questions posed on this Rule 34 application, I am persuaded that the defendant's position is correct. Owning a strata lot and sharing ownership of the common property in a condominium development is a new system of owning property and has required the development of new mechanisms and procedures. Living in a strata development, as the Nova Scotia Court of Appeal stated [in 2475813 Nova Scotia Ltd. v. Rodgers, 2001 NSCA 12 (CanLII), 2001 NSCA 12 at para. 5], combines many previously developed legal relationships. It is also something new. It may resemble living in a small community in earlier times. The council meeting of a strata corporation, while similar in some respects to a corporate annual general meeting, also resembles the town hall meeting of a small community. Stratas are small communities, with all the benefits and the potential problems that go with living in close collaboration with former strangers. In the circumstances, I believe the court should be slow to find absolute rights in individual owners that cannot be modified by the considered view of the majority of owners, controlled by judicial supervision where appropriate.

[24] As is apparent from the scheme of the Act, its purpose is to create condominiums and to enact a total body of

law to permit this new arrangement and application of property rights. To permit more concentrated and efficient use of land resources, this new type of property ownership met the need for a means of providing fee ownership to people wishing to own their own home, as land became less available and more expensive with increased post-war urbanization.

[25] As J.C. Cowan (later Cowan J.) noted in a lecture he gave shortly after the introduction of the new strata title concept to British Columbia (since published as "Strata Titles" in K.C. Woodsworth, ed., British Columbia Annual Law Lectures, 1968 (Vancouver, B.C.: Continuing Legal Education)), the condominium or strata title concept permits us to "legally build and own 'castles in the air'." One of the important objects of the Act, like its predecessors, is to provide a framework of rules for group living in those castles, most often in one building. The primary feature of those rules is that no one person possesses or can possess exclusive control of the building and that, generally speaking, the majority rules. No owner has complete freedom of action within their own unit or within the common property....

[32] One of the problems that comes with living in an urban condominium development, rather than say a house on a large lot, or in a castle surrounded by high walls and a moat, is the loss of privacy....

Madam Justice Loo determined that the refusal of the owners to allow the replacement of the spandrel window with vision glass was significantly unfair. She said:

[36] The original purchasers of the 01 units and the 02 units both knew or ought to have known from looking at the strata plans that the distance between their windows was close and that the windows were to be vision glass windows. However, whether or not the current owners of the 02 units were the original purchasers, the 02 unit owners have both a privacy screen at the expense of the 01 unit owners and a view. The 01 unit owners, and more particularly the petitioners, have no view from the spandrel window and a privacy screen they do not want. To allow the 02 units the benefit of a privacy screen that is in reality a window in an 01 unit, deprives the 01 unit owners' use and enjoyment of the window as a window.

Despite having followed the procedure they understood to apply to the circumstance, the owners had their decision overturned by the court. The court determined that the benefit of the spandrel window was to the neighbours, for privacy, and the detriment was to the petitioners because they lost the view.

This case clearly shows the difficulty owners and courts have in balancing competing rights in a strata corporation. What is abundantly clear is to live in a strata corporation means that "no owner has complete freedom", and if you want to "do what I want" because "this my house" – then you should best buy a single family home.

This case has been appealed.

*Phil Dougan*



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## INSURANCE CORNER

### Earthquake And Tsunami Insurance: Are You Ready?

Recent tragedies in New Zealand and Japan have once more brought up the issues of earthquake and tsunami insurance coverage to the top of the list for many people on the Canadian West Coast. After all, we live in a high risk area for both these natural disasters and often forget how vulnerable our families and real estate assets are to these hazards created by fault lines in our back yard.

Most insurance policies exclude coverage for loss or damage caused by earthquake and flood, which includes tidal waves and tsunamis. But specific coverage is usually available by way of an endorsement or extension to an existing insurance policy.

#### Earthquake coverage

Unlike other insurance perils where a specific deductible amount is shown, earthquake coverage is typically subject to a percentage deductible applicable for each “occurrence”. This percentage is applied to the limit of insurance on the building. A quake deductible can be as low as 5% on a personal lines policy and as high as 20% on a commercial building in a high risk area.

For example: an apartment building owner, insured to a limit of \$25,000,000 and subject to a 10% quake deductible, will face a \$2,500,000 deductible for earthquake damage before the insurance company chips in.

Another particularity of earthquake insurance coverage is that an “occurrence” is defined to span a specific period of time. Unlike other perils such as fire or water, which cause most, if not all, of the damage at a specific point in time; earthquakes often involve a first shock causing some damage and aftershocks, which can also damage to the same building. Keep in mind that as a building owner, the longer the period of time allowed for a single “occurrence”, the better your coverage is.

For example: an insurance policy with an “occurrence” defined to span 168 hours will include all the damage due to the initial shock in addition to all aftershock damage within 7 days as a single claim, subject to a single deductible.

Consider that quake deductibles are very high and always ask your insurance broker for the lowest percentage deductible available, combined with the longest time span for an “occurrence” to be included on your policy.

#### Tsunami coverage

Tsunamis and tidal waves fall within the insurance definition of “flood”.

This coverage is not currently available to homeowners and tenants, but commercial building owners and landlords can easily obtain flood insurance.

Deductibles on this type of insurance can range from \$10,000 to \$50,000, depending on the construction, occupancy, age and location of the building.

Earthquakes and tsunamis cause billions of dollars of direct damage, but also result in huge consequential losses. As a building owner and landlord, always make sure your rental income or business interruption are fully protected for a suitable period of time – these days that’s up to 24 months - to help shoulder your expenses while repairs are under way.

## LEGISLATIVE UPDATE

### The Canadian Revenue Agency (“CRA”) and tax exempt status of strata corporations in B.C.

As most of you know, the CRA has, for as long as strata corporations have been filing annual tax returns, determined that strata corporations fall within the exemption from tax pursuant to section 149(1)(l) of the Income Tax Act (the “Act”). The CRA has routinely acknowledged that strata corporations, as an organization that are exempt from tax under section 149(1)(l) of the Act, may earn a profit provided that profit is incidental to the business of the strata corporation and the profit arises from not-for profit activities.

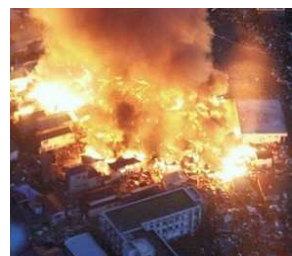


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## Earthquake Safety Procedures

<b>Hazard</b>	<p>British Columbia's coastal regions are zoned for moderate to severe earthquake hazards. The hazard is formed by the intersection of three continental plates in what is known as the Cascadia Subduction Region. This region is formed as one plate slides under, or subducts, another plate causing a region of potentially large seismic instability. Secondary hazards of the region include the liquefaction of soils as well as tsunami waves caused by shifting plates.</p>	
<b>Preparing For An Earthquake</b>	<p>Environment Canada urges all people in seismic areas to prepare for 72 hours of self-reliance following an event. Your emergency preparations should include the following major areas:</p> <div><div><p>3 gallons (11.4 liters) of water per person</p><p>Battery powered radios or TV's</p><p>Flashlights and spare batteries</p><p>First Aid supplies</p></div><div><p>Essential prescription medications</p><p>Canned food products</p><p>Fire Extinguishers</p><p>Emergency tools (gas main wrench)</p></div></div>	
<b>Emergency Actions</b>	<p>Take calm and direct action in the event that seismic shaking should begin.</p> <ul style="list-style-type: none"><li>✓ If inside, remain inside the building until the conclusion of shaking.</li><li>✓ Take shelter under large stable objects such as tables or counters. Use doorways in load bearing walls as an alternative.</li><li>✓ Stay away from windows, bookshelves and overhead light fixtures.</li><li>✓ Calmly exit the building once shaking concludes. Be considerate of overhead hazards and the potential for aftershocks.</li><li>✗ Do not light any matches or candles as this may ignite ruptured gas systems.</li><li>✗ Make no attempt to enter or exit a building during the shaking. The majority of deaths and injuries are caused by falling glass and debris.</li><li>✗ If driving, do not leave your vehicle to find shelter. Stop in a safe area and take refuge in your vehicle.</li></ul>	
<b>Actions Immediately Following</b>	<p>Direct shake damage is a major source of earthquake losses. However secondary losses can be profound and can largely be avoided with appropriate emergency action. Following a seismic event, the following actions can serve to limit damage and limit threats to occupant safety:</p> <ul style="list-style-type: none"><li>• Turn off any appliances and space heaters.</li><li>• Assess any damage and safety threats from falling objects or debris and restrict access to these areas.</li><li>• Be prepared to close domestic water lines if any leaks are observed.</li><li>• Be prepared to disengage electrical and gas services if gas leakages are detected.</li></ul>	

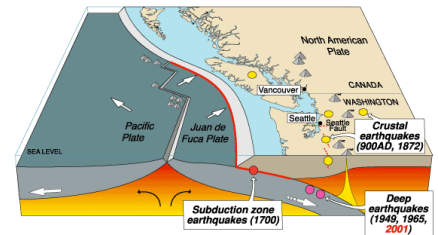
For assistance with your pre-quake emergency response planning or other loss control related issues, please contact **BFL Loss Control Engineering** for additional resources and services.



## Preparing Your Facility for Earthquake

### Hazard

British Columbia's coastal regions are zoned for moderate to severe earthquake hazards. The hazard is formed by the intersection of three continental plates in what is known as the Cascadia Subduction Region. This region is formed as one plate slides under, or subducts, another plate causing a region of potentially large seismic instability. Secondary hazards of the region include the liquefaction of soils as well as tsunami waves caused by shifting plates.



### Pre-Planning

The first critical step in preparing your facility for a major seismic event is the completion of a thorough pre-plan. This step is essential in identifying the specific hazards and exposures of your facility. Once properly identified, a formal response plan and recovery plan can be formulated to help mitigate these deficiencies.

### Engineering Solutions



While it may not be feasible or cost effective to complete a seismic retrofit on the building envelope, there are numerous ways to affect seismic risk improvement. These methods include:

- Formalized documented response plans for your facility to ensure that protection systems are maintained, fuel systems are isolated and potential water damage is avoided.
- Sprinkler systems are properly braced to resist lateral building movements during shaking (pictured 1<sup>st</sup> and 2<sup>nd</sup> images on left).
- Seismic gas shutoff valves can be installed to automatically isolate fuel lines during shaking to minimize fire-following loss scenarios (pictured 3<sup>rd</sup> on left).
- Equipment, storage racks and fuel fired appliances can be properly anchored and braced to eliminate toppling, broken fuel lines and broken water lines (pictured bottom on left).

### Post Quake Actions

Following the earthquake, coordinated and prompt action can be taken to reduce the overall damage to your facility as well as the susceptibility to secondary losses such as fire and water damage. Formally documented emergency procedures are critical to ensure the right people are available to execute your facility plan. Basic steps include the following:

- Disconnecting electrical power or incoming fuel services if damage has occurred.
- Close domestic water lines as required to minimize water damage.
- Close sprinkler valves only to affected areas
- Prohibit welding, cutting or other ignition sources if fire protection is affected.
- Provide additional security as needed for your site.

For assistance in preparing your facility for an earthquake or developing a pre-quake emergency response plan or other loss control related issues, please contact **BFL Loss Control Engineering** for additional resources and services.

Recently a client forwarded me a letter from the CRA. The letter was sent by the CRA after it had reviewed the strata corporation's annual tax return for 2010. The letter my client received identified, as an area of concern, the "making of a profit or intent to make a profit". The letter states that "a key component of qualifying for and maintaining tax-exempt status is that there can be no significant profit motive associated with the activities (business lines) undertaken by an organization exempt from tax under paragraph 149(1)(l) of the Act." The tax return that the strata corporation had filed had referred to telecommunications revenue earned from the rental of the roof top for telecommunications equipment. To the best of my knowledge this type of "revenue" is quite common among strata corporations in B.C. In speaking to many of my legal colleagues from across the Country who are associated with CCI, they all acknowledged that telecommunications revenue is a common "revenue" source for condominium corporations. In addition, there is "revenue" that can be earned from strata-owned units and from the investment of reserve funds. According to the CRA, revenues of the type attributed to my client are revenues that are not funded" by members and are a purely "for profit" activity with the proceeds being used to reduce the operating costs of the Strata Corporation and thereby reducing the maintenance fees payable by owners to the Strata Corporation. While the CRA did not take away the strata corporation's tax exempt status, it did warn that the strata corporation could be subject to a follow up audit of its tax exempt status to ensure that the tax returns filed were in compliance with the Act. The fact of the matter is that no strata corporation wants to have its not-for-profit tax exempt status taken away; this

could possibly result in taxes being payable on all income which would be a considerable blow to all strata corporations. While the CRA seems to be saying that the revenues earned suggest the existence of a significant profit motive, does it not seem to make more sense that the earning of income only serves to reduce the overall operating expenses of the Strata Corporation and its owners and not to generate profit of any sort for its members/owners.

That being said, it is perhaps time for strata corporations who identify similar "revenue" sources on their tax returns to consider consulting a tax lawyer/tax advisor to determine whether or not there are alternative ways to structure the revenue so that perhaps it can be considered by CRA to be ancillary to the objectives of the Strata Corporation. Alternatively these same advisors may be able to ascertain a tax efficient way to minimize income tax payable by strata corporations with revenue sources that are considered to be based on a "significant profit motive". Earning of income only serves to reduce the overall operating expenses of the Strata Corporation and its owners and not to generate profit of any sort for its members/owners. Unless CRA is able to prove otherwise, it is my view that the profit generated from a portion of the common property of the Strata Corporation is incidental to the fundamental objectives of the Strata Corporation which are to provide housing and shelter to its members and to be fiscally responsible to its members when it comes to the operating costs they are required to pay to the Strata Corporation. Provided the income earned is not payable to the owners or made available for their personal benefit, it is my view that the income earned is incidental. In my view the fact that the revenue is used, somewhat like a budget surplus, to reduce the overall expenses of the Strata Corporation does not, in my view, amount to a "personal benefit" to any of the strata lot owners who comprise the Strata Corporation.

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## ALTERATION & INDEMNITY AGREEMENTS

*By Cora D. Wilson, Strata Lawyer*

Alterations are becoming more complex and fraught with liability concerns resulting in many strata corporations opting to amend their bylaws to adopt a system for addressing these important issues.

A simple example highlights the importance of having properly drafted alteration bylaws. An owner may wish to enclose his or her balcony to increase their habitable living area. This may seem like a reasonable and straightforward request. However, none of us need to be reminded of the severe impact the "Leaky Condo" crisis has had on owners. If the building envelope balcony enclosure is not done properly, water penetration into the building substrate could result in severe rot and damage to the common property and contribute to a premature building envelope failure. The remedial costs are gigantic. Such costs would be typically paid by all owners, unless the strata corporation has a properly worded alteration and indemnity agreement that requires costs to be paid by the owner performing the alteration.

The basic rule of thumb is that an alteration by an owner requires the prior written approval of the strata council (See Standard Bylaws 5 and 6). However, there are some alterations that may not be caught by these bylaws, such as flooring replacements (other than flooring installed by the owner developer), hot tub installations and the installation of window air conditioners, to name a few. Specific bylaws

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may be required to ensure that alterations may be governed by the strata corporation.

The strata corporation should review its bylaws to ensure that its concerns are adequately addressed to cover matters such as noise, vibration, nuisance, interference with views and privacy, fire and other hazards and building envelope alterations.

The following is a checklist of issues and conditions that a strata corporation may wish to impose on an owner by way of an alteration agreement:

1. determine the types of alterations that require approval given the unique character of the particular strata corporation;
2. require written approval from the council to ensure that the proposed alteration complies with the aesthetic needs of the complex including the location, color, size and appearance;
3. require the owner to provide valid permits from the authority having jurisdiction before commencing work on the alteration;
4. require the owner to employ proper professionals and contractors to design, inspect and certify that the work complies with applicable building codes and other laws (this is particularly important if there are water penetration concerns);
5. require the owner to provide evidence that the contractors and others are covered by WCB and are licensed to perform the work;
6. impose appropriate standards on the quality of the work as a condition to the grant of approval;
7. require the owner to perform the work within a certain period of time and to rectify deficiencies, if any;
8. authorize the strata corporation to perform the outstanding work or correct the deficiencies if the owner fails to do so after notice to that effect;
9. require compliance with bylaws dealing with noise, nuisance, access, permitted hours for the work, etc.;
10. require compliance section 70(4) of the Strata Property Act dealing with changes in habitable area and section 71 of the Strata Property Act dealing with significant changes in the use or appearance of common property – (both of these provisions are often overlooked and both require owner approval at a general meeting before proceeding with the alterations);
11. obtain a satisfactory indemnity agreement for the benefit of the strata corporation and its council members, authorized agents and employees against any claims, losses, damages or actions related to the alteration, including payment of any legal costs of the strata corporation on a full indemnity basis;
12. require the owner to pay all of the expenses related to the alteration – including past present and future expenses for repair, maintenance, replacement, insurance, professionals, contractors and legal costs;
13. require the owner to inform a subsequent purchaser of the strata lot of the terms of the alteration agreement and to obtain

the subsequent purchaser's agreement to be bound by the alteration agreement, failing which, the alteration would have to be removed by the owner before closing;

14. require the owner to remove any Builder's Lien claims which may be filed against the common property as a result of the alteration;

15. address the increased costs of fire and liability insurance payable by the strata corporation, if applicable;

16. address what happens in the event of a claim against the strata corporation related to the alteration;

17. address whether or not to require an owner to obtain an homeowner's insurance policy; and,

18. consider incorporating the alteration agreement into a bylaw amendment to provide notice to the public when the bylaw is registered in the applicable land title office.

19. These agreements are complex. Strata corporations are advised to seek legal advice when preparing these agreements to ensure that all relevant issues are properly addressed.



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## HOARDERS IN STRATA CORPORATIONS

We have all heard stories about hoarders and many of us have likely seen the A & E television show called “Hoarders” or the show called “Buried Alive”. While we have all heard the term “one person’s junk is another person’s treasurer”, what is a “hoarder”? There are several definitions for “hoarder”, for “compulsive hoarder” and even a medical definition of “hoarder”. Generally speaking, someone is a hoarder if they acquire, accumulate and possess items (without using or discarding them) “even if the items are worthless, hazardous, or unsanitary. In many instances someone who is a compulsive hoarder will accumulate to such an extent that their mobility within their home is impaired and interferes with basic activities within their home, including cooking, cleaning, showering and sleeping.

Are there hoarders in condominiums? The simple answer is “yes”. Elaine Birchell, an Ottawa-based hoarding intervention specialist, has stated that “Worldwide, there are an estimated 1 to 2.5 percent are hoarders”. She has stated that “what we find is no matter where you go, the prevalence rate seems to remain the same” and that hoarders “feel that their safety, their security, their happiness, their meaning in life, their worth is defined in direct proportion to the number of things they have, and perhaps the types of things”. Whether the accumulation consists of stacks of magazines and newspapers, or clothing piled high in each room, or “collectibles” or rotting/spoiled food or human waste, the hoarder has soon amassed such a large amount of items piled high in every room that they cannot easily access their front door, their washrooms or bedrooms!

We have all heard the maxim “our homes are our castles” so what’s the big deal with a condominium owner being able to pile up items, including trash, that they have obtained or purchased and do not want to get rid of it or even use it? While we may have our own stories to tell about strata lot owners who fit the bill as a hoarder, here are a few stories from elsewhere about hoarders in condominium units.

On September 24, 2010, a fire broke out in a 720 unit apartment building in Toronto. The source of the fire was a suite occupied by an individual who was a known hoarder. According to one official, there was so much stuff behind the door to the suite that it could not be opened fully. Many of the occupants in the building had to be evacuated and but for the quick action of the fire department, there could have been a significant loss of life. As it is, almost 1200 people were displaced for almost a week while the fire department attended to the fire and dealt with the resultant damage. The fire department had stated that because the suite was so completely filled with papers and books that the fire was one of the hottest fires it had ever fought!

While this story involved an apartment building and not a condominium corporation, it is safe to say that the existence of a hoarder in a multi-family strata corporation, including a highrise tower filled with hundreds if not thousands of occupants, can pose some very serious problems for strata councils.

Another story out of Nashville, Tennessee may bring closer to home how bad a hoarding problem can get. Stacy Harris, the owner of a condominium for over 35 years, did not think that anything was wrong in her unit while other owners and the property manager in the building, described as an upscale condominium tower, said “they

could not get rid of the stench that had residents complaining frequently”. A news article about the case, which went to court after the homeowner’s association sued (successfully) the owner who was ordered to sell her unit and use the sale proceeds to pay back more than \$116,000.00 in legal fees, made reference to an interview with the supervisor of a local bio-hazard cleaning company. The supervisor was quoted as saying that Ms. Harris lived in a “gross filth and hoarder situation”.

They say that a picture is worth a thousand words and here is a picture to give you an idea of what might be encountered behind an owner’s door in your strata corporation:



So what can be done when a strata corporation discovers that they have an owner/occupant whose unit might look like this? The most obvious answer might be to compel the owner/occupant to clean up the unit but keeping in mind what has previously been said about the mentality of a hoarder, this solution may not be so simple.

As you know, every strata corporation is required to have bylaws. By default, those bylaws are the Standard bylaws set out in the Strata Property Act (the “Act”). Most if not all strata corporations will have the following bylaw (which is reproduced from bylaw 3 of the Schedule of Standard Bylaws).

### Use of property

3 (1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that

- (a) causes a nuisance or hazard to another person,
- (b) causes unreasonable noise,
- (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,
- (d) is illegal, or
- (e) is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan.

But how does a strata council know that what lurks behind an owner’s door is a nuisance or a hazard if they cannot get into the unit?

Perhaps a passerby has had an opportunity to look in when the owner's door is open; perhaps it is a window washer who can see into the unit from the exterior of the building or perhaps there is only suspicion that a problem exists because the owner will not allow access to test smoke detectors or to clean fireplaces or dryer vents. Whatever the reason, without access to the unit it is admittedly difficult for the strata council to decide whether or not they have a hoarder on their hands!

Strata corporations routinely require access to units for such things as annual smoke detector testing, sprinkler head inspection or fire place/dryer vent cleaning. The following bylaw is generally utilized by strata corporations who require access, for emergency purposes or otherwise, to a unit:

#### Permit entry to strata lot

(1) An owner, tenant, occupant or visitor must allow a person authorized by the strata corporation to enter the strata lot

- (a) in an emergency, without notice, to ensure safety or prevent significant loss or damage, and
- (b) at a reasonable time, on 48 hours' written notice, to inspect, repair or maintain common property, common assets and any portions of a strata lot that are the responsibility of the strata corporation to repair and maintain under these bylaws or insure under section 149 of the Act.

(2) The notice referred to in subsection (1) (b) must include the date and approximate time of entry, and the reason for entry.

However, this bylaw does not really have any teeth to it in terms of "voluntary" access to the extent that a strata corporation will likely have to turn to section 173 of the Act to compel an owner to allow "a person authorized by the strata corporation to enter the strata lot" (unless there is an emergency). Section 173 of the Act states:

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

- (a) order an owner, tenant or other person to perform a duty he or she is required to perform under this Act, the bylaws or the rules;
- (b) order an owner, tenant or other person to stop contravening this Act, the regulations, the bylaws or the rules;
- (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

Section 173 of the Act does not require, as a prerequisite, that the court application be approved by a  $\frac{3}{4}$  vote resolution. A strata corporation, armed with compelling evidence that supports a court application to gain access, can proceed directly to court and apply for an order that the owner/occupant provide access to the unit. The application could, if supported by the evidence, even include asking for an order that the owner clean up the unit. But will a hoarder happily agree to obey these court orders and more importantly, will a hoarder, who likely suffers from a variety of medical/mental conditions, be in a position to comprehend what they are being asked to do?

*In Strata Plan NW 1260 v. Neronovich* [Vancouver, L012803 BCSC] a non-resident owner allowed their town house to become so filthy

with discarded and rotten food that her unit and a number of other neighbouring units were infested with rats. The strata corporation applied for a court order requiring the defendant to clean up her unit. The court granted the strata corporation's application with an additional order that if she did not do it herself, the strata corporation was empowered to go in and do it themselves and charge it to the owner. The strata corporation ended up having to do the job themselves, and upon subsequent application to the court the strata corporation was also empowered to dispose of everything that had been taken out of the unit and were awarded their actual legal costs after taxation by the registrar of the court.

As an aside, having reviewed the pictures supplied to the court of the unit of Ms. Neronovich, it is not hard to assume there was undoubtedly mental illness of some sort at play. This arises quite often. Strata owners are not immune from mental illness – and there are many people who, while they do not foam at the mouth and can 'function' on a day-to-day level, are not capable of making reasonable decisions and cannot form reasonable judgments about their own, or others behaviour. Dealing with such individuals is one of the biggest challenges a strata community is likely to encounter.

As an alternative to a section 173 court application, a strata corporation might try to invoke the provisions of section 133 of the Act which states:

133 (1) The strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including

- (a) doing work on or to a strata lot, the common property or common assets, and,
- (b) removing objects from the common property or common assets.

(2) The strata corporation may require that the reasonable costs of remedying the contravention be paid by the person who may be fined for the contravention under section 130.

Of course the difficulty, once again, is gaining access to be able to utilize section 133 of the Act. As such, a section 173 court application should likely include language taken from section 133 of the Act so that a strata corporation, like Strata Plan NW 1260, is given the legal tools to clean up the owner's strata lot if the owner is simply not able to do so.

Are there any other options available to a strata corporation to deal with this type of "difficult" owner? When all else fails or perhaps the first step to take if a strata corporation is concerned that they are dealing with a hoarder is to notify the local Fire Department and/or Health Authorities to determine whether or not they will, perhaps with the involvement of the police, gain entry into the unit. If a strata corporation were to proceed in this manner, the strata council should ensure that there are two or more witnesses present when the unit is entered to avoid allegations of theft and to be able to give evidence of the condition of the unit if the strata corporation ends up having to proceed to court. In any event, the local Fire Department/Health Authorities may be better equipped to deal with this type of "bylaw" contravention and could be asked to issue a notice pursuant to section 85 of the Act which states:

## Work order against strata lot

84 (1) Except as provided in section 41.1 of the *Fire Services Act*, a strata corporation that receives a notice or order requiring work to be done on or to a strata lot, from a public or local authority authorized by law to require the work, must promptly give the notice or order to the owner of the strata lot.

(2) An owner who receives a notice or order requiring work to be done on or to the owner's strata lot, from a public or local authority authorized by law to require the work or from the strata corporation under subsection (1), must do the work.

If the owner failed to comply with the work order, the strata corporation could then invoke section 85 of the Act which states:

85 (1) If an owner, after receiving the notice or order under section 84, fails to do the required work, the strata corporation may do the required work.

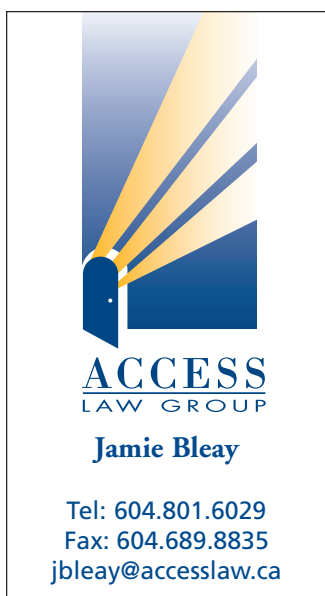
(2) If the owner appeals the work order and advises the strata corporation in writing of the appeal, the strata corporation must wait for the results of the appeal.

(3) Except in an emergency, the strata corporation must notify the owner in writing of its intention to do the work at least one week before starting the work.

(4) The owner must reimburse the strata corporation for any money the strata corporation spends doing work on or to the strata lot under this section.

As you can see, there is no simple and easy solution to dealing with hoarders in strata corporations. Condominium ownership is on the rise and we are seeing more and more baby boomers and their parents moving into condominiums. It is easy to see how the hoarding problem will start to become more and more prevalent and strata council members and strata managers will need to be vigilant about moving quickly to deal with a hoarder; not only is hoarding "nuisance or hazard to another person", it has the potential to cause harm or injury to others, like the 2010 apartment fire in Toronto!

*By Jamie A. Bleay and Philip Dougan, both of Access Law Group*



## VIDEO SURVEILLANCE AND BYLAW ENFORCEMENT

### (Or is Big Brother Really Watching?)

We all know of buildings that have video surveillance systems in place; video surveillance cameras are routinely mounted in common areas to provide video surveillance of exterior doors, lobby areas and parking garages. After all, the need for video surveillance for personal safety and security is a good thing, right? But is it as simple as having the system installed and monitoring it to minimize vandalism, theft and other criminal activity? The decision of the B.C. Information and Privacy Commissioner in *Re: Shoal Point Strata Council* (2009) has shed considerable light on the use of video surveillance generally and in particular, its use for the purpose of bylaw enforcement.

The Facts in the Shoal Point decision could most likely apply to many strata corporations in the Lower Mainland. Shoal Point is a mixed residential and commercial apartment style building located in Victoria, B.C. There are 162 residential units in the building which has fifteen exterior doors and other exterior entry points, such as ground floor windows and skylights. When first constructed, there were 8 security cameras. According to the evidence submitted at the hearing, "three of the cameras focused on the entrance to each of the three lobbies (one for each), one on the loading dock, one on the upper parking gate, one on the hallway outside of the fitness centre door, and two on the pool. The cameras that are aimed at external access points provide a snapshot of anyone coming into or out of the area."

When the system first went live there was a live feed from all of the 8 cameras to the Originally, Concierge Desk; there was also a live feed from the three lobby cameras to each residential unit. The occupants in each residential unit could see the live lobby feed. When two additional cameras were added later on (one at the service entrance door and the other at the entrance to one of the parkades), the live feed for all cameras except for the two cameras focused on the pool went to each residential unit. There was a formal policy adopted for the use and operation of the video surveillance system. Over the years there were repeated references in strata council minutes to the use of the system and in some instances, the use to enforce bylaw violations.

Several occupants complained to the Privacy Commissioner about the gathering of personal information using the video surveillance system. However, the complaints did not focus so much on the use of the information for security purposes but for the use of the information gathered from the video surveillance system to enforce the bylaws of the strata corporation. The Privacy Commissioner, after hearing the complaints and considering the wording of sections 10 and 14 of the Personal Information Protection Act of B.C., which state:

10(1) On or before collecting personal information about an individual from the individual, an organization must disclose to the individual verbally or in writing

the purposes for the collection of the information, and

on request by the individual, the position name or title and the contact information for an officer or employee of the organization who is able to answer the individual's questions about the collection.

14 Subject to this Act, an organization may use personal information only for purposes that a reasonable person would consider appropriate in the circumstances and that

fulfill the purposes that the organization discloses under section 10(1),

for information collected before this Act comes into force, fulfill the purposes for which it was collected, or

are otherwise permitted under this Act.

made several rulings and/or findings and/or recommendations, which are summarized below:

Pursuant to section 10(1) of PIPA, organizations must, before they collect personal information from someone, disclose to that person, either verbally or in writing, the purpose for collecting their information.

For video surveillance in buildings with large numbers of units with regular occupancy turnover, notification must be in writing with respect to the collection of personal information via video surveillance.

Notification must also be provided to visitors given that section 10(1) of PIPA requires that everyone whose image is recorded by the video surveillance receive the appropriate notification. The posting of signage at all external entrances and camera locations (including the fitness centre room), with appropriate wording to comply with section 10(1), is required.

In order to use personal information for purposes that are in compliance with PIPA, it is necessary to first collect that personal information for purposes that are in compliance. In other words, lawful use is contingent on lawful collection in the first place.

The passing of a bylaw pursuant to the Strata Property Act that authorizes the collection of personal information (under section 12(1)(h) of PIPA) would allow a strata corporation to comply with the obligation to obtain the express or implied consent of the individuals to whom the bylaws apply to collect their images on video surveillance systems.

The need to collect, use and disclose personal information must pass the "reasonable person standard". The reason/purpose for the use of a video surveillance system must be set out in writing and the collection of personal information can only be for the stated purpose(s).

For the purpose of "security", decisions about whether to implement video surveillance should be based on an assessment, in the circumstances of each case, of the real need for surveillance of this kind, its reasonably expected benefits and the impact of its use on privacy. Video surveillance should be used only in response to a real and significant security or safety problem and only then at appropriate locations to address the security or safety problem.

There needs to be ample evidence, in the case of cameras installed in pool areas, that warning notices are not sufficient to warn individuals of the danger involved in the use of, for example, the pool facilities, for it to be reasonable to install and implement video surveillance.

There needs to be ample evidence or more than a paucity of incidents of damage to common property to support the contention that video surveillance to counter damage to common property.

In order to utilize video surveillance for the purpose of enforcing strata corporation bylaws, written notice of the collection and use of personal information for this purpose and further, the notice (whether in the form of policies and procedures or a bylaw) should identify whether a single or repeated violation will be an issue for which video surveillance will be used to address.

There must be sufficient evidence to establish that the frequency of bylaw violations is such that video surveillance (rather than other forms of enforcement) can be justified as an appropriate method of bylaw enforcement.

There should be appropriate and adequate security measures in place to prevent unauthorized access to the video surveillance material that has been collected and there should be notification, in writing, that there will be specific individuals designated to access and view this material.

Live feeds to residential units, other than to allow residents to identify their own visitors to the building, does not meet the reasonable person standard, nor does daily viewing of video footage in the absence of a bona fide complaint or evidence of a threat to security, personal safety or property damage.

*By Jamie A. Bleay and Philip Dougan, both of Access Law Group*

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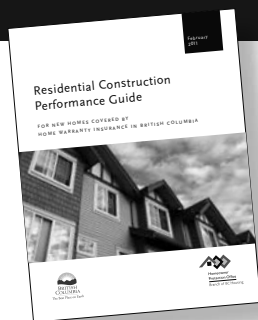
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