



President's Message

PRESIDENT'S MESSAGE

– SUMMER 2014

For many of us summertime means a bit of R & R and perhaps a chance to get away for a vacation to remember. However the same cannot be said for the directors of CCI Vancouver. Our board has been in full gear since our last seminar that took place on May 31, 2014 planning for the remaining seminars and events in 2014 as well as putting the finishing touches on the 2015 schedule. You will find our "Year at a glance" further along in this edition of the newsletter.

Before referring to the upcoming events I wanted to take a moment to thank Phil Dougan and Paul Mendes for their excellent educational seminar on proxies and general meetings. We had quite a number of council members and strata managers show up to participate in one of most exciting interactive seminars yet. Each attendee was given a 'clicker' and was able to follow along with Phil and Paul as they introduced numerous scenarios regarding proxies and voting followed by a series of questions to be answered. The clickers allowed each attendee to input their answer to the various questions after which Paul and Phil took the time to explain how they had arrived at their answer. I think it is safe to say that this was one of the most entertaining seminars CCI Vancouver has ever held.

As I stated earlier you will find our "Year at a glance" further along in the newsletter. The next event that will be hosted by CCI Vancouver will be a seminar that will take place on September 20, 2014. The location and time for the seminar, which will cover a myriad of topics, can be found in the newsletter and can be downloaded from the CCI Vancouver website. We look forward to seeing all of our members in attendance for what will surely be another wonderful educational seminar.

As most of you know CCI Vancouver is now producing an electronic newsletter. If you would like to subscribe to it directly as a member of CCI Vancouver you can do so by visiting CCI Vancouver's website at www.cci-vancouver.ca. At the same time I would hope that you would fully explore our website to make sure you are fully up to date on our upcoming educational seminars and programs.

We will be holding our 2014 Annual General Meeting on September 20, 2014 immediately after the conclusion of our upcoming seminar. CCI Vancouver is looking for volunteers who are passionate about all things strata who would like to join the board of directors or join one of our many committees, which include:

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Communications/marketing

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I invite you, as a member, to attend the annual general meeting and see if the time is right for you to step forward and be a valuable contributor to CCI Vancouver.

Jamie Bleay – President CCI Vancouver

CASE LAW UPDATE – SUMMER 2014

In *The Owners, Strata Plan LMS 3442 v. Todd Storozuk*, 2014 BCSC 1507 (CanLII) Mr. Justice Jenkins was asked to consider the application of section 144 of the *Strata Property Act* (the “Act”) in relation to a request for an exemption from a rental restriction bylaws on the grounds the bylaw caused hardship and in particular, whether or not an exemption to such a request was allowed because the strata corporation allegedly did not give its decision to the owner in question as required by section 144(4)(a)(i) of the Act.

The facts the Judge considered were as follows:

1. Bylaw 10(1) stated that an owner of a residential strata lot shall not rent his or her strata lot;
2. Mr. Storozuk, having purchased his strata lot prior to the passage of bylaw 10(1), lived in his unit for a number of years;
3. In 2012, he and his partner purchased a lot with the intention of building a home on the lot. In order to finance the purchase of the lot and the cost of constructing a home, he took out a mortgage, the security for which was unit his strata lot. In July 2012 he listed that strata lot for sale;

4. By February of 2013 the unit had not sold and the court accepted Mr. Storozuk's evidence that he was encountering significant financial stress. As a result he decided to rent his unit without permission or approval having been given;
5. Shortly after the tenants took possession there were complaints of noise at which time the strata council decided to impose fines for the noise complaints and breach of the parking bylaw;
6. Upon receiving the complaints and a notice of violation of bylaw 10 (1) was sent to Mr. Storozuk on March 7, 2013 regarding the rental of the unit and allowed him an opportunity to respond to the complaint in writing or by requesting a hearing of the strata council;
7. On March 7, 2013, Mr. Storozuk responded to the notice of violation asking that his email of February 22, 2013 be considered as his hardship application and advising he would be attending the strata council meeting of March 11, 2013;
8. He attended the meeting of March 11, 2013 and his application for a hardship exemption was verbally rejected;
9. On March 19, 2013, the strata council advised Mr. Storozuk by email that “the information provided does not support a case for hardship”.
10. Mr. Storozuk continued to rent his unit while the strata corporation continued to fine him for breach of bylaw 10(1).

At the hearing of the petition Mr. Storozuk took the position that since the strata council did not inform him in writing of its decision to decision to dismiss his hardship application until eight days after the March 11, 2013 strata council meeting the strata council was deemed to have accepted his hardship exemption request pursuant to section 144(4)(a)(i) of the Act. Section 144 of the Act states:

144. Exemption from rental restriction bylaw

144(1) An owner may apply to the strata corporation for an exemption from a bylaw that prohibits or limits rentals on the grounds that the bylaw causes hardship to the owner.

(2) The application must be in writing and must state

- a) the reason the owner thinks an exemption should be made, and
- b) whether the owner wishes a hearing.

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- (3) If the owner wishes a hearing, the strata corporation must hear the owner or the owner's agent within 4 weeks after the date the application is given to the strata corporation.
- (4) An exemption is allowed if
 - a) a) the strata corporation does not give its decision in writing to the owner,
 - i. if a hearing is held, within one week after the hearing, or
 - ii. if no hearing is requested, within 2 weeks after the application is given to the strata corporation, or
 - b) the owner requests a hearing under subsection (2)(b) and the strata corporation does not hold a hearing within 4 weeks after the date the application is given to the strata corporation.
- (5) An exemption granted by a strata corporation may be for a limited time.
- (6) The strata corporation must not unreasonably refuse to grant an exemption

The strata corporation argued strenuously that Mr. Storozuk was not entitled to rely on a technical argument that it was one day late in advising him, in writing, of its decision when he had been verbally advised at the council meeting that his application had been rejected.

The strata corporation also argued that after Mr. Storozuk had rented out his unit he did not apply for a hardship exemption from the strata council but instead simply attended the strata council meeting as the letter indicated he was permitted to do and as such, the council meeting was not a "hardship" hearing.

The Judge found on the evidence that the strata council was in possession of an e-mail dated February 22, 2013 that set out the reason for the basis for a hardship exemption and on March 7, 2013 he asked in an e-mail to the strata council that his February 22 e-mail be considered his hardship exemption application.

After considering the submissions made and the plain language of section 144(4)(a)(i) of the Act application the Judge stated that "there is no dispute that the strata council did not comply with the requirement that the decision must be given in writing to the owner within one week after the hearing. The petitioner gave Mr. Storozuk an oral decision at the council meeting but did not give him a decision in writing until eight days after the hearing."

He went on to state that "While the strict interpretation of the statute seems unjust given that Mr. Storozuk knew the result from the oral decision, received the written decision only one day late, rented his condo without following the proper procedure himself, and likely acted in bad faith by attempting to mislead the petitioner by stating that the tenants were "renting to own", I find that I am bound to apply the statute. The statute specifically states that an exemption is allowed if the strata corporation does not give its decision in writing within one week after a hearing is held. Nothing in the statute indicates that this is a flexible requirement or gives the court discretion to interfere with the one-week limit imposed by the statute for the strata corporation to give its written decision. The remedy for the failure to adhere to the one-week limit is also expressly set out in the statute: the exemption is allowed automatically by operation of the statute."

He concluded by saying that Mr. Storozuk's application for an exemption from bylaw 10(1) on the grounds of hardship was allowed by virtue of section 144(4)(a) of the Act and was entitled to rent his strata lot. The Judge also stated that any fines levied after March 18, 2013 could not be imposed after that date.

*Editor's Note: This section of the Act can be the cause of sleepless nights for strata council members, strata managers and lawyers alike and confirms how important it is for a strata council to act promptly to hold a hearing within the required time frame, if a hearing is requested and more importantly, to promptly give its decision, **in writing**, within one week after the hearing. Missing that deadline was fatal to this strata corporation. Best practices suggest that a letter be dictated and sent out (e-mail correspondence may be appropriate IF it was provided by the owner for the purpose of delivery of the decision/notice) as soon as possible. The date of the postmark should be sufficient evidence of the deemed date of mailing but if there is any doubt that the written decision might not be received in time a process server can always be used to deliver the decision.*

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MAJOR LEGISLATIVE CHANGES IMPACTING REPAIRS & BEST PRACTICES

By Cora D. Wilson, J.D.

Recent amendments to the *Strata Property Act* ("Act") will make it easier for a strata corporation to repair and maintain their buildings. The first legislative amendment changes the voting threshold at a general meeting of owners from a $\frac{3}{4}$ vote to a majority vote when funding a depreciation report or approving repairs recommended by a depreciation report from the contingency reserve fund (the CRF).

The second legislative amendment permits a strata corporation to proceed with a court application to obtain an order for repairs in the situation where a $\frac{3}{4}$ vote resolution for a special levy fails but more than 50% of the votes cast were in favour of the resolution. It is important to remember the strata corporation must approve the funding to proceed with court action. It is recommended that the strata corporation obtain advice from a qualified strata lawyer to verify that this amendment applies to the strata corporation in question.

Recent reviews of resolutions approved by strata corporations reveal major flaws which could result in resolutions being struck down if challenged. The consequences could be catastrophic since the resolution forms the foundation for funding repairs, paying contractors, financing the repairs and collecting arrears. If the resolution falls, then the owners' legal obligation to pay also falls. The process could become a house of cards.

The following discussion reviews the new legislation in a summary fashion, addresses some of the pitfalls and outlines the process for a strata corporation to follow as a best practice.

Summary of Legislative Amendments

As of April 9, 2014, section 92 of the *Strata Property Act* (the "Act") was amended to clarify that the cost of a depreciation report can be an operating expense. This means the cost to obtain a depreciation report may be included in the annual budget, which is approved by a majority vote.

Also effective April 9, 2014, the cost to obtain a depreciation report can be paid out of the CRF by a majority vote (s. 96(b)(i)(A)(I), Act).

This creates an exception to the general rule that a $\frac{3}{4}$ vote resolution is required to approve expenditures from the CRF. Owners are now permitted to approve funding for repairs, maintenance or replacement recommended in the most recent depreciation report by a majority vote (s. 96(b)(i)(A)(II), Act).

By way of summary, a strata corporation can now use a majority vote to fund both a depreciation report and the work recommended in the depreciation report from the CRF.

It is anticipated that these changes will result in more strata corporations proceeding with depreciation reports and addressing major repair programs in a planned, reasonable and timely fashion to meet the mandatory statutory duty to repair imposed by the Act.

The team approach comprising appropriate qualified certifying professionals, qualified contractors, a strata lawyer, a strata manager and other qualified persons is recommended to ensure that the strata corporation meets the minimum standards. They safe guard the process by ensuring that the strata corporation acts within the scope of its statutory authority, both substantively and procedurally, adheres to due process, provides transparency and complies with the mandate provided by the approved resolutions.

Special levy resolutions still require a $\frac{3}{4}$ vote of owners at a general meeting (s. 108, Act). Effective December 12, 2013, the strata corporation may apply to the Supreme Court for an order approving a special levy to address maintenance or repairs defeated by the owners at a general meeting provided that more than $\frac{1}{2}$ of the votes cast favoured the resolution (ss. 173(2) & (4), Act). Previously, a $\frac{3}{4}$ vote was required to authorize the strata corporation to engage in such litigation. Although it is now easier to proceed to the Supreme Court, many obstacles still remain. This process tends to be political, cumbersome, expensive and uncertain.

Since the funding for such litigation still requires a $\frac{3}{4}$ vote, I recommend that sufficient monies for legal costs be approved as part of the annual budget. This will allow the council to conduct business, while minimizing the probability of time consuming and often difficult political battles to obtain expenditure approval.

The legislation encourages the use of the CRF as a long term planning tool. Special levies will likely be used less often given the higher voting threshold required for approval. Clearly it is easier to obtain a majority vote approving monies already available in the CRF than it is to approve a special levy ($\frac{3}{4}$ vote). It is envisioned that more strata corporations will investigate financing options available to them to minimize the burden of a huge repair levy. Both special levies and strata corporation financing (borrowing) require a $\frac{3}{4}$ vote for approval (ss. 108 & 111, Act). If the CRF is exhausted or insufficient, owners may view financing (borrowing) as a palatable option in appropriate cases. For example, a repair levy of \$50,000.00 per strata lot amortized over 15 years costs about \$394.00 per month assuming a 5% interest rate (prime plus 2%). It is easier for some owners to pay \$394.00 per month as opposed to coming up with \$50,000.00 all at once.

One of the objectives should be to ensure that owners do not lose their home if they cannot afford to pay the special levy. When the strata corporation acts as the borrower it gives everyone a fighting chance by minimizing the owner subsidy if some owners default, ensuring that funding is available to pay the contractor when due and providing those owners who are least able to pay with an opportunity to hold onto their investment.

The Train Wreck Resolution:

It is not unusual to find a poorly worded resolution such as the following:

Resolved: Contingency reserve fund expenditure by majority vote not to exceed \$3,000,000.00 to replace up to 30 roofs with cedar shakes in 2014, 30 roofs in 2015 and the remaining roofs in 2016. Approved.

The major problems with this poorly worded resolution include the following:

- a. the strata corporation only has \$500,000.00 in the CRF;
- b. the depreciation report did not require all of the roofs to be replaced over a 3 year period; and,
- c. a $\frac{3}{4}$ vote is required to approve significant changes in the use or appearance of common property (s. 71, Act).

The failure to comply with substantive provisions of the Act is fatal. If a portion of the resolution cannot legally be approved by majority vote, then the whole of the resolution is in jeopardy of being struck down in the event of a challenge. The Courts do not have the power to save fatal resolutions - hence, approving a defective resolution in this case is akin to approving expenditures out of a bank account containing insufficient funds. The contractor will rely on this resolution as evidence that there are sufficient funds available to pay its accounts as they fall due. In fact, the funding is grossly inadequate.

There are other problems with this resolution. For example, the scope of authorized work is vague and uncertain and the phasing order of the work is not addressed.

The question is whether a strata corporation should act upon an approved resolution which fails to meet minimum legal standards. The council should seek legal advice from a qualified strata lawyer. As a matter of practice, the political process should always be exhausted before commencing legal proceedings. It could be that the resolution may be revised and ratified by a further vote of owners at a general meeting. This course of action is always recommended over proceeding with major repairs that rely on a flawed resolution.

The strata corporation should not proceed with the project for the following reasons:

- a. There are insufficient monies in the CRF (short by \$2,500,000.00) to pay for the roofing project which requires an estimated amount of \$3,000,000.00 to complete.
- b. Awarding the contract or a tender to a contractor for the complete scope of work (\$3,000,000.00) could place the strata corporation in a potential breach of contract situation if funding is not available as the project proceeds.
- c. Approval of the CRF resolution is predicated upon the approval of a further special levy resolution to provide the balance of the funding required to pay for the entire project. Since this has not occurred and there is no guarantee that it will occur, then moving forward creates the potential for unquantifiable, but avoidable, legal exposure to liability.
- d. The wording of resolution is vague and confusing creating uncertainty such that the resolution could be struck down on this basis.
- e. The failure to obtain a $\frac{3}{4}$ vote pursuant to section 71 of the Act, if required, is fatal to the validity of the resolution.

The strata manager's professional liability insurance does not cover work performed outside of that manager's scope of expertise. For example, resolution drafting is not only an art, it likely qualifies as the provision of a legal service. Strata managers are neither qualified nor licenced to provide legal services. Further, such services by a strata manager are not covered by their errors and omissions insurance.



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In the event of a loss to the strata corporation due to the negligent drafting of the resolution by the agent, there would be no recourse against the agent's insurance.

It is envisioned that brokerages in the future will exercise prudence and caution when addressing services which qualify as legal services and ensure that services are only provided within the scope of their expertise and licencing requirements and are covered by appropriate insurance.

Practice Tips

The process for addressing major repairs and approving the related expenditures is summarized as follows (this list is not exhaustive):

1. investigate the background of the professionals and contractors;
2. hire a qualified engineer, building envelope or other professional to assist with the process, as required;
3. ensure that appropriate professional insurance coverage is available;
4. retain an experienced strata lawyer;
5. obtain an estimate of probable costs for the repairs from a qualified certifying professional or obtain a reasonable number of quotes from qualified contractors for smaller projects;
6. determine whether the proposed repair is recommended in the most current depreciation report,
 - a. if yes, those repairs may be approved out of the CRF by majority vote subject to the availability of funds;
 - b. if no, a $\frac{3}{4}$ vote resolution is required to approve:
 - i. a special levy;
 - ii. expenditures out of the CRF for repairs which are not recommended in the depreciation report; or,
 - iii. strata corporation financing (borrowing);
7. consider preparing two resolutions for owner approval if there is a concern that the $\frac{3}{4}$ vote may not be approved to permit a partial repair;
8. address the options for funding the project:
 - a. strata corporation financing (borrowing);
 - b. special levy;
 - c. contingency reserve fund; or,
 - d. combination;
9. keep the owners informed regarding the project throughout including:
 - a. information meetings with the professionals, including the strata lawyer, as required;
 - b. newsletters;

- c. web-site; and/or,
 - d. other means;
10. address any political, legal or construction obstacles or concerns in a reasonable and in a timely fashion;
 11. instruct a qualified strata lawyer to prepare the resolution(s) addressing the following:
 - a. ensure that the repair authorization is tailor made to address all required work including, but not limited to, the scope of work set out in the professional's report and any additional work recommended by qualified professionals during the course of the work;
 - b. ensure that the expenditure authorization is broad enough to capture all expenses such as, the remedial work, warranty, landscaping, permit costs, professional costs, legal costs, collection costs, change work orders, etc.;
 - c. include a reasonable contingency to minimize the possibility of an additional $\frac{3}{4}$ vote of owners to approve additional funding;
 - d. authorize the council to approve change work orders;
 - e. delegate decision making authority, including the power to make expenditures, to the council;
 - f. approve significant changes to the use or appearance of common property by $\frac{3}{4}$ vote;



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- g. insert a provision requiring the strata corporation to report to the owners upon completion of the work (eg. 6 months after completion of the work);
- h. if the funding amount is paid by a combination of special levy and the CRF, indicate where the expenditures will be applied from first and how any excess funds will be addressed; and,
- i. address any other clauses that may be required given the nature of the project; and,
- j. if a special levy is proposed, then the following must be addressed (s. 108, Act):
 - i. state the purpose of the levy;
 - ii. state the total amount of the repair special levy;
 - iii. state the method used to determine each strata lot's share of the special levy (e.g. unit entitlement);
 - iv. attach a schedule indicating the amount payable by each strata lot on account of the special levy;
 - v. state the date by which the special levy is to be paid, or, if payable in installments, the dates by which the installments are to be paid; and,
 - vi. draft an interest provision in the event of any default in payment of the special levy, including the commencement date (7 days after approval at a minimum).

The implementation of the major repair project is beyond the scope of this article.

Strata corporations are advised to seek legal advice from a qualified strata lawyer when addressing repair projects to provide input and advice throughout the process. This includes drafting the resolution.

WHEN IS A CHANGE NOT A CHANGE?

By Philip J. Dougan of Access Law Group

Section 71 of the *Strata Property Act* sets out how and when changes to the use and appearance of common property may be authorized by a Strata Corporation. The section states:

Change in use of common property

- 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.

So in essence the section says - *do not change anything about common property without getting a large majority of the owners on side with you to make such a change.*

What sort of changes might be caught by s. 71? If a strata wanted to change a parking space into a storage area, s. 71 would be triggered. If a grassy garden area was to be turned into visitor parking, s. 71 would be triggered. If a common meeting room was to be turned into a living unit for the caretaker, that would trigger s. 71 (at least, if not other sections of the *Act* too).

These sorts of changes are large and obvious, and by the wording of s. 71 are fairly easily determined to be "Significant changes" to common property.

But what about changes that are more subtle? Can a parking space still be considered a parking space if it is only used to park bicycles? Is that a significant change in the appearance common property? Probably not – as the parking space presumably would still be a concrete space. But would it look different with 20 bikes in it? Maybe, that is a significant change in the appearance of common property....

What too if the changes are made by an owner rather than by the Strata Corporation *per se*. It is likely that it is changes made by owners that will raise concerns about the application of s. 71 rather than changes by the Strata Corporation. This is because of the way decisions are made by the Strata itself. If for example, the Strata wanted to change a parking space into a bike storage / parking area and simply wanted to re-assign a parking space and install a bike rack, this is not something you are likely to be doing annually or more often. By definition then such a change would not be included in the annual budget for the Strata. At best, the money required would need a vote for a transfer from the CRF or a levy to raise the funds. Both of these types of votes must be passed by a ¾ vote of the owners. Thus, if the proposal received a ¾ to raise the money it seems reasonable to impute the owners' permission to the Strata to make a significant change in the appearance or use of the common property. If the owners had not liked the plan, they would not vote to spend the money to facilitate the plan.

Conversely, owners are supposed to get the permission of the Strata Corporation before making any changes to common or strata lot property. This does not always happen; or if it does happen, what is asked for, and what work is actually completed are often very different things.

Strata's are often caught in the middle of fights that arise between owners. One owner having sought (or not sought) Strata approval has made a change to common property and that change has an unexpected or unintended, or unauthorized effect on another owner. The aggrieved owner can become so upset that litigation ensues.

This issue has only been before the courts a few times. In *Reid v. The Owners Strata Plan LMS 2503*, 2003 BCCA 126 (CanLII), Mr. Reid complained that pots plant and other moveable materials placed in a common property entrance way were negatively impacting his enjoyment of property and the Strata's limited permission to the owners to place items in the entrance way was significantly unfair to him.

In that case, the Court of Appeal determined that allowing owners to place plants and small trees on common property was not a significant change in the use or appearance of a patio area to trigger a problem under s. 71.

In *Sidhu v. The Owners Strata Plan VR 1886*, 2008 BCSC 92 (CanLII) the court considered changes made by Mr. Sidhu to common property related to his use of a commercial unit as a dry cleaners. Mr. Sidhu had bored six holes through the exterior wall of the building for vents for his dry cleaning machinery. The court found such an unauthorized change as significant pursuant to s. 71 and provided for the Strata to return the common property to its original appearance and to charge the cost of the repairs to Mr. Sidhu.

In *Chan v. the Owners. Strata Plan VR 677* and others (2February 2012) BCSC 1725 the court heard of a number of changes made by one owner in the context of a small strata corporation (three owners) in which all the owners had made changes to property over the years, but now some specific changes to property were challenged by one owner.

The changes complained of, were changes to a window; changes to an interior hallway, including the addition of a door in that common property hallway and changes to a fence on the outside of the building and an overhang to an outside door.

Having defined 'significant' as being "noteworthy, important or consequential" the court considered whether these particular changes could be considered significant. To do this the court imposed some factors to evaluate the changes by; these were:

Objectively; how visibility or non-visibility to the owners and general public were the changes?

Does the change affect the use or enjoyment of a strata lot?

Does the change create direct interference or disruption as a result of the change of use of common property?

Does the change impact on marketability or value of the strata unit?

How many units are there in the strata complex involved?

Is the building residential use only, commercial use only or mixed use?

Subjectively; how has the strata been governed in the past ?

What allowances for change have been made in the past?

Has a similar change been approved before?

Have the formalities of strata procedures and governance been followed in the past?

Has the owner objecting to the change previously been permitted to make a similar change?

Thus using this lens of factors the court determined that objectively, less visible changes that do not affect the enjoyment of other units, that do not create direct disruption, do not negatively impact marketability and are in smaller residential complexes are less likely to be 'significant' changes pursuant to s. 71 of the *Act*.

Subjectively, changes that have occurred in informal governance circumstances, that have been 'allowed' before also mean such changes are not as significant as if the letter of the law had been followed in the past.

The Court in *Chan* thus found the changes made by the owner to be not significant, and no order for a $\frac{3}{4}$ vote under s. 71 was needed; the chances could remain.

In *Foley v. The Owners Strata Plan VR 387*, 2014 BCSC 1333 the court was again asked to consider the question of what constitutes a significant change to common property. In this case the facts were more complex. An owner sought and received permission from the strata council to refurbish his roof top deck, as the roof was being replaced in any event. He was given permission to return the deck to its original layout. When the tarps came off the roof it became clear that he had extended his roof deck to include areas that were not previously part of his deck. The impact of this change was that the railing for the deck was now on a parapet wall right at the front of the building in plain sight from the street. Previously the railing had been set back a few feet from the parapet wall and was attached to the deck itself thus lower down and all but invisible from the street. The change also mean that the owner now could, looking over the new railing, see right into a neighbours sun room that had previously been private. The new deck area also meant the owner was walking on the roof of a neighbours' bedroom.

The owners who thought the change inappropriate complained to the council. The council saw the change as being beyond what was authorized and ordered the change put back to its original lay out. The owner met with the council and after consultations, the council reversed its decision and determined that the change could stay and by implication said the change was not significant pursuant to s. 71.



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Some concerned owners petitioned the council for a meeting and to vote have the railing removed and returned to its original foot print. The wording of the resolution put before the owners reversed the onus contemplated by s. 71 and instead of requiring $\frac{3}{4}$ of the owner to *approve* the change, the resolution required the owners to *disapprove* the change by a $\frac{3}{4}$ vote to have it removed. Thus the petitioner instead of needing only 26% of the votes to defeat a $\frac{3}{4}$ approval vote, now required 75% of the vote to require the change to be reversed. At the meeting 60% of the owners said the change was significant and wanted it removed.

The petitioning owners sued. The petitioners said the court should consider the factors in *Chan* and find the change to be significant and take note of the fact that 60% of the owners thought the change significant and opposed it. The Strata argued that the council alone gets to determine if something is a significant change or not, and if the council determines something is not a significant change, the courts should not lightly interfere with the decision of a democratically elected council decision. The Strata also raised the question as to the actual use of the section at law. Notwithstanding the *Chan* decision that was clearly the actions of an owner, the Strata argued that s. 71 allows only the Strata itself to raise issues of concern about significant changes to the court and that s. 71 also only allows a court to intervene if the source of the change is from the action of the Strata corporation itself. The section specifically says “the strata corporation must not make a significant change...”.

The Court in *Foley* determined that the change of the roof top railing was a ‘significant change’ and reviewed the evidence considering the *Chan* factors as well as the court’s comments in *Reid* and *Sidhu*.

As the change was a visible change and impacted directly a number of owners, and perhaps increased the value of the owners unit that had increased the size of his deck, the change was significant legally.

Unfortunately, given the remedy the court ordered (a meeting of the owners with a properly worded s. 71 $\frac{3}{4}$ vote resolution in which $\frac{3}{4}$ of the owners must *approve* the change) the court did not consider the question of who may bring on such actions relating to s. 71 and whether deference to a council decision that a change is not significant were not considered. Presumably however, the *Foley* decision following *Chan* suggests that changes made by an individual owner can be considered under this section and that deference should be made to democratic procedure involving the whole ownership, not necessarily just the council.

Significant changes will continue to be made by owners determined to do what they want, or by owners unaware of their responsibilities to their neighbours, but strata corporations should be alive to the potential impact of any change made in the common property and likely would be well advised to seek confirmation of the ownership’s impression of the change by calling for a $\frac{3}{4}$ vote on the significance of the change.

STRATA LIVING - THE IMPORTANCE OF EARTHQUAKE INSURANCE ON YOUR PERSONAL INSURANCE POLICY.

By Paul Murcutt of BFL Canada Insurance Services Inc.

Earthquake insurance has been a hot topic in recent years in Canada.

Media coverage of earthquakes in distant countries has left the world shocked and many British Columbians have started to ask what the risk is, here on our doorstep, for good reason.

According to a recent geological survey of Canada, BC is due for a large earthquake with an estimated 10% probability of it happening in the next 50 years.

Here in BC, it is estimated there are approximately 35,000 strata corporations containing in excess of 500,000 strata lots; that’s over 25% of our population living in a strata.

Your strata policy

Fortunately, earthquake insurance is available to purchase by strata corporations in BC and the vast majority of such corporations obtain that additional coverage to protect themselves and their ownership; however, a significant consideration under that special coverage is the deductible. In the Canadian marketplace, earthquake deductibles are typically shown as a percentage, but a percentage of what? The deductible amount is a percentage of the total insurance value stated on the certificate of insurance or policy Declarations. For example:

- Total Insurance Value stated on the certificate of insurance = \$20,000,000
- Earthquake deductible = 10%
- Deductible for the strata corporation = \$2,000,000

As illustrated, the deductible amount can be considerable for a strata corporation and there is a more than likely chance there are not enough funds available to pay that deductible in the event of a loss.

How do you protect yourself from the financial impact of an earthquake?

As per the Strata Property Act, an insurance deductible is a common expense. As an owner, in the event there is not sufficient funds available for the strata to pay the deductible, you would be assessed your portion of this significant deductible based on your individual unit entitlement.

Many people believe they will get relief from the Federal and/or Provincial governments and, whilst in some cases, limited relief maybe deployed, the only certain way to protect yourself is to purchase adequate earthquake insurance with your personal insurance policy. Sufficient coverage is essential; you should discuss with your personal insurance broker on how best to protect yourself. If your personal insurance policy is not set up correctly, you may not have any or sufficient coverage to protect yourself from the financial loss of an earthquake. To find out more; here are some helpful resources:

www.publicsafety.gc.ca

www.embc.gov.bc.ca/em/dfa_claims/dfa.html

www.ibabc.org

INSURANCE POLICY RENEWED? WHO KNOWS?

by Gerry Fanaken

I live in a high rise strata corporation which has a terrific strata council and an excellent management company. No complaints at all from me but, even with all this positivity, some things do slip between the cracks. I try not to sweat the small stuff but when it comes to the annual insurance renewal for our strata corporation, I must confess that topic is a major concern for me. I mean just imagine if the insurance policy is not renewed (accidentally) and then there is some calamity which costs a lot of money or, worse, makes my, and all owners', investments go down the drain. Although I am not on my strata council (having served many, many terms in the past) I do keep track of the insurance renewal date and I make sure that I receive confirmation from my management company that it has been renewed. Every strata lot owner should do this but the reality is that 99 percent simply assume that the strata council and/or management company have it in hand.

Recently, our strata corporation's insurance policy came up for renewal but I had not seen any mention of the topic in the council meeting minutes for the two months prior to the expiry date. I was aware, however, that our strata agent was on top and that the renewal would be done but I wondered just how many other owners in my building (over 100 units) had any concern about such an immensely important aspect of strata living. Is it adequate to simply assume that such matters are in hand and there is no need to enquire, or be informed?

One afternoon (in fact the very day the policy expired) I ran into the council president in the lobby and I gently asked him about the policy renewal. This gentleman is a very active council member and has tremendous knowledge about building repairs and maintenance matters. "Oh" he replied "it's all in hand. It comes up sometime later in the month." He was quite shocked to learn that it had actually come up this very day. I assured him that all was under control but that the strata council should be sure to add this topic to the next meeting agenda so that the minutes would inform all the owners. Sometimes in strata corporation administration, strata councils get so busy with the day to day routine matters that some important, indeed critical issues and tasks get overlooked. Having an excellent property management company to keep track of these details is wonderful but when it comes to such tasks as renewing the insurance policy, having several sets of eyes on the calendar is mandatory. So just a heads up if you are on a strata council. In my case, at the next strata council meeting the matter was raised and minuted. In fact, the property manager attached two of the policy cover pages which detailed all the coverages, deductibles, etc. This is an excellent protocol and is a great safeguard against any accusations from an owner that "I didn't know: no one told me."

Note that the *Strata Property Act* requires that the insurance program be reported at the Annual General Meeting. This is also an excellent protocol.

Here is a quiz. Your policy expires on August 1st. What time on that day will it expire? (a) 12 noon; (b) 11:59 p.m. ; (c) 12:01 a.m.

Since I am on the topic of insurance, let me carry on with some other bits of information that may be beneficial to readers. First,

understand that insurance policies are not all the same. Many strata councils (I should probably say most strata councils) are of the opinion that "insurance is insurance is insurance" and the only point that matters at renewal time is which broker or agent can offer the lowest premium. In fact, far from it: strata corporation insurance policies are all different, not just in such simple aspects as the deductibles and premiums, but rather in the content, the extent and depth of the coverages provided, the coverages and benefits excluded and the reliability, reputation and service attitude of the broker. Admittedly there are few of us capable of reading 100 pages of fine print to make a meaningful comparison but some effort must be made to understand the wordings that are used. In the event of a claim, the precise wordings (inclusions and exclusions) will have a dramatic, definite and legal meaning which will be relied upon if there is any dispute. Good brokers will take the time to meet with your strata council to go over their policy wordings. It is not just a sales pitch. Good brokers want you to know what you are buying. Indeed, a strata council does have to consider competitive premiums but let that be your last step, not the first one. The first step is to obtain the best possible wording and service.

Answer to quiz: (c)

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STRATA EDUCATIONAL SEMINARS AT A GLANCE (2014 AND 2015)

CCI Vancouver has planned a year full of 1/2 Day and Evening Strata Educational Seminars for Council Members in different locations in Greater Vancouver. Stay tuned for the announcement of the locations and speakers for each seminar. You can subscribe to our Electronic Newsletter on our website to be notified about the details of each seminar and other news in future.

Note: The dates are subject to change.

September 20, 2014 (1/2 Day Seminar):

Mandatory Compostables for Multi-Family Dwellings

Presenter: Tanya Stewart, Waste Management

Composting in your strata will be mandatory in 2015. Get the facts and worthwhile tips to make implementation easier.

Budgeting and Depreciation Reports

Presenters: A panel of experts including Phil Dougan of Access Law Group, Kevin Grasty of Halsall Associates, an auditing specialist from Reid Hurst Nagy, Shervin Shapourian of Power Strata Systems, and others.

Topics:

- Strata Property Act requirements
- Depreciation Report implementation recommendations
- Developing a financial strategy for your strata
- Common budgeting mistakes
- Budgeting for Maintenance and repairs – the pitfalls
- How technology can help

This will be an interactive presentation and your participation will be welcome. There will be plenty of time for your questions.

Legal updates

Presenters: Jamie Bleay and Phil Dougan, Access Law Group

Recent decisions that may affect your strata.

For complete details and to register, visit our website at

www.ccivancouver.ca

October 14, 2014 (Evening Seminar):

Insurance

- Claims and impact on rates
- What can stratas do to reduce costs?
- Strata versus home owner
- The role of the insurance adjuster
- Restoration companies – emergencies and finals

November 29, 2014 (1/2 Day Seminar):

Strata Property Act – 15 years later

- $\frac{3}{4}$ votes – why the confusion
- By-law Enforcement – options for enforcement
- Rules or bylaws – what is the difference

Filing Tax Returns

- Do strata's have to file returns?
- Audits – mandatory
- Revenue from Cell Towers and other sources (parking, lockers, golf, marinas)

Open Forum

- Q & A on any hot topics
- "In the News"

January 13, 2015 (Evening Seminar):

Council Meetings

- Proxy attendance allowed?
- Minutes – styles and formats
- Privacy rules
- Enforcement of bylaws – how to disclose in the minutes
- Impact on sales of units of poorly worded or misleading minutes

February 7, 2015 (1/2 Day Seminar):

Contracts for Major Project

- The role of the consultant
- WorkSafeBC Regulations
- CCDC or?
- Lien Holdbacks
- Deficiency holdbacks
- Penalties for delays

Selecting a Contractor/Consultant

- Reference checks
- Experience in the specific work being planned
- Financial resources to complete the work
- Ability to communicate with the clients

Open Forum

- Q & A on any hot topics
- “In the News”

March 10, 2015 (Evening Seminar):

Volunteers in your strata

- What can/should they do
- Limits on insurance
- Condo cop
- Committees
- Replacing paid workers

April 14, 2015 (Evening Seminar):

Legal Update

- Human Rights tribunals
- Alternate dispute resolution
- Avoiding the financial black hole
- Limitation Act
- Sections
- Types
- Bylaws

May 9, 2015 (1/2 Day Seminar):

Annual General Meetings – Revisited

- What is quorum
- Counting the Votes
- Elections – vote required for each nominee
- Rules of Order?

Bylaw Enforcement – revisited

- The goal of bylaw enforcement – available options
- How is it done – The rules
- Do they work?
- How to collect the money
- Is there another solution?

Open Forum

- Q & A on any hot topics
- “In the News”

Be a Drip: Protect Your Buildings

Installing a drip edge is an easy way to prevent damage to your building

By Kevin Grasty, P.Eng., and Torsten Ball, P.Eng.

One of the simplest – yet often overlooked – ways to protect a building against water leakage and its deteriorating effects is to install a drip edge.

A drip edge is a feature on an exterior surface that diverts rainwater away from a wall or other vertical element.

Walls Should be Kept Dry

Excessive wetting of porous cladding components such as concrete, stucco and wood will lead to deterioration. Water molecules also like to stick together, and with a driving rain they can be forced into the smallest openings in an exterior wall. Concentrated water shedding can also cause aesthetic issues such as staining.

A properly installed and maintained drip edge will help keep walls as dry as possible, reducing the likelihood of deterioration, as well as leakage through the walls and damage to concealed wall components.

Drip Edge Examples in Action

The **top left photo** shows how an **inadequate drip edge** on a balcony can result in **wood rot**.

Properly maintaining a drip edge is key. The **top right photo** demonstrates that an improper drip edge is enough to direct excess water on to the walls and cause **brick deterioration**.

Finally, the **bottom photo** shows the **staining** that can occur from water shedding when there is no drip edge below the windows.



Wood rot from inadequate drip edge.



Brick deterioration from water



Water shedding can cause wall staining

Please contact our team of experts

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Strata Council Members, Strata Owners and Managers



Half Day Strata Educational Seminar

9 am to 9:30 am - Composting in your strata will be mandatory in 2015.
Get the facts and worthwhile tips to make implementation easier.

Tanya Stewart, *Waste Management*

9:30 am to 11:30 - Budgeting and Depreciation Reports
This will be an interactive presentation with a panel of experts.

Topics:

- Strata Property Act requirements
- Depreciation Report implementation recommendations
- Developing a financial strategy for your strata
- Common budgeting mistakes
- Budgeting for maintenance and repairs - the pitfalls
- How technology can help

Phil Dougan, *Access Law Group*, Kevin Grasty, *Halsall Associates*,
An auditing specialist, *Reid Hurst Nagy*, Shervin Shapourian,
Power Strata Systems and others.

11:30 am to Noon - Legal Updates
Recent decisions that may affect your strata

Jamie Bleay and Phil Dougan, *Access Law Group*

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CCI Vancouver Half Day Strata Educational Seminar

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Name	Address/Suite	Email
Director:		
Name	Address/Suite	Email

Please forward all correspondence to: ☐ Management Company address ☐ Condo Corporation address

Annual Fee: ☐ 1-50 Units: \$110.00 ☐ 51-100 Units: \$150.00 ☐ 101-200 Units: \$200.00 ☐ 201+ Units: \$250.00

■ PROFESSIONAL MEMBERSHIP

Name:	Occupation:
Company:	
Address:	
Suite #:	
City:	Province:
Postal Code:	
Phone: ()	Fax: ()
Email:	

Annual Fee: ☐ \$180.00

■ BUSINESS PARTNER MEMBERSHIP

Company:	
Name:	Industry:
Address:	
Suite #:	
City:	Province:
Postal Code:	
Phone: ()	Fax: ()
Email:	



Annual Fee: ☐ \$400.00

■ INDIVIDUAL CONDOMINIUM RESIDENT MEMBERSHIP

Name:	
Address:	
Suite #:	
City:	Province:
Postal Code:	
Phone: ()	Fax: ()
Email:	

Annual Fee: ☐ \$110.00

Method of Payment:

☐ Cheque Charge to: ☐  ☐ 

Card #: _____ Exp Date: ____ / ____

Signature: _____

PLEASE NOTE: Charges will appear on your credit card statement as Association Concepts.

Cheques should be made payable to:
Canadian Condominium Institute - Vancouver Chapter
P.O. Box 17577 RPO The Ritz, Vancouver, BC V6E 0B2
Tel: 1-866-491-6216, Ext. 108 • Email: contact@ccivancouver.ca



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Advertising Submissions

Please provide photo quality advertisement in either electronic or camera-ready format suitable for scanning (inkjet print-outs are not acceptable). Scanned images must be in high resolution of at least 300 dpi. Electronic files must be submitted in tiff or pdf format. **Note: PDF** files should not be converted from colour to black & white. If the ad is to be in black & white, the original file must be in black & white. If the ad is to be in colour, the original file must be in colour. The ad copy submitted should be sized to the ad requirements (see above ad sizes). Please call or e-mail for additional specifications. If you do not have an advertisement already prepared, setup is an additional charge at \$50.00 per hour. Please send advertising submissions to the attention of Jamie Bleay at:

CCI Vancouver Chapter
Suite 1700 – 1185 West Georgia Street
Vancouver, B.C. V6E 4E6
or to the chapter's e-mail address at: contact@ccivancouver.ca

MAKE CHEQUE PAYABLE TO CCI VANCOUVER AND MAIL TO:
P.O. Box 17577 RPO The Ritz, Vancouver, B.C. V6E 0B2

OR BY CREDIT CARD:

Credit Card: _____ Visa _____ Mastercard
Credit Card Number: _____
Expiration Date: _____ / _____
Name on Card: _____
Signature: _____

Note: Charges will appear on credit card statement as Taylor Enterprises Ltd.