CCI Vancouver Chapter

CONDO NEWS

2012 Edition #1

President's Message

2011 was a successful year for CCI Vancouver. We held 4 very successful education seminars and published 4 newsletters. Our last seminar in November attracted over 60 people and attracted participants from as far away as Abbotsford. We are able to say that our membership numbers grew and we had an opportunity to offer assistance to the B.C. Government with respect to various proposed legislative changes to the Strata Property Act. As of December 13, 2011 the government passed the regulations necessary to require strata corporations to address the need for deprecation reports and improve disclosure to purchasers regarding documentation that had not previously been disclosed as part of the information made available in Form B's. CCI Vancouver has recognized the importance of these changes and the need to help our members and non-members alike understand what these changes mean to strata corporations and how to implement these changes. This will be particularly true of the introduction of depreciation reports which will now require a considerable amount of time and effort to understand and "sell" to owners. Our February 18, 2012 CCI Vancouver will host an all day seminar at the UBC Robson Square campus and the new changes to the Act and regulations will be one of the main topics that will be presented. A registration form for this seminar is included in this newsletter and can also be found online at www.ccivancouver.com.

As we noted in an earlier newsletter we also plan to roll out a full day educational course that will cover 5 or 6 topics that should be of interest to strata council members and strata managers alike. Stay tuned for more information on our website about this course and we look forward to seeing you at all our seminars.

Jamie Bleay – President of CCI Vancouver

Inside this Issue

LEGAL CORNER

Case law update – Winter 2012

Armonowski v. The Owners Strata Plan LMS 2151 B.C. Provincial Court October 14, 2011

This is another case in a line of B.C. Provincial Court decisions regarding the Court's jurisdiction to hear claims regarding decisions and actions by a strata corporation. In this case Mr. Armanowski sued the strata corporation seeking reimbursement of his proportionate share of monies he paid pursuant to a special levy in 2007 to retain the services of RDH Building Engineering Limited ("RDH") for anticipated engineering fees and costs associated with necessary balcony repairs at the condominium building. The strata corporation ultimately paid RDH the sum of $47,736.15 which, according to Mr. Armonowski, was "for a service which was never provided" and sued to recover the sum of $1,269.78 being his share of the monies paid to RDH. The strata corporation defended the action by stating that it complied with all necessary steps required under the Strata Property Act (the "Act") and that the funds paid to RDH were paid pursuant to a duly authorized special levy and that RDH provided the services for which it was paid. The strata corporation also defended the action on the basis that the Court had no jurisdiction because it involve questions regarding the actions and decision-making of the strata corporation which it alleged were within the sole jurisdiction of the Supreme Court of B.C.

The relevant facts taken into account by the Court included:

1. There were problems with the balconies at the building that required repair;
2. In 2006 two balconies were repaired with the assistance of RDH;
3. In 2007 the strata council decided it wanted to proceed with repairs to the remaining 26 balconies and it obtained an estimate of approximately $320,000.00 for the repairs, including additional engineering costs;
4. At a special general meeting on September 11, 2007 the owners approved a resolution passed by a ¾ vote resolution to raise $365,000.00 for the purpose of funding necessary balcony repairs;
5. The strata corporation received a proposal from RDH in March, 2008 with a proposal for consulting services in connection with the balcony repairs, which proposal was divided into three distinct phases, namely pre-construction, construction, post-construction. RDH set out separate fees for each of the three phases;
6. Mr. Armonowski paid his proportionate share of the special levy but asserted that RDH did not in fact provide the services for which it was paid because "there was no need for RDH to do any additional engineering or designing work for the remaining 26 balconies" after 2 balconies had already been repaired;
7. At a subsequent general meeting held on December 15, 2008 the owners defeated a further special levy to raise additional funds to pay for balcony repair costs. This resulted in the termination of any further services from RDH.

The Court then considered the applicable legislation which included section 3 of the Small Claims Act and section1 163 to 165 of the Act.

After extensively reviewing the existing case law regarding the issue of jurisdiction, the Court agreed that section 3(1)(c) of the Small Claims Court Act was not applicable. The Court went on to state that all of the allegations of Mr. Armonowski "involve issues of corporate governance" and were claims that had to be brought in the Supreme Court of British Columbia.

OCCUPANCY BYLAWS – WILL THEY HOLD UP IN COURT?

Many Strata Corporations have a bylaw something like this one:

All Strata Lots shall be restricted to the following maximum number of residents:

(a) In a one bedroom or studio apartment – no more than two permanent residents.

(b) In a two bedroom apartment – no more than four permanent residents.

Will such a bylaw be upheld by the Court?

CCI - Vancouver Board of Directors - 2011/2012

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Welcome New Members

The Owners, Strata Plan NW519

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The difficulty is that the Strata Property Act (the "Act") does not contain any provisions about occupancy levels. Indeed, in our example – the idea of permanent resident is not clear from the Act.

The only mention of occupancy is in fact the definition of Occupant, which is not very definitive:

> **"occupant"** means a person, other than an owner or tenant, who occupies a strata lot;

To date, we have been unable to find any case law on this point. But if such a bylaw is challenged, what can a Strata Corporation say is the basis for such a rule, if it is not based in the Act?

The answer lies in the *Building Code.*

For more than 30 years, the National Building Code has been adopted by regulation such that the *National Building Code* also becomes the *BC Building Code (the "Code").*

In the Code, there are some definitions that are a lot more direct about what occupancy means and how many people are allowed in any given building.

For example in the *Code:*

Occupancy means the use or intended use of a building or part thereof for the shelter or support of persons, animals or property.

Occupancy load means the number of persons for which a building or part thereof is designed.

Dwelling Unit means a suite operated as a housekeeping unit used or intended to be used as a domicile by one or more persons and usually containing cooking, eating, living, sleeping and sanitation facilities.

Suite means a single room or series of rooms of complimentary use, operated under a single tenancy and includes dwelling units, individual guests rooms in motels, hotels, boarding houses, rooming houses and dormitories, as well as individual stores and individual or complementary rooms for business and personal services occupancies.

Major Occupancy means the principal occupancy for which a building or part thereof is used or intended to be used, and shall be deemed to include the subsidiary occupancies which are an integral part of the principal occupancy.

Two sections of the *Code* are quite explicit about how the occupancy and occupancy load of a residential building are determined:

The occupancy load of a residential building is determined by

3.1.17.1 (b) 2 persons per sleeping room in a dwelling unit.

9.9.1.3 The occupancy load for dwelling units shall be based on 2 persons per bedroom or sleeping area.

From these definitions we can see that:

1. An 'ordinary' strata building for people to live in as their home is a Dwelling Unit by the definition in the *Code;*
2. An 'ordinary' strata building for people to live in as their home is also a Suite by the definition in the *Code;*
3. An 'ordinary' strata building for people to live in as their home defines the Major occupancy as residential;
4. All residential buildings have occupancy loads determined by the number of bedrooms contained in each dwelling or suite;
5. That occupancy load is independent of size, square footage, or unit entitlement – it is a straight proportion – 2 people may live in a dwelling unit or suite per bedroom in that dwelling place or suite.

Currently, a bylaw that limits occupancy based on this formula (2 people per bedroom) would be a correct expression of the *Code.*

Most Strata Corporation bylaws also contain the "nuisance bylaw" from the Standard Bylaws that includes the following:

> An owner tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that
>
> …
>
> d) is illegal; or
>
> e) is contrary to the 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.

The *Code* appears emphatic that it a simple count of number of bedrooms and number of people that determines the maximum occupancy of a building, suite, dwelling place or individual strata lot. The nature of the person sleeping there's right to be there – either as owner, tenant, occupant, or visitor (the terms used in the *Act*) seems irrelevant.

The Strata Plan filed with the Land Titles Office, does not distinguish between rooms in a strata lot. There is not therefore, a direct link to the bylaw that prohibits anything contrary to the purpose of the property as shown on the strata plan, (as the above wording from the standard nuisance bylaw puts it) to occupancy load levels.

However; I do not believe it would be such a huge leap of judicial faith for a Judge to accept that the intended purposes of the building are laid out in more detail in the architectural drawings of the building. Those drawings must be in compliance with the *Code* – that has had the 2 persons per bedroom rule since at least 1980.

The occupancy rule does fall in to grey area when one considers whether it is a controlling rule when one considers having guests in strata lot. At this point, I take it as presumption that having, for example, 6 friends over in a one bedroom home for a dinner party does not necessarily constitute 'occupancy' and that given those guests will not sleep in the unit – that the rule is not breached.

However, there may be *Fire Code* concerns raised. This may be something the strata discusses with the insurer.

Enforcing an Occupancy Bylaw

These Occupancy Bylaws are hard to enforce, because how does one go about proving more people are living in a unit than is allowed by the bylaw? That is not easy to answer, but it does not mean that such a bylaw cannot be enforced, and that it will be upheld by the courts.

Interestingly, an even more restrictive bylaw was recently upheld in Ontario – whereby a bylaw restricting occupancy to only family members (ie – all those living in a unit must be related to one another – as a family) was upheld as a legitimate bylaw to restrict the use of a building. The Bylaw had the effect of keeping out potential nuisance renters – in that case – numerous university students living together - but unrelated to one another.

It is s legitimate concern for a Strata Corporation that the building be used in the manner in which it was designed to be used and by the number of people it was designed to sustain. Overuse puts strain on the infrastructure of the building, the utilities and the potentially, the fire suppression system. It is an important concern that a strata make sure that the building is being used properly; because if it is not, and injury occurs, there may be ramifications as to legal liability or insurance coverage.

Two people per bedroom is the law.

Phil Dougan

ALL I WANT FOR CHRISTMAS IS A STRATA PROPERTY TRIBUNAL

BY GRANT HADDOCK

HADDOCK & COMPANY

As I write this paper, Christmas is fast approaching and the Ministry of Energy and Mines, Office of Housing and Construction Standards (the "Ministry") sponsored public consultation on a dispute resolution tribunal for strata properties has closed. While it clearly is not possible for my wish that a dispute resolution Tribunal for strata property be established by this Christmas, it appears that the provincial government is a least somewhat resolute in its desire to establish a tribunal to deal with strata property disputes.

In my view, this development is long overdue. I have a fielded countless phone calls from strata property owners who are clearly and obviously facing actions or inactions by their strata council that are clearly and obviously in breach of the *Strata Property Act* or strata bylaws. In all too many instances, there is virtually nothing that the strata property owner can do because of the complexity or expense involved in navigating the procedures necessary to apply to the Supreme Court or commence proceedings by arbitration. This has often resulted in a David & Goliath struggle whereby strata council, backed by the resources of the strata corporation, does what they please, legal or not, and simply sits back and waits for the disgruntled owner to attempt to remedy the situation. All too often, I have had to advise strata lot owners that strata councils are perfectly willing and able to contravene strata bylaws and the *Strata Property Act* because they want to and knowing full well that it is unlikely that individual owners will have the wherewithal to challenge them. This unbalanced and inequitable contest may lead to the strata council being encouraged to take an illegal approach to accomplish their goals knowing that there is little downside to doing so if the opposition is unable to challenge them.

In my view, this has generated an access to justice issue in that strata lot owners who may be entitled to relief from the courts are not even attempting to bring their disputes before the courts because of complexity and cost issues. In my view, the implementation of a strata property dispute resolution Tribunal will do much to level the playing field and do much to remedy an access to justice issue.

The proposed approach to resolving strata property disputes remains on the Ministry's website. Among the matters that the Ministry proposes the tribunal address are the following:

Provide Resources and Information

- The tribunal would provide a central location for information and assistance to resolve strata disputes in a simply, timely and cost-effective manner.
- Direct strata residents (including council members) to resources available to help them understand the Act, their responsibilities and alternate ways of addressing issues or disagreements.
- Publish its decisions on previous cases
- Advise parties on the most appropriate resolution methods for their dispute.

Provide Formal Dispute Resolution Services

- The tribunal would help parties attempt to negotiate a settlement, and if successful will issue an order to reflect the terms of the agreement. If unsuccessful, the tribunal would make a decision and issue an order that both parties would be required to comply with.
- Tribunal orders will be enforceable in court.
- Based on the experience of other BC tribunals it is expected a strata dispute resolution tribunal could resolve most disputes in about two months.
- Disputes that are outside of the tribunal's legal jurisdiction would be referred to the BC Supreme Court.

Scope and Authority

- Issue legal binding decisions, including ordering compliance with the Act.
- Compel all parties to appear and call witnesses
- Award costs against a party, where the tribunal feels it is appropriate and regulations allow (this would normally occur only in situations where a party filed a frivolous or vexatious case or abused the tribunal process).

It is proposed that some common disputes be left to the Supreme Court. Those would include:

- Liens on property (sections 89, 90, 117)
- Rebuilding damaged property (section 160)
- Appointment of administrator to run a strata corporation (section 174)
- Enforcement of a tribunal order (section 189)
- Orders sought be leasehold landlords (government/public authority) (sections 208, 209)
- Certain developers' issues (sections 226, 232-236)
- Liquidation or wind-up of a strata corporation (sections 279, 284)

In the result, there should be fewer disputes ending up in the Supreme Court.

One comment that I have heard about this proposed process is that it will decrease the amount of disputes that have to be dealt with. While I agree that our Supreme and Provincial Courts will probably see less strata property actions commenced in their courts, I am of the view that the creation of a tribunal increase, perhaps dramatically, the number of claims being made. The creation of the tribunal will create an easily accessible venue for owners and strata corporations to deal with disputes. The major impediment of complexity and cost will be swept away or minimized and disputes that would otherwise be given up will see a resolution.

The downside to this is that it also opens the door to vexatious claimants. There are some disputes that are initiated by owners that really should be forgotten, but the Tribunal will provide a venue for those persons with an axe to grind to begin proceedings where they might not have if they were had to retain council and pay Supreme Court filing fees.

It appears that the Ministry has anticipated this and as part of the proposal is considering granting the Tribunal the ability to award costs against a party for claims that are frivolous or vexatious.

Nevertheless, frivolous and vexatious claims have to be dealt with and potential cost awards don't often dissuade parties from making those claims.

One of the unknowns of the proposed Tribunal will be the role of the property manager. Property managers are regulated by the *Real Estate Services Act,* not the *Strata Property Act*. Will the Tribunal be able to handle disputes between a strata corporation and a property manager or an owner and a property manager?

Further, there has been some suggestion in the media that strata property managers may be able to make representations and/or assist the strata corporation in claiming or defending claims before the Tribunal. Strata property managers currently have to be careful about what they do for their clients in litigation because of restrictions under the *Legal Professionals Act* as well as issues regarding the strata manager's insurance. Absent of an enactment of some sort, I think it would remain inadvisable for strata property managers to undertake an advocacy role for strata corporations in the courts or before a proposed Tribunal.

Lastly, there is the issue of the enabling legislation and whether that legislation will contain a privative clause. This is important as the existence of a privative clause will determine the standard of review of a Tribunal decision if a party wished to appeal a Tribunal decision to the Supreme Court.

The *Residential Tenancy Act* contains a privative clause thus making reviews of decisions and orders made under the Act difficult to overturn under the *Administrative Tribunals Act* and the *Judicial Review Procedure Act*. Notably, the *Human Rights Code* does not have a privative clause so decisions of the Human Rights Tribunal are subject to a lower standard of review under the *Administrative Tribunals Act*. While providing a privative clause to legislation creating a strata property dispute resolution Tribunal would probably reduce the number of successful appeals being made to the Supreme Court, I would prefer to see legislation without a privative clause mainly because bad decisions should be successfully appealed.

The Government of British Columbia has given us the tantalizing prospect of a Tribunal to deal with strata property disputes. Implementing a Tribunal as proposed by the government will result in sweeping changes which will fundamentally alter the way owners, strata corporations, property managers and lawyers deal with dispute resolution. In my view, the change proposed will ultimately be good for the industry, but is it too much to ask for a Tribunal by Christmas 2012?

This article is for general information purposes only and does not constitute legal advice. Every situation is unique and readers are encouraged to seek out the advice of a lawyer when implementing the strategies suggested in this article.

DEALING WITH DIFFICULT PEOPLE – A LOCAL EXAMPLE

There have been several newsletter articles published about difficult people in strata corporations. One cannot expect to live in a diverse community of individuals and not be confronted with difficult people or at least individuals who perhaps should not be living in close quarters in a condominium complex or who may not be mentally or physically well enough to be able to take care of themselves and abide by all of the bylaws and rules that exist in a condominium environment. For example, it is quite common to hear about hoarders in a condominium complex and more and more often we are hearing about elderly individuals who are not well or who are perhaps infirm and house-bound in a condominium complex. We are also hearing about mentally challenged individuals who have considerable difficulty properly caring for themselves and who, often unintentionally, rub the strata council and other owners the wrong way. There are other stories about individuals who, due to a difference of opinion with the strata council or one or more owners in the building, decide to act in such a way that significantly interferes with the rights of others to use and enjoy their homes.

In The Owners, Strata Plan LMS 2768 v. Rose Jordison and Jordy Jordison, a decision of Mr. Justice Blair of the Supreme Court of B.C. rendered on Thursday January 12, 2012, the Judge considered whether or not the Respondents were "difficult people" and whether not the strata corporation was entitled to an order that they be forced to sell their home and move away from the condominium community they had been living in. According to the evidence presented to the Judge, the strata corporation had, for a number of years, attempted to address what the Judge referred to as their "harassment of other owners in the Strata who live in close proximity to the Jordisons' residence". The strata corporation had written countless letters, including letters written on their behalf by legal counsel, and had levied fines in excess of $20,000.00 in an effort to change the behaviour of Rose and Jordy Jordison but these penalties have not had the desired effect of changing the Jordisons' behaviour. The evidence presented by the strata corporation at the hearing of the petition on November 25, 2011 (which took place in the absence of Rose and Jordy Jordison although they had more than ample notice of the application) consisted of Affidavits sworn by 13 individuals, 12 of them owners in the complex, regarding the behaviour of one or both of the Respondents over a period of approximately 4 years. A summary of the evidence presented at the hearing of the petition included:

1. Evidence from an owner who, between March, 2007 and the fall of 2011, wrote more than 30 letters complaining of noise coming from the Respondents' unit. Her evidence included a description of the types of noise, the times and dates of the noises and from time to time she described the length of time the noises persisted. Her evidence also included instances of name calling and the use of expletives;
2. Evidence from an owner who had seen Jordy verbally or physically attack someone, who had seen Jordy spit at another owner and who herself had been sworn or, given the finger or been called names;

3. Evidence from an owner who lived just down the hall from the Jordisons who wrote fifteen letters between March, 2008 and July, 2011 complaining of harassment, excessive noises and over 257 encounters that had seriously and directly interfered with her daily quality of life. This individual's evidence also included complaints of being called "you f.....g bitch, f... off," a "whore", a "f.....g bitch", a "ho for a show" and repeated instances of being given the finger by the Jordisons. Her evidence included having water thrown on her by Jordy.

There were many more affidavits before Mr. Justice Blair in support of the strata corporation's application and specifically for an order that the Jordisons' sell their strata lot and be removed from the condominium complex.

In considering the application the Judge considered the legislative provisions which counsel for the strata corporation argued gave the Judge the authority and jurisdiction to grant the relief sought. In particular the Judge considered the following provisions of the Strata Property Act (the "Act") and the bylaws of the strata corporation:

1. Section 3 of the Act which states:

Except as otherwise provided in this Act, the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.

2. Section 4 of the Act which states:

The powers and duties of the strata corporation must be exercised and performed by a council, unless this Act, the regulations or the bylaws provide otherwise.

3. Section 4 of the bylaws which states:

4.1 A resident 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,

...

4.2 A resident or visitor must not cause damage, other than reasonable wear and tear, to the common property, common assets or those parts of a strata lot which the strata corporation must repair and maintain under these bylaws or insure under s. 149 of the Act.

4. Sections 45.2 and 45.3 of the bylaws dealing with the responsibility of owners with respect to their children which states:

5. 45.2 Residents are responsible for the conduct of children residing in their strata lot, including ensuring that noise is kept at a level, in the sole determination of a majority of the council that will not disturb the rights of quiet enjoyment of others.

45.3 Residents are responsible to assume liability for and properly supervise activities of children including, but not exhaustively, bicycling, skateboarding and hockey and including use by children of common property amenities.

6. Section s. 26 the Act which states:

26 Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

7. Sections 129 and 130 of the Act which states:

129 (1) To enforce a bylaw or rule the strata corporation may do one or more of the following:

(a) impose a fine under section 130;

(b) remedy a contravention under section 133;

(c) deny access to a recreational facility under section 134.

(2) Before enforcing a bylaw or rule the strata corporation may give a person a warning or may give the person time to comply with the bylaw or rule.

130 (1) The strata corporation may fine an owner if a bylaw or rule is contravened by

(a) the owner,

(b) a person who is visiting the owner or was admitted to the premises by the owner for social, business or family reasons or any other reason, or

(c) an occupant, if the strata lot is not rented by the owner to a tenant.

(2) The strata corporation may fine a tenant if a bylaw or rule is contravened by

(a) the tenant,

(b) a person who is visiting the tenant or was admitted to the premises by the tenant for social, business or family reasons or any other reason, or

(c) an occupant, if the strata lot is not sublet by the tenant to a subtenant.

8. Sections 170, 171 and 172 of the Act which states:

170 The strata corporation may sue an owner.

171 (1) The strata corporation may sue as representative of all owners, except any who are being sued, about any matter affecting the strata corporation, including any of the following matters:

(a) the interpretation or application of this Act, the regulations, the bylaws or the rules;

(b) the common property or common assets;

(c) the use or enjoyment of a strata lot;

(d) money owing, including money owing as a fine, under this Act, the bylaws or the rules.

(2) Before the strata corporation sues under this section, the suit must be authorized by a resolution passed by a 3/4 vote at an annual or special general meeting.

(3) For the purposes of the 3/4 vote referred to in subsection (2), a person being sued is not an eligible voter.

(4) The authorization referred to in subsection (2) is not required for a proceeding under the Small Claims Act against an owner or other person to collect money owing to the strata corporation, including money owing as a fine, if the strata corporation has passed a bylaw dispensing with the need for authorization, and the terms and conditions of that bylaw are met.

(5) All owners, except any being sued, must contribute to the expense of suing under this section.

(6) A strata lot's share of the total contribution to the expense of suing is calculated in accordance with section 99 (2) or 100 (1) except that

(a) an owner who is being sued is not required to contribute, and

(b) the unit entitlement of a strata lot owned by an owner who is being sued is not used in the calculations.

...

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).

The Judge was then referred to several legal authorities in support of the relief sought. One case of note was Sterling Village Condominium, Inc. v. Breitenbach (1971), 251 So. 2d 685 in which the District Court of Appeal of Florida, Fourth District was asked to look at a situation involving owners who had undertaken changes to their unit contrary to the rules of the condominium development. In that case the Judge for the court wrote

> "Daily in this state thousands of citizens are investing millions of dollars in condominium property. Chapter 711, F.S.A.,1967, the Florida Condominium Act, and the Articles or Declarations of Condominiums provided for thereunder ought to be construed strictly to assure these investors that what the buyer sees the buyer gets. Every man may justly consider his home his castle and himself as the king thereof; nonetheless his sovereign fiat to use his property as he pleases must yield, at least in degree, where ownership is in common or cooperation with others. The benefits of condominium living and ownership demand no less. The individual ought not be permitted to disrupt the integrity of the common scheme through his desire for change, however laudable that change might be."

Mr. Justice Blair found that the rationale in this decision, which ultimately required the owners to return their unit to its original state, was applicable to the case before him because the Jordisons were found to have "acted in a manner contrary to the Bylaws and rules and that cannot continue. The Jordisons cannot live in their unit as they please. Their conduct is subject to the Bylaws and rules where ownership is in common or cooperation with other Strata owners, that being a cost to their enjoying the benefits of strata living and ownership". He went on to state, at paragraph 56, that "The Jordisons cannot be permitted, through their harassment and abuse of fellow strata members, to disrupt the integrity of the common scheme offered by the Strata. The Bylaws and rules of the Strata, when properly constituted, form a framework of behavioural decency accepted by the Strata's members, breaches of which can lead to action by the Strata to enforce adherence by strata members to the provisions of the Act, its regulations, the Bylaws and the rules."

The Judge went on to state, at paragraph 58 of the decision, that "I specifically conclude from the evidence that the Jordisons' conduct including their obscene language and gestures, their interference with the activities of others, their spitting at other residents, the unacceptable loud and unnecessary noise they in their unit created have unreasonably interfered with the rights of others who are entitled to enjoy in peace the common property, the common assets and their own strata lots." He also found Rose Jordison was responsible for her actions and behaviour and those of her son to the extent that she, by her actions, condoned the breaches committed by her son.

With respect to the remedy sought by the strata corporation, the Judge said this at paragraph 64 of his Judgment:

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"Rather than proceed at this time with an injunction application against the Jordisons, the Strata seeks an order forcing Ms. Jordison to sell her unit and to move from the Strata's complex. This is, as noted by Perell J. in York Condominium Corporation No. 136 v. Roth, [2006] O.J. No. 3417 (S.C.J.), a draconian form of relief. The Strata's application to force Ms. Jordison to sell her unit raises two questions, the first being whether this Court has the authority to order Ms. Jordison to sell her unit, and the second being whether the circumstances are such that an order for sale ought to be made. To put the latter question another way, is an order forcing Ms. Jordison to sell her unit proportionate to the damage that she and her son have caused other residents in the Strata or is it an extreme measure that is not justified at this time?" After hearing submissions regarding the application of section 173 of the Act, the Judge stated that "aAlthough the language does not specifically state that the Court can order an owner to sell his or her unit, I construe that the wording in s. 173(c) is sufficiently wide to provide the Court with the authority to make an order for sale against Ms. Jordison where such an order is necessary to stop further contraventions of the Act, the regulations, Bylaws or rules." And relied on the decision of Metropolitan Toronto Condominium Corporation No. 747 v. Korolekh, 2010 ONSC 4448, M.A. in support of his interpretation of section 173(c) of the Act. In that case the owner of a unit was ordered to sell her unit and move based on the following breaches of the condominium corporation's declaration, bylaws and rules:

(i) physical assaults on other unit owners;

(ii) acts of mischief against their property;

(iii) racist and homophobic slurs and threats;

(iv) playing extremely loud music at night; and

(v) using her large and aggressive dog, described as a 150 pound Rottweiler, to frighten and intimidate other unit holders and their children, as well as failing to clean up the dog's faeces.

Although Mr. Justice Blair acknowledged that section 173 of the Act and section 134 of the Condominium Act of Ontario were not identical, he concluded that "they are comparable in that the sections noted both provide their respective courts with the discretion to order the sale of a unit when a unit holder's misconduct required such a sanction."

Being satisfied that he had the authority to order Ms. Jordison to sell her strata lot, he once again reviewed the evidence that the strata corporation presented in support of its application and the failure of the Jordisons to live "within the framework of rules required to ensure peace within the strata community in which they reside" and their failure to even respond to the strata corporation's application. He construed their lack of a response to be a denial of any impropriety or wrongdoing on their behalf. He concluded by saying that "relief sought by the Strata in its petition, draconian as it may be, will be allowed as providing the means whereby harmony may be reinstated within the Strata" and ordered the sale of the Jordisons' strata lot. He also ordered that Respondents shall "purchase, lease, rent or reside in any other unit of Strata Plan LMS 2768".

Note: As draconian as the remedy sought might have been, the Judge considered the other alternatives available to the strata corporation, including the imposition of fines and applying to court for injunctive relief. However, in the circumstances he considered that in order to restore peace and harmony within the strata corporation he had to order the Respondents to sell and move away. In some instances this may prove to be the only remedy when you are confronted with "difficult people".

Jamie Bleay

HOW TO CREATE SECTIONS

Many of the properties we manage are divided into sections. Sections help the owners to allocate expenses and responsibilities that are unique to the sections, and can make the administration of strata corporations more efficient. Sometimes the section divisions envisioned by the developer are not workable and sections may be cancelled. The *Strata Property Act* says that a strata corporation can create sections to represent the different interests of residential and non-residential owners. Non-residential owners who use their strata lots for significantly different purposes can form sections. For residential owners, SPA Regulation 11.1 says that residential strata sections can be formed to separate residential apartment strata lots, townhouse strata lots, and detached house strata lots.

Sections can be created by the developer when the strata plan is deposited in the Land Title Office. If a strata corporation wants to create or cancel sections after that time, they can do so at an annual or special general meeting.

A notice of the meeting must be circulated and it must include a ¾ vote resolution to amend the bylaws to provide for the creation and administration of sections, or for the cancellation of sections. A ¾ vote by the eligible voters in the section and a ¾ vote by the eligible voters in the strata corporation as a whole are required. Once the bylaw amendment creating a section is filed in the Land Title Office, a section is created. Similarly, filing a bylaw amendment cancelling sections is the required method to cancel sections. On the creation of sections, a strata corporation can also pass a ¾ vote resolution to allocate limited common property to a particular section as long as the property is for the use of all lots in the section. Each section is a corporation that has all the powers and duties of the strata corporation for matters affecting that section.

The administration of sections must include a separate executive, which is a sort of mini-strata council that deals with issues that only concern the section. Sections can establish their own budgets, operating fund, and contingency reserve fund for expenses common to the section, and can make special levies and impose fines. They can also sue or be sued, enter into contracts and buy or sell property on behalf of the section. Sections can not enter into contracts on behalf of the entire strata corporation. The calculation of strata fees are affected by the creation of sections, and *SPA* has a formula to calculate a section's share of common expenses and fees for expenses that relate solely to the section. In addition, bylaws and rules that pertain to the section may be established. Each section must have insurance cover for any perils not insured by the strata corporation policy or excess insurance for amounts not covered by the strata corporation's insurance.

The creation and cancellation of sections is a powerful tool that should only be used when necessary. Always obtain legal advice before creating or cancelling sections.

This article is intended to provide general information only. It is not intended to provide legal advice, and should not be relied upon as the legal opinion of the author, or Vancouver Condominium Services under any circumstances.

CCI VANCOUVER TRADE & SPONSOR MEMBERS DIRECTORY

Accounting Services

Dong Russell & Company Inc.
2nd Floor – 2325 Burrard Street
Vancouver, B.C. V6J 3J2
Tel: 604-730-7472
Fax: 604-730-7459

Reid Hurst Nagy Inc.
105-13900 Maycrest Way
Richmond, B.C. V6V 3E2
Tel: 604-273-9338
Fax: 604-273-9390

Builders (Property Restoration Services)

EPS Westcoast Construction Ltd.
#110-15585 24th Avenue
Surrey, B.C. V4A 2J4
Tel: 604-538-8249
Fax: 604-538-1371

Equity Protection Group
203-15585 24th Avenue
Surrey, B.C. V4A 2J4
Tel: 604-542-9697
Fax: 604-538-1371

First General Services Vancouver Inc.
2661 Lillooet Street
Vancouver, B.C. V5M 4P7
Tel: 604-291-2880
Fax: 604-291-2872

Phoenix Restorations Ltd.
1800 Brigantine Drive
Coquitlam, B.C. V3K 7B5
Tel: 604-945-5371
Fax: 604-945-5372

Financial Services

1 City Financial Ltd.
1847 Marine Drive, Suite 200
West Vancouver, B.C. V7V 1J7
Tel: 604-261-0285
Fax: 604-925-9961

Pacific & Western Bank of Canada
P.O. Box 2000, 40733 Perth Drive
Garibaldi Highlands, B.C. V0N 1T0
Tel: 604-984-7564
Fax: 604-898-3442

Strata Capital Corporation
170-422 Richards Street
Vancouver B.C. V6B 2Z4
Tel: 866-237-9474
Fax: 866-826-2728

Legal Services

Access Law Group
1700 – 1185 West Georgia Street
Vancouver, B.C. V6E 4E6
Tel: 604-689-8000
Fax: 604-689-8835

C.D. Wilson & Associates
630 Terminal Avenue N.,
Nanaimo, B.C. V8S 4K2
Tel: 250-741-1400
Fax: 250-741-1441

Clark Wilson LLP
800-885 West Georgia Street
Vancouver, B.C. V6C 3H1
Tel: 604-643-3359
Fax: 604-687-6314

Cleveland & Doan
1321 Johnston Road
White Rock, B.C. V4B 3Z3
Tel: 604-536-5002
Fax: 604-536-7002

Miller Thomson LLP
1000-840 Howe Street
Vancouver, B.C. V6Z 2M1
Tel: 604-687-2242
Fax: 604-643-1200

Strata Management & Real Estate

Assertive Property Mgmt. & Real Estate Services Inc.
3847B Hastings Street
Burnaby, B.C. V5C 2H7
Tel: 604-253-5566
Fax: 604-253-5536

Blueprint Strata Management Inc.
1548 Johnston Road, Suite #206
White Rock, B.C. V4B 3Z8
Tel: 604-200-1030
Fax: 604-200-1031

Dodwell Strata Management Ltd.
1701 – 1166 Alberni Street
Vancouver, B.C. V6E 3Z3
Tel: 604-699-5255
Fax: 604-688-3245

Gateway Property Management Corporation
#400-11950-80th Avenue
Delta, BC V4C 1Y2
Tel: 604-635-5000
Fax: 604-635-5001

Homelife Glenayre Realty Chiliwack Co. Ltd.
45269 Keith Wilson Road
Chilliwack, B.C. V2R 5S1
Tel: 604-858-7368
Fax: 604-858-7380

Kyle Properties Ltd.
202 – 1537 West 8th Avenue
Vancouver, B.C. V6J 1T5
Tel: 604-732-5263
Fax: 604-732-8858

The Wynford Group
#815 - 1200 West 73rd Avenue
Vancouver, B.C. V6P 6G5
Tel: 604-261-0285
Fax: 604-261-9279

Engineering

Apex Building Sciences Inc.
233-18525 53 Avenue
Surrey, B.C. V3S 7A4
Tel: 604-575-8220
Fax: 604-575-8223

Halsall Associates Limited
930 West 1st Street, Suite 112
North Vancouver, BC V7P 3N4
Tel: 604-924-5575
Fax: 604-924-5573

Homeowner Protection Office
Branch of BC Housing
4789 Kingsway, Suite 650
Burnaby BC V5H 0A3
Tel: 604-646-7095
Fax: 604-646-7051

Strata Council Members, Strata Managers and Owners

- **Did you know that** new regulations have been passed under the *Strata Property Act* for depreciation reports?
- **Did you know that,** as of March 1, 2012, the Form B will require strata corporations to disclose information regarding rules, the annual budget and developer's rental disclosure statement and (at a later date) the Form B will have to include additional information to purchasers regarding parking and storage allocation?
- **Did you know that** the Government is proposing the introduction of a new dispute resolution model to allow owners and strata corporations to take their disputes to a tribunal?
- **What do *you* really want to know** about audits, financial statements and how the CRA treats strata corporations' income?

CCI Vancouver is hosting an all-day seminar to address each of these topics and provide you with an engineering, accounting and legal perspective. There will be an opportunity to participate in a Q & A panel discussion and learn firsthand what your strata corporation will have to do to understand and start planning for the implementation of the required changes.

Canadian Condominium Institute CCI Institut canadien des condominiums

CCI Vancouver All Day Seminar

Saturday, February 18, 2012

UBC Robson Square
800 Robson Street
Vancouver

Registration Starts: 8:30 AM

Seminar:
9:00 AM to 12:00 NOON
1:00 PM to 3:00 PM

Registration Fee:
Members $ 50
Non-Members $ 100

Each member and up to 2 guests of that member will be entitled to pay the member fee of $ 50.

Lunch will be served and is included in your registration fee.

You must PRE-REGISTER as there will NOT be any registration at the door. Space will be limited. DO NOT DELAY!

REGISTRATION FORM:

CCI SEMINAR FEBRUARY 18, 2012

Canadian Condominium Institute CCI Institut canadien des condominiums

Name: _____ **Strata Plan #** _____

Name and address of strata management company if the invoice is to be paid by the management company:

_____

Seminar fee:	**Member**	_____	**x $50.00 =**	_____
	Guests of Member (up to 2)	_____	**x $50.00 =**	_____
	Non-Member	_____	**x $100.00 =**	_____

FAX COMPLETED REGISTRATION FORM TO 604-689-8835, MAKE CHEQUE PAYABLE TO *CCI VANCOUVER* AND MAIL TO 1700 – 1185 W. GEORGIA STREET, VANCOUVER, B.C. V6E 4E6.

FOR MORE INFORMATION INQUIRE AT: contact@ccivancouver.com or register on line at www.ccivancouver.com

Canadian Condominium Institute – Vancouver Chapter
Advertising Rates 2011/2012

Size	**Members Black & White	**Non-Members Black & White	**Members *Full Colour	**Non-Members *Full Colour
Business Card – 3.33"w x 1.83"h	$50.00	$75.00	$75.00	$100.00
¼ Page – 3.5"w x 4.75"h	$125.00	$225.00	$325.00	$425.00
½ Page 7.0"w x 4.75"h (Landscape) 9.5"w x 3.5"h (Portrait)	$250.00	$400.00	$650.00	$750.00
Full Page – 7.0"w x 9.5"h	$400.00	$750.00	$950.00	$1,100.00
Back Cover			$1,200.00	$1,500.00
Artwork Set Up & Design				$25.00/hr.

***Full Colour Ads – Payment must be received by CCI Vancouver Chapter prior to printing.**

****Rates are based on a per issue basis.**

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 $25.00 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.com

Canadian Condominium Institute CCI Institut canadien des condominiums
Vancouver Chapter

MEMBERSHIP APPLICATION

MEMBERSHIP TO JUNE 30, 2012

How/from whom did you hear about CCI?: _____

■ CONDOMINIUM CORPORATION MEMBERSHIP: *Please complete all areas*

❒ Townhouse
❒ Apartment Style
❒ Other

Condominium No.: No. of Units: Registration Date:

Management Company: Contact Name:

Address: Suite #:

City: Province: Postal Code:

Phone: ( ) Fax: ( ) Email:

Condo Corporation Address: Suite #:

City: Province: Postal Code:

Phone: ( ) Fax: ( ) Email:

President:
Name *Address/Suite* *Email*

Treasurer:
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

■ SPONSOR/TRADE SERVICE SUPPLIER MEMBERSHIP

Company:

Name: Industry:

Address: Suite #:

City: Province: Postal Code:

Phone: ( ) Fax: ( ) Email:

Annual Fee: ❒ $300.00

■ INDIVIDUAL CONDOMINIUM RESIDENT MEMBERSHIP

Name:

Address: Suite #:

City: Province: Postal Code:

Phone: ( ) Fax: ( ) Email:

Annual Fee: ❒ $110.00

Cheques should be made payable to: **Canadian Condominium Institute - Vancouver Chapter**
1700 - 1185 West Georgia St., Vancouver, BC V6E 4E6
Tel: 604-689-8000 • Fax: 604-689-8835 • Email: contact@ccivancouver.com