

## President's Message

### President's message – Edition # 1 - 2016

2015 was a very successful year for CCI Vancouver and concluded with a sold out seminar on November 12, 2015 on the topic of smoking with Veronica Franco of Clark, Wilson as our guest speaker. That was our seventh and final educational seminar of the year. Over the course of 2015 our seven educational seminars attracted over 400 attendees. We hope that the 2016 educational seminar calendar attracts even more attendees and we are off to a good start with our first seminar of the year that was held on January 21, 2016 to a sold out crowd. Sean Ingraham and Jamie Bleay spoke on the roles and responsibilities of strata corporations and strata councils and finished the evening by showing a short clip of what we understand is a new reality television show called "Condo cops". If you want a good chuckle at some of the antics and stories that form the basis of this show you can see several short clips on you tube.

Our next seminar is scheduled for February 20, 2016 and the registration form should be on the website as I write this message. There will be at least 5 more educational seminars over the course

of the next 11 months, including what we anticipate will be a sold out event on May 28th as our opportunity to host the CCI National 2016 Spring Leader's Forum in Vancouver wraps up. The online registration link for the Spring Leader's Forum social events will soon be available on our website. Space for the social evening events will be limited so if you want to attend one or more of these events make sure you register early! There are still sponsorship opportunities available and if you are interested in being a sponsor for this event the sponsorship form can be found in this newsletter.

*Jamie Bleay – President CCI Vancouver*

### A HELPFUL GUIDE FOR RESPONDING TO BYLAW INFRACTION COMPLAINTS

*Naomi Rozenberg - T: (604) 685-3911 - E: nrr@mlaw.ca*

Lesperance Mendes is frequently asked how a strata corporation should respond to complaints that residents have breached a bylaw.

In general, we recommend that a strata council follow the following

#### INSIDE THIS ISSUE

<i>President's message – Edition # 1 - 2016</i> .....	1
<i>A Helpful Guide for Responding to Bylaw Infraction Complaints</i> .....	1
<i>Preventative Maintenance: Property Walk-Through Checklists</i> .....	3
<i>A Free Resource To Help Improve Recycling</i> .....	4
<i>Case Law Update.</i> .....	6
<i>Professional Members and Business Partners Members</i> .....	10

“three step process” when a complaint is received to ensure compliance with section 135 of the Strata Property Act.

Step 1: Send the resident a written notice that a complaint was received by the strata corporation

The written notice should:

- include details of the complaint, including the date and time of the alleged bylaw infraction(s);
- refer to the specific bylaw(s) that was allegedly breached;
- give the recipient (owner or tenant) a reasonable opportunity to respond;
- indicate that the resident can request a hearing;
- list possible consequences if the council finds there has been an infraction, such as a fine;
- provide a deadline by which the resident must (a) respond in writing to the complaint and/or (b) request a hearing.

Step 2: Hold a council meeting

After the hearing, or if a hearing is not requested, and after the deadline to accept written submissions council must ultimately vote to decide whether there has been a bylaw infraction. In voting, council must consider the correspondence and submissions from both sides in an impartial manner. If council determines that there has been a bylaw infraction, council members must also vote on the consequences, such as a warning or a fine or other remedies that are permitted by the Strata Property Act.

Note:

- A council member who is personally involved with the complaint should recuse him or herself from the meeting at which the complaint is discussed.
- The council's decision should be noted in the strata council meeting minutes, without reference to individual names.
- A fine must not automatically be levied every time a complaint is received.

Step 3: Send a decision letter

A decision letter must be issued that sets out the strata council's decision.

## Additional Points to Consider

1. When submitting a complaint to your strata council, include as much information as possible. The complainant should provide sufficient details such that the strata council can determine who is likely responsible for the behavior and which bylaw(s) may have been violated.
2. A strata council might conclude that a resident has breached a bylaw without proof 'beyond a reasonable doubt' of the infraction, such as video surveillance. The council can take many factors into consideration when rendering a decision, including circumstantial evidence and the resident's failure to respond to (or deny) the allegation.
3. Whether a behavior constitutes a “nuisance” is a question of mixed fact and law. Council should consider a number of factors, including the nature of the conduct, the frequency and the duration.
4. Strata corporations must ensure that their actions or decisions do not violate an owner's reasonable expectation in a manner that is “significantly unfair”.
5. Strata councils should also be mindful of the Human Rights Code. They must ensure that their decision does not discriminate against a person or class of persons because of their race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age.
6. If fines are not having a deterrent effect, the strata council should consider other avenues of bylaw enforcement such as a court application.

Strata corporations that follow the above three-step process improve their chances of enforcing and collecting fines that are levied. The process encourages fairness, promotes impartiality and can potentially avoid future disputes. In contrast, failure to follow the three step process will likely result in a Court order that some or all of the fines imposed be reduced or removed entirely.

Lesperance Mendes would be pleased to review your strata corporation's process of responding to bylaw infraction complaints to ensure the procedure complies with the Strata Property Act. To make an appointment, please contact Paul G. Mendes or Naomi R. Rozenberg.

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## PREVENTATIVE MAINTENANCE: PROPERTY WALK-THROUGH CHECKLISTS

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When it comes to building maintenance, a keen eye can keep small problems from becoming costly repairs. Consultants and contractors may visit periodically, but tend to have a focused assignment. It often falls to the owners and their property manager to conduct periodic walk-throughs to identify problems as they come up.

The following are recommended checklists for a typical property walk-through. If you identify any issues, or anything otherwise unusual for your property, ask your contractor or consultant to more thoroughly review the conditions and recommend suitable repairs. Pro-active maintenance can extend the service life of major components, save thousands of dollars and keep residents happy!

### EXTERIOR SITE

- No ponded water on pavement or on grade
- Minimal settlement, cracking, heaving or deterioration

on asphalt, paving stones and sidewalks

- Minimal soil erosion or ice build-up at downspout outlets
- Eavestroughs are draining freely (no spill-over or clogs)
- Plant material near fire hydrants, traffic signs, utility vents is trimmed back (equipment is accessible)
- No overgrown landscaping/bushes that could promote mischief
- Exterior electrical transformer cases are free of corrosion and there is no unusual buzzing
- Light poles/fixtures are straight; no significant rust or cracks

### EXTERIOR BUILDING WALLS AND WINDOWS

- No concentrated wetting on walls below eavestroughs, window sills (as seen during a rain storm)
- Siding, flashing and trim pieces are well-secured to the walls, windows and roof edges
- No cracks or holes in cladding; no dislodged or loose bricks
- No significant areas of white deposits (efflorescence) on brick, stucco or concrete



## Make Your Home Safe for Independent Living

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**Toll-free: 1-800-257-7756**

Canada



HOUSING MATTERS

## ROOFS, BALCONIES AND TERRACES

- No significant ponding water near drains 24 hours after a rain storm
- No unwanted vegetation growing on roofs/terraces
- Balcony guard rails and dividers between terraces are well-secured (not angled or dislodged)
- No cracked or loose concrete at balcony edges
- No tables, chairs or planters directly against a balcony guard rail (could be a climbing hazard for children)
- No large icicles hanging from eavestroughs or roof edges

## UNDERGROUND PARKING GARAGES

- No large, wide or new cracks on concrete walls, slabs or columns
- Waterproofing membrane is not cracked, peeling or loose
- No significant leakage through concrete cracks or expansion joints
- Garage exhaust fans are working, particularly at morning/evening “rush hours”
- No dark areas at parking stalls, stairs or hallways
- Covers are properly fitted over floor drains (not loose or shifted)

## FIRE, LIFE SAFETY AND MECHANICAL SYSTEMS

- Exterior storage areas and egress routes are clear of debris and garbage
- Interior storage rooms and egress routes are free of debris and combustible items (furniture, paper files)
- Fire sprinkler heads have adequate clearance (not obstructed by stored materials)
- Fire extinguishers are properly mounted and secured
- Fire rated doors are free of damage and close/latch properly
- No gaps/voids around pipes or ducts that penetrate a fire-rated wall
- Emergency lights and exits signs are functional
- No unusual noises coming from boilers, ventilation fans, valves or pumps
- No water or chemical leaks below equipment
- No unusual smells in storage areas, particularly at pools/spa equipment
- Supply air fan filters are clean

## A FREE RESOURCE TO HELP IMPROVE RECYCLING



For condominium building managers, strata councils and residents of multi-unit buildings, getting everyone to recycle properly can present some real challenges.

With 21 municipalities in the Metro Vancouver region, each at a different stage in their recycling programs, and a wide variety of multi-family buildings, it can be challenging for property managers to find correct answers to important questions – such as how many food scraps bins their building is likely to need.

To make it easier, Metro Vancouver has created the Multi-Family Recycling Toolkit, a collection of free resources for promoting, implementing or improving recycling programs in multi-family buildings.

### Evidence-based Approach

Those free resources are the culmination of two years of research and field testing. Step one was engaging UBC's Department of Psychology to help us identify a 'best-practice' for recycling signs. That project confirmed that signs utilizing icons helped people get materials in the correct bins in less time. Icons also negate the need to produce materials in multiple languages.

Other interventions provided in the recycling toolkit were piloted at Metro Vancouver's own housing sites. Pre and post-intervention waste composition studies at our pilot and control sites confirmed that residents got better at putting the right materials in the right bins with fewer recyclables found in the garbage bins.

### Taking Out the Guesswork

To get started, you provide the municipality in which your complex is located as well as the total number of units. That information is used to calculate the number and types of bins you will need for your property, helping you optimize your building's waste management infrastructure.



“Many LandlordBC members manage multiple buildings in different cities in Metro” said David Hutniak CEO of LandlordBC. “Having one online resource for educational materials to share with residents saves building managers time and reducing garbage at their sites by improving recycling ultimately saves them money.”



## Support Materials for Residents Promote Recycling Efforts



However, the Toolkit is more than just a way to calculate how many recycling bins and dumpsters are needed. You can also download professionally-designed posters and signage to assist residents in the correct recycling practices. Feedback from residents was used to ensure our handouts communicated information in a clear and concise manner. Additional resources were developed to address the most common challenges faced by property managers.

To help residents reduce waste before it even arrives there are links anyone can use to stop the delivery of unwanted junk mail and phone books.

“Our Green Team here at Panorama Place, a West End high-rise, frequently uses the Metro Van Recycling Website as a resource,” says Jill Schroder of the Panorama Place Green Team. “The site really has all the information gathered in one place. And it’s easy to navigate, so you can find what you need. We cite it on our building website, and tell new residents to check the site out if they have questions.”

### Creating Champions Fosters Commitment

How important is it to connect like-minded residents? At Metro Vancouver’s test sites, staff were hearing that many people felt isolated, operating under the impression they were the only ones who were committed to these waste reduction efforts. Not only did the test sites with green teams achieve higher diversion of recyclables from the garbage, those sites also had the least regression to pre-intervention contamination rates. Use our templates to form green teams in your buildings.

To use Metro Vancouver’s Multi-Family Recycling Toolkit, please visit [www.metrovancouver.org](http://www.metrovancouver.org) and search “multi-family recycling toolkit”.

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## CASE LAW UPDATE

### THE OWNERS, STRATA PLAN NW 1815 V. ARADI, 2016 BCSC 105

This case is the culmination of a significant amount of media attention regarding a smoking prohibition bylaw and the rights of an individual to smoke based on the existence of an alleged disability based on an addiction to nicotine.

The facts of the case are relatively straightforward. Mr. Aradi purchased his strata lot in 2002. At the time of the hearing before Madame Justice Harris he was retired and the evidence indicated he was a life-long smoker.

At the time he purchased his strata lot there were no bylaws that restricted smoking. On March 31, 2009 the strata corporation passed a smoking prohibition bylaw that states:

8.1 Municipal Bylaws and strata Bylaws do not permit smoking in any areas of the building including suites, hallways, lobbies, elevator, laundry room, or stairwells, as they are designated non-smoking.”

That bylaw was amended on April 15, 2014 that states:

#### Smoking

33(1) Smoking is prohibited

- (a) in a strata lot,
- (b) on the interior common property, including but not limited to hallways, elevators, parking, garages, electrical and mechanical rooms,
- (c) on patios and balconies,
- (d) within three meters of a door, window or air intake, and
- (e) on any land that is a common asset.

Complaints began being received in or about December, 2013 regarding Mr. Aradi’s smoking bothering other occupants in the building. Mr. Aradi received letters from the strata corporation to advise him of the complaints regarding his smoking and was advised of his opportunity to attending hearing before the strata council or provide a written response to the complaint letters, neither of which he did. He did however submit a written response to the strata council stating that the bylaw was discriminatory by creating two classes of citizens, smokers and non-smokers. Over a period of approximately 20 months fines in the amount of \$2,300.00 were levied against him but were not paid by him. The strata corporation filed its petition to the court in August, 2015 seeking, among other things, an order that Mr. Aradi cease and desist in smoking in contravention of bylaw 33(1) and submitted several affidavits confirming that Mr. Aradi had been smoking cigarettes in his strata lot for at least two years and



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had ignored the strata corporation's repeated requests to comply with the smoking prohibition bylaw. Mr. Aradi countered by stating that he has smoked in his strata lot but argued that he had a disability resulting from his addiction to cigarettes/nicotine and due to his limited mobility affecting his ability to leave his strata lot and smoke outside the strata corporation was discriminating against him by not accommodating his disability. He also submitted evidence that he had filed a complaint with the Human Rights Tribunal and argued in court that no order should be made in the strata corporation's petition until his complaint before the Tribunal was heard.

The issues before the Judge dealt with the alleged bylaw violations and whether pursuant to section 173 of the Strata Property Act (the "Act") a declaration that Mr. Aradi had breached the smoking prohibition bylaw and order that he cease and desist from smoking in contravention of the bylaw.

Having reviewed evidence from Mr. Aradi's occupational therapist that Mr. Aradi had functional limitations but found it was significant that the report did not speak to any other measures or means available to assist him with his mobility limitations and finding that Mr. Aradi was still able to drive a car which would allow him to drive off sight to smoke, the Judge concluded that there was ample evidence that Mr. Aradi had "contravened the bylaws of the strata corporation by smoking cigarettes in his unit" and ordered that he cease and desist contravening the bylaws by smoking in his suite.

*Editor's note: The complaint before the Human Rights Tribunal is anticipated to be heard in July, 2016. Whether the complaint will*

*require the strata corporation to accommodate Mr. Aradi's disability due to his addiction to cigarettes and allow him to smoke in his strata lot despite the smoking prohibition bylaw is now in the hands of the Tribunal, if the case does in fact proceed. In the meantime our courts have confirmed that strata corporations can enforce smoking prohibition bylaws.*

## RADCLIFFE V. THE OWNERS, STRATA PLAN KAS 1436, 2014 BCSC 2241

This case is about dealing with water ingress and all the rights and duties that can float around (excuse the pun) such claims.

The water got into the building through an envelope failure and the petitioners spent over \$21,000 repairing floors and other items damaged by water. The Strata would not reimburse the petitioners saying the y were not required to, and the petitioners sued saying the Strat was acting in a significantly unfair way towards them. The floods were caused by an inappropriately sloped balcony and an insufficient fix of that problem. No insurance was available.

Am engineering report found the leaks to have been caused by a failure of the balcony seal of the unit above the petitioners' unit and systemic problems with the construction of the balcony itself. The problem would persist, said the engineers, without remedial work.

The petitioners were repeatedly flooded and repeatedly paid for repairs and sought payment from the Strata. They did not get reimbursed. Eventually an SGM passed ¾ vote to raise \$60,000 to make proper



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repairs and repay owners who had had flood expenses. The petitioner were not paid from this fund.

The proceedings were brought by way of petition ( a paper only type of evidence hearing, as opposed to a proceeding brought by Notice of Civil Claim, that leads to a trial with witnesses giving evidence in the witness box) and the Strata argued that this was not appropriate because the petitioners were, in essence, seeking damages; something ordinarily only awarded through a trial process. The Court determined that a proceedings under s. 164 of the Strata Property Act regarding alleged 'significantly unfair' actions of the Strata was properly brought by way of petition as, at its pith and substance, the case was about the Strata's duties under the Act, and a petition would be appropriate and quicker and cheaper to resolve those types of issues. This determination also include the right of the court to award damages if it were the remedy required to undo the unfairness and bring about an equitable solution.

Having determined the proceedings were properly brought the court then considered whether the Strata's actions were indeed significantly unfair by considering the 'test' set up by the Court of Appeal in the Dollan case:

1. Examined objectively, does the evidence support the asserted reasonable expectations of the petitioner?
2. Does the evidence establish that the reasonable expectation of the petitioner was violated by action that was significantly unfair?

The Court found that at the outset of the problems, the Strata is not an insurer, required to make everyone whole and is required only to act reasonably. This, the Strata did in relation to the first flood. It did not know about the potential for flooding, and an owner is otherwise responsible to repair and maintain the strata lot they own.

This was not the case thereafter however. Once the Strata knew there was a problem with the balconies, it had a duty to act to resolve those issues and take care of any subsequent problems. It did not do this, and in fact treated the petitioners quite differently than others in the building. The Court awarded over \$14,500 for the 'damages' for the subsequent floods and gave costs to the petitioners even when they were not completely successful.

This case is in line with other cases on this point that have imposed a 'reasonableness' standard on Stratas that does not expect a Strata Corporation to be omniscient and know where new problems might arise. That same standard that forgives a Strata in the first instance of a problem, equally though, provides a footing for an owner to claim the Strata acted unreasonably, and thus potentially

significantly unfairly, if it knew about a problem, and chose not to do anything about it. That is unreasonable, and in such cases the Strata will be paying for any damage.

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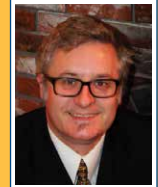
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## CCI VANCOUVER 2015 - 2016 SEMINAR SCHEDULE YEAR AT A GLANCE

A list of past Strata Education Seminars is available on the CCI Vancouver website at [ccivancouver.ca](http://ccivancouver.ca)

<b>2015</b>	
June 25th	Evening Seminar <b>Conflict Prevention</b> – Steps a strata can take to prevent conflict
September 19th	½ Day Seminar and AGM <b>Understanding an insurance claim from beginning to end</b>
November 12th	Evening Seminar <b>The rights and wrongs</b> – how to deal with smoking in a strata
<b>2016</b>	
January 21st	Evening Seminar <b>Who does what?</b> Responsibilities and the Strata Council's Role
February 20th	½ Day Seminar <b>Financial Management for Strata Councils</b>
March 10th	Evening Seminar <b>Nomination and Elections in Strata Corporations</b>
April 21st	Evening Seminar <b>Meeting Minutes</b>
May 28th	2016 Spring Conference Seminar <b>Repair and Maintenance and CRT Update</b>
June 23rd	Evening Seminar <b>Strata Council Members' Code of Ethics</b>

More information for each seminar will be available on the CCI Vancouver website as each seminar date approaches. If you would like to be notified of seminar details via e-mail, please subscribe to our e-news on the website.

All topics and dates are subject to change.

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## Your Condo Connection to Education

**Your CCI Strata Membership Offers Access to Information, Education and  
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Strata Council Members have a substantial responsibility to govern and manage their Strata Corporation properly. They are called upon daily to make prudent and effective business decisions that affect the lives of all their strata residents. Through membership in CCI Vancouver, Strata Council Members need not feel alone. The knowledge and information they will gain from other Strata Council Members and Industry Professionals will not only benefit them, but their entire strata.

### **Membership Benefits to:**

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- Access to the resources in the **Members Only** area of the CCI Vancouver website, including the Chapter's **Condo News Publication** archives
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**Your Strata Corporation could be the winner of the Strata of the Year Contest  
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## Canadian Condominium Institute – Vancouver Chapter Advertising Opportunities in Condo News Publication

**Condo News** is a quarterly publication of CCI Vancouver Chapter circulated to all members of CCI Vancouver via e-mail. Read the President's Message, case law updates, strata articles, interesting feature articles and much more. All **Condo News** issues (archived and current) are available to CCI Vancouver Members for downloading in PDF format from the Members Only area of the chapter's website. Advertising and article submission opportunities are available only to members of CCI Vancouver.

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