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CCI Vancouver Chapter

Includes:

***Civil Resolution Tribunal Updates
Legal Corner
Business Partner and Professional Members
Directory and CCI Vancouver Services at a Glance***

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Fall 2018

THIS ISSUE

- ▶ Flood Emergency Response Planning
- ▶ Determining Total Insurable Value and Understanding Fluctuations

PRESIDENT'S MESSAGE

Paul Murcutt,
President, CCI Vancouver



There is a crispness in the air. After a fantastic summer of long sunny days, the Labour Day weekend hits and a switch goes off. Fall hits us hard and before you know it, we are close to Christmas. For many strata corporations this is a highly productive time of year. Councils are back on track and have dusted off the 'to do' list that, for the most part, took a back seat over the summer months.

At CCI Vancouver we were busy preparing for our AGM, held on September 29th, which was coupled with a fantastic session on Building Communities. Our excellent presenters Jim Allison and Stephen Cassady, provided an informative and inspiring session that included breakout sessions where the groups were able to navigate their way through tricky situations a council might face, with 'building community' always in mind. The session received great praise and so we will be holding more like this in the future. A big thank you our presenters and our seminar sponsors, BFL CANADA, Access Law and Maxium Financial, without whom we would not be able to hold seminars like this.

For the AGM portion, we cleaned up some of our by-laws and a new board was elected. I would like to personally thank each member of our 2017-2018 board for their tremendous work and look forward to working with the new board for 2019.

There is certainly no shortage of work for the new board. We held the popular Condo 101 session in late October and on November 22nd we have a very timely seminar on Cannabis legislation and the impact on stratas. We have seen a flurry of activity as stratas plan on how to deal with the new legislation in their buildings. Be sure to catch Paul Mendes, from Lesperance Mendes, as he takes us through some tips and tricks on how to regulate usage in a corporation.

I look forward to seeing you all at an upcoming event.

Paul Murcutt – President CCI Vancouver

Welcome New Members

- ▶ Blueprint Strata Management Inc.
- ▶ GUS
- ▶ Epic Restoration
- ▶ Amanda M. Magee, Lesperance Mendes Lawyers

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BFL Canada Insurance Services Inc.
Email: pmurcutt@bflcanada.ca

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Email: kelly.mcfadyen@cwbbmaxium.com

Jamie Bleay, Past President
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Email: jbleay@accesslaw.ca

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GUS
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Jim Allison, Secretary
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Email: jim@assertivenorthwest.com

Margarita Carlos, Member at Large
Normac
Email: margarita@normac.ca

Lisa Frey, Member at Large
Lawson Lundell, LLP
Email: lfrey@lawsonlundell.com

Carol Stengert, Member at Large
Condominium Owner
Email: cstengert@hotmail.com

Silvano Todesco, Member at Large
Citadel Law Corporation
Email: stodesco@citadelawyers.ca

John Wallis, Member at Large
Phoenix Restorations Ltd.
Email: johnw@phoenixrestorations.com

Grace Wang, Member at Large
HUB International Insurance Brokers
Email: grace.wang@hubinternational.com

Sean Ingraham, Committee Member
FirstService Residential BC Ltd.
Email: sean.ingraham@fsresidential.com

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HAVE A STORY OR ADVICE TO SHARE ON STRATA ISSUES?

CCI Vancouver accepts **educational articles** from **Strata Councils**, **Business Partner and Professional Members** that are useful for strata councils and corporations in BC. Submitting an article provides you with the opportunity to contribute toward our award winning publication aimed at helping strata councils and strata corporations to be better equipped to perform their duties.

Articles submitted by **Business Partner and Professional Members** should be relevant to the contributor's area of expertise. Only one article per industry/company will be accepted for each issue.

Articles submitted by **Strata Councils** should tell the story of how a problem was solved or the strata community was improved. By sharing your stories, your challenges and successes, you will inspire other councils to problem solve and be contributing toward strata best practices, helping others to build strong communities.

Go to the CCI website to see **submission requirements**. Issue deadlines:

Winter – January 15

Spring – March 15

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PO Box 17577 RPO The Ritz, Vancouver, BC V6E 0B2

P: 1.866.491.6216, Ext.114

Email: **contact@ccivancouver.ca**

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Stratology is written by Phil Dougan, a strata lawyer with Citadel Law Corporation, and will be published regularly in Condo News with the goal of providing information on fundamental strata matters that strata owners and council members need to know.

By Phil Dougan,
Citadel Law Corporation



Everything You Need To Know About Strata Living

Liens

The Strata Property Act states that:

116 (1) The strata corporation may register a lien against an owner's strata lot by registering in the land title office a Certificate of Lien in the prescribed form if the owner fails to pay the strata corporation any of the following with respect to that strata lot:

- (a) strata fees;
- (b) a special levy;
- (c) a reimbursement of the cost of work referred to in section 85;
- (d) the strata lot's share of a judgment against the strata corporation;

Most people do not buy strata lots understanding the significance of the lien powers of a strata corporation. It is not uncommon for owners who are upset with the administration of their strata corporation, to withhold strata fees in protest of the governance problems.

What these owners do not realize is, by not paying strata fees, the very people they consider to be a problem, will be empowered, and

required, to follow a process in the Strata Property Act that can lead, within a very short time frame to the forced sale of the non-paying strata owner's unit!

Regardless of financial concerns, owners must pay strata fees and special levies. There is no defence to not paying a properly passed levy or budget.

Owners can make payments under protest [s. 114], but unless the payment is proven to be illegal, the 'joint nature' of strata ownership removes from a single owner the right to not participate in the financial expenses determined by the majority of owners.

If you have clients who have a very hard time accepting other people's decisions, or do not like being told they must do something, perhaps they should be viewing single family homes rather than stratas! Strata Corporations are community ownership models; you cannot not be involved in decision making with all your neighbours. ■

Phil Dougan has worked for over a decade in Strata Property Law and has appeared at every level of Court in British Columbia; the Civil Resolution Tribunal; the Residential Tenancy Tribunal; the Human Rights Tribunal and in employment matters.

Citadel Law Corporation

Phil Dougan

Tel: 778-945-9990

Email: pdougan@citadellawyers.ca

Website: www.citadellawyers.ca



The Anatomy of an Improperly Imposed Fine

One common theme which arises in many Civil Resolution Tribunal (CRT) decisions is the pronouncement that the process for properly imposing fines was not strictly followed. Where the procedure dictated by the Strata Property Act (SPA) is not strictly followed, the fines will be set aside and the offending owner will escape the consequences of their breach.

That pronouncement should not be surprising. On more than one occasion (most notably in *Terry v. The Owners, Strata Plan NW309 2016 BCCA 449*) the court reinforced the principle that the imposition of fines before providing the particulars of the alleged breach and an opportunity to respond makes the fines invalid.

The process for fining an owner is laid out in s.135 (1) and (2) of the SPA: Complaint, right to answer and notice of decision 135

- (1) The strata corporation must not
 - (a) impose a fine against a person,
 - (b) require a person to pay the costs of remedying a contravention, or
 - (c) deny a person the use of a recreational facility for a contravention of a bylaw or rule unless the strata corporation has
 - (d) received a complaint about the contravention,
 - (e) given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and
 - (f) if the person is a tenant, given notice of the complaint to the person.

- (2) The strata corporation must, as soon as feasible, give notice in writing of a decision on a matter referred to in subsection 1(a), (b) or (c) to the persons referred to in subsection (1)(e) and (f).

In *Terry* the Court succinctly summarized that process as follows:

[28] *In my view, an owner or tenant who may be subject to a fine must be given notice that the strata corporation is contemplating the imposition of a fine for the alleged contravention of an identified bylaw or rule, and particulars sufficient to call to the attention of the owner or tenant the contravention at issue. In addition, the owner or tenant must be given a reasonable opportunity to answer the complaint.*

What constitutes a reasonable opportunity to be heard in response is a case-specific inquiry that must take account of the nature of the alleged contravention, the context in which the violation is said to have occurred, and the time that might reasonably be required to gather information or evidence needed to answer it.

What constitutes 'particulars' was also reviewed by the court in *Terry*. There the court said that particulars must be "sufficient to call to the attention of the owner or tenant the contravention at issue." They need not be complex.

In *The Owners, Strata Plan NW3075 v. Stevens* 2018 BCPC 2 the court, when examining the requirements of s.135 made two additional observations. One, 14 days is generally a reasonable time to respond (although in *Terry* the court observed that time is flexible depending on the circumstances). Two, that there is no need to point out the right to request a hearing, just an opportunity to respond.

How that process can go awry in its application was illustrated in the CRT's decision in *Himmelman v. The Owners, Strata Plan LMS 2064*, 2018 BCCRT 426. In that case, the strata corporation received complaints that the applicant, a tenant in the respondent strata corporation, did not have his dog on a leash as required by bylaws. In response to those complaints, the strata manager wrote to owner of the strata lot. The first three times were as warnings and the last three threatened fines if the conduct continued. Although the last three letters offered an opportunity to respond and request a hearing, that offer was not extended directly to the tenant. The strata council, not hearing from the owner, decided to impose fines. The tenant, eventually having received word of the complaints through his landlord, paid the fines and wrote to the strata manager requesting a council hearing. A hearing was held and a decision was made not to reverse the fines.

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In assessing the applicant's objections to the fines the CRT made the following general observations about the process under s.135:

- a complaint made about a bylaw contravention can be made verbally and can be made by a strata council member;
- that providing particulars of a dispute does not mean providing copies of the complaint letters when writing to the owner;
- the payment of the fines does not constitute an admission of the bylaw contravention;

However, the CRT concluded that "the procedure followed by the strata in assessing fines created 2 fatal errors" that prevented it from being able to collect those fines from the tenant. Those errors were:

- a failure to give the tenant any written particulars of the complaint as it only wrote to the owner, contrary to section 135(e) of the SPA. (The fact that the owner may have notified the tenant does not relieve the strata from notifying the tenant directly).
- the fines were assessed before the tenant was given the opportunity to be heard. (The fact that the owner had been afforded that opportunity didn't amount to compliance with s.135).

In addition to the mistakes identified in *Himmelmann*, there are other mistakes a strata corporation can make in imposing fines.

In *The Owners, Strata Plan BCS 3625 v. Wiltsey et al*, 2018 BCCRT 155 the council informed the owner on December 16 that a \$500 fine had been imposed at the November 15 strata council meeting. That fine was in response to conduct that occurred on October 20. Since the strata supplied no evidence that it informed the owner of any alleged infraction that took place on October 20, the fine was determined to be invalid.

A failure to advise that fines have been imposed once the decision to impose them is made is also a failure to comply with s.135. In *The Owners, Strata Plan VR 279 v. Morin*, 2018 BCCRT 483 the strata corporation was unable to collect over \$13,000 in fines because of a failure to advise the owner of council's decision to impose fines.

The failure to comply with s.135 doesn't just apply to fines. It also applies to the costs of remedying a bylaw contravention imposed under s.133 of the SPA. In *Strata Plan VR 19 v. Collins 2004 BCSC 174* the strata corporation was not entitled to recover the costs of removing an unauthorized alteration because it did not comply with s.135.

The good news is that if caught in time, these oversights can be corrected. In *Himmelmann* the CRT observed that, based on the decision in *Cheung v. Strata Plan VR 1902*, 2004 BCSC 1750, the procedural defects could have been cured if the strata had reversed the fines, given the tenant written particulars of the complaint(s), with a copy to the owner, and given the tenant a reasonable opportunity to respond before re-imposing them. Neither writing to the tenant nor granting a hearing after the fines were imposed could cure the problem. Only a full reversal and beginning the process again would have been effective.

However, not everything done after the fact will cure a lack of compliance. Exchanging correspondence regarding the fines and the breaches after the fact does not meet the requirements of s.135 to provide an opportunity to respond - *Terry v. The Owners, Strata Plan NW309* 2016 BCCA 449. Offering a hearing after the initial allegation letters without saying what the hearing relates to is not sufficient to comply with s.135 - *The Owners, Strata Plan NW 2170 v. Broadbent*, 2017 BCCRT 11

Strata councils who want to ensure that fines will **not** be enforceable should make sure that they:

- write to the wrong party;
- don't give a description of the conduct which breached the bylaw;
- decide to impose a fine without giving an opportunity to answer the allegations;
- not let the owner or tenant know that a decision to impose a fine was made;
- don't immediately correct non-compliance when they realize it has happened;

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LEGAL CORNER

STRATA CASE LAW IN BC

By Kathrine Uppal,
Access Law Group



Case Law 1

Court Respectfully Disagrees About 'Retroactive' Strata Fees **625536 v. LMS 4385**

A recent decision by the Supreme Court of British Columbia deals with a nominal amount of fees (\$887.38) but is of general importance to strata corporations and strata law practitioners when determining how to collect certain strata fees.

The Court, in 65536 B.C. Ltd v The Owners, Strata Plan LMS4385, 2018, BCSC 1637 was tasked with deciding whether strata corporations could collect an increase in strata fees as an adjustment. Or, whether such collection was contrary to the Strata Property Act. The Court looked closely at a strata corporation's obligations under the Act and specifically took note that

- the Act permits a strata corporation to hold its general meeting up to two months after its fiscal year end; and
- it is at the AGM that a new budget can be approved. Once such budget is approved, the Act requires the strata corporation to inform owners of any changes to their strata fees

The Court employed statutory interpretation tools to determine whether the collection of an increase in fees, approved at the AGM, was permitted by the Act.

The Court found that there was no requirement that strata fees be paid in equal installments and that the amount approved in the new budget (that was over and above the previous fiscal year's fees) must be paid to make up for the deficit between what was paid and what should be paid. The Court went on to say that the adjustment amount could be part of the fee schedule or even form a special levy. The way the difference is collected is not limited by the Act.

Contrary to two previous decisions by the Civil Resolution Tribunal, the Court was satisfied that "a subsequent adjustment to the fees paid

in the period between the end of a fiscal year and the passing of the budget for the next fiscal year, is not a retroactive charge."

The Court also commented specifically on the Civil Resolution Tribunal's concern that information disclosed on a Form B or Form F would be inaccurate prior to the approval of a new budget – the Court disagreed stating that, the obligation to pay an increase in strata fees does not arise until budget approval at the AGM. Therefore, those forms would still be accurate as at the date they are issued.

This decision allows strata corporations to be flexible in how they collect the difference between the previous year's strata fees and any increase to those fees as approved for the current fiscal year. To avoid any challenges, strata corporations should ensure to invoice the difference as early as possible. ■

Kathrine Uppal is an associate with Access Law Group and assists in all areas of the strata/condominium practice. Kathrine has experience in providing legal advice to individuals, local companies and national organizations in a variety of contexts, including real estate, bankruptcy and insolvency, and collections matters.

Access Law Group
Kathrine Uppal
Tel: (604) 235-4667
www.accesslaw.ca
kuppal@accesslaw.ca

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Strata councils who want to ensure that fines and chargebacks are properly imposed, should do the opposite. As long as they:

- write to the tenant when there is one (copying the owner);
- give proper particulars of the alleged breach (date, time, etc.);
- wait for the owner or tenant to respond before deciding whether to impose a fine; and
- promptly notify them of any decision;

they should be on solid ground to collect any fines they do impose. ■

This article is intended for information purposes only and should not be taken as the provision of legal advice

Shawn M. Smith is lawyer whose practice focuses on strata property law. He frequently writes and lectures for a variety of strata associations. He is a partner with the law firm of Cleveland Doan LLP.

Cleveland Doan, LLP

Shawn M. Smith

Tel: (604) 536-5002

www.clevelanddoan.com

shawn@clevelanddoan.com

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Case Law 2

8 Steps Every Strata Council Should Take When Responding to a Smoking Complaint

With cannabis legalization fast approaching, it is a good time for strata council members to educate themselves about a strata corporation's obligations when responding to smoking complaints.

Regardless of what a strata corporation's bylaws say about smoking, the strata corporation has a duty to accommodate any resident who has a legitimate medical condition that is exacerbated by second-hand smoke.

Strata corporations are subject to claims under section 8 of the Human Rights Code, which says that a person must not be discriminated against regarding any accommodation, service or facility customarily available to the public. A resident owner or tenant will successfully establish discrimination if they can show that they have a disability (such as a medical condition), and that they have suffered an adverse impact in relation to provision of services by the strata corporation as a result of that disability. If the claimant can establish discrimination, then the onus shifts to the strata to prove that it has accommodated the complainant up to the point of undue hardship.

For example, in the case of *Leary v. Strata Plan VR1001*, 2016 BCHRT 139, an owner who suffered from allergic and asthmatic bronchitis won a human rights claim against her strata when the strata council failed to take any meaningful action to respond to her complaints about smoke ingress into her unit from neighbouring units. The strata was ordered to engage an air quality specialist to investigate the smoke ingress, and to work with the claimant to find a reasonable solution. The strata was also ordered to pay the claimant \$7,500 as compensation for injury to her dignity, feelings and self-respect.

In the *Leary* decision, the B.C. Human Rights Tribunal set out helpful guidelines for strata corporations to follow when responding to smoking complaints. Upon receipt of a smoking complaint from a resident, the strata council should take the following steps:

- **Address requests for accommodation promptly, and take them seriously.** There are very real consequences for a strata corporation that fails to adequately respond to smoking complaints.
- **Designate a 'first responder.'** Consider having one strata council member responsible for responding to smoking complaints and requests for accommodation. That should allow the strata to be more responsive to requests, including in between council meetings.
- **Request medical information.** The strata is entitled to enough medical information to understand the need and extent for accommodation, but no more. In the *Leary* case, a doctor's note explaining that the claimant's bronchitis was negatively impacted by second-hand smoke was enough information to establish a disability and adverse impact.
- **Keep medical information confidential.** If an owner or tenant submits medical documentation to support their request, only the individuals who are involved in the accommodation process should have access to that information. Under no circumstances should it be circulated to the general ownership.
- **Get an expert.** A 'sniff test' undertaken by another council member or the strata manager is rarely sufficient to evaluate the presence of smoke ingress into a unit. The strata may have to retain and pay for an air quality expert as part of its duty to accommodate.
- **Investigate possible solutions.** The strata council should be proactive and take the lead on figuring out how to resolve the smoke ingress. It should not put the onus on the complaining owner or tenant to find a solution.

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British Columbia

The Owners, Strata Plan VR 855 v. Shawn Oak Holdings Ltd. (BC Supreme Court) July 12, 2018

Strata Corporation's by-law did not limit rentals in compliance with Strata Property Act

Shawn Oaks Holdings Ltd. owned, and had rented, many units in the strata property. The strata corporation claimed that the rentals contravened the corporation's by-laws. The relevant by-law said that the units could only be occupied by owners and their immediate families. The Court held that the by-laws in question did not prohibit rentals in compliance with Section 141 (2) (a) of the Strata Property Act. The Court said:

In my view, the fact that bylaw 3.1 is framed in terms of occupancy rather than rental is not necessarily fatal to whether it is a valid bylaw. The concern with using the verb "occupy" rather than verb "rent" in the bylaw, is that they are two overlapping, but not necessarily co-existent actions; there can be occupancy with or without rental. I have come to the conclusion that because they are different actions, and because bylaw 3.1 uses an extended definition of immediate family that is not consistent with the Regulations, a plain reading of bylaw 3.1 is that it does not prohibit rentals in compliance with the SPA.

The Court also said that this matter did not fall within the exclusive jurisdiction of the Civil Resolution Tribunal, under Section 189.6 of the Strata Property Act

The Parent obo the Child v. The Strata Corporation and Others (BC Human Rights Tribunal) August 14, 2018

Human Rights claim respecting harm allegedly caused by second-hand smoke dismissed as out of time

This was a claim by a parent on behalf of a child, for alleged discrimination on the part of the strata corporation in failing to address second-hand smoke, allegedly due to violations of the strata corporation's No Smoking by-law, with alleged resulting harm to the claimant's child who suffers from asthma.

The Tribunal dismissed the claim. The Tribunal said that the claim was out of time, for having been filed after the applicable six-month limitation period under Section 22 of the Human Rights Code; and the Tribunal declined to extend the limitation period. The Tribunal said:

The Parent is clearly seeking justice for the alleged discrimination related to the Child's exposure to second-hand smoke emanating from another owner's home and elsewhere on the strata property. More widely, the Parent argues it is in the public interest to accept the late filed complaint when so many British Columbians live in strata corporations and many are forced to move, including those with disabilities, because of discrimination on the part of strata corporations and property management companies, related to second-hand smoke. While sympathetic to these issues, in this case I am not satisfied the public interest is engaged where the Tribunal regularly deals with cases involving strata services and disability, the jurisprudence about which is fairly settled: Leary v. Strata Plan VR1001, 2016 BCHRT 139 (CanLII). Such considerations must also be weighed against the argument that allowing a late-filed complaint to be accepted could encourage other complainants to ignore the substantive time limits set out in the Code: A obo B v. School District No. C and another, 2009 BCHRT 256 (CanLII), at para. 101; Johansen v. Southern Railway of B.C. and another, 2011 BCHRT 239 (CanLII), at para. 33. In my view, the Parent has not shown that his complaint raises a unique issue that the Tribunal should hear to advance the purposes of the Code.

Ontario

Re Jovasevic (Landlord and Tenant Board) July 24, 2018

Landlord entitled to recover damages from tenant resulting from short-term sub-tenancies

The landlord rented one of the units in the condominium to a tenant, under a long-term lease. The tenant proceeded to list the unit “on the Airbnb website as a home share available for short term rentals” without the landlord’s knowledge or consent. The tenant then rented the unit to many sub-tenants, on a short-term basis, over many months.

The landlord applied to terminate the tenancy; but that issue had been rendered moot because the tenant had moved out. The landlord also alleged that, as a result of the numerous sub-tenancies, there was “undue damage” to the unit, for which the tenant should be obligated to compensate the landlord in accordance with Section 89 of the Residential Tenancies Act.

The Landlord and Tenant Board agreed and ordered the tenant to pay the landlord \$4,232.87 in compensation for undue damage, plus \$175 in filing fees.

The Landlord and Tenant Board said:

The use of the phrase “undue damage” indicates that some damage to a rental unit is expected with everyday use. I would agree with the Tenant that normal wear and tear is not undue and the Tenant cannot be held liable to the Landlord for it.

That being said, I agree with the Landlord that much of what is claimed here cannot be said to be the result of normal, everyday use. Further, some of the damage is clearly associated with careless or negligent behaviour or wilfulness. ■

James Davidson is one of the founding partners of Davidson Houle Allen LLP and has been practicing condominium law for over 30 years. He represents condominium corporations, their directors, owners, and insurers throughout Eastern Ontario. His experience also includes building deficiencies, shared property interests, co-ownership and construction law. Jim is proud to be an associate (ACCI) and also a fellow (FCCI) of the Canadian Condominium Institute.

Davidson Houle Allen LLP

James Davidson

Tel: 613-231-8243

www.davidsoncondolaw.ca

james@davidsoncondolaw.ca

By Grace Wang,
HUB International Coastal
Insurance Brokers



Flood Emergency Response Planning

Flood risks pose significant challenges to businesses in the U.S. and around the globe. The majority of the world's population lives in close proximity to the coast or major inland waterways, so many homes and businesses are at risk for this type of disaster. Floods vary in geographical impact and the speed with which water levels rise. A tropical storm may impact hundreds of miles of coastal communities over a period of days while localized flash floods may impact small geographical areas in a matter of minutes. Major storms and flood disasters have the potential to destroy property, take lives, and cripple businesses. FEMA estimates that over 40% of businesses that experience a significant disaster do not reopen.

In October 2012, Hurricane Sandy decimated the east coast of the U.S., causing over \$50B of total damage. Many businesses were underinsured and unprepared for such a catastrophic event. FEMA has since proposed new flood maps in many coastal locations. As a result, properties that weren't in a flood zone in the past may now be required to obtain flood insurance. In addition to insurance protection, implementing a Flood Emergency Response Plan (FERP) is critical to ensuring the continuity and survival of businesses in flood-prone areas.

How do I Protect my Business?

Identify your Risks

The first step to being prepared is to identify and understand your risks. Are your facilities located in flood zones? If you are unsure, consult with your insurance professional to learn about the flood risks for your properties and the insurance coverage options that are available.

When new buildings are planned, potential sites should be reviewed for flood risk. If building in a flood zone is necessary, be sure to locate key electrical and mechanical equipment above grade level, with additional flood protection such as pitched drains and sump pumps.

Create a Plan

Once you have identified that a property is at risk for flooding, a Flood Emergency Response Plan (FERP) should be developed. The plan should:

- Designate a person in charge. The FERP Coordinator should have authority to initiate the plan and to direct resources before, during, and after the emergency.
- Identify key personnel who have FERP responsibilities.
- Develop a communication method (such as a phone chain) to alert employees of incoming storms or impending floods.

The communications should also alert key personnel to be on stand-by for flood preparation actions.

- Create procedures to shut down equipment and processes in a safe manner.
- Have provisions for when to activate the IT Disaster Recovery Plan. Shift IT functions to other facilities or remote data centers to ensure continuity of operations.
- Allow for relocating equipment, inventory, valuable records or other movable property to higher levels, if possible.
- Establish measures to prevent water from entering the building.
- Establish written agreements for response and recovery resources with contractors.

For example, consider a facility that does not have a back-up generator. The facility could contract to have reserved rental generators available in the event of a prolonged power outage due to flooding. Many companies charge a small service fee to guarantee this type of service.

- Schedule regular training on FERP procedures, especially with key employees.

Update the FERP whenever any personnel changes are made, or when processes in the facility change.

Preparing – Before the Flood

Mitigate damage and protect your property by taking the following pre-flood precautions:

- The FERP coordinator should closely monitor storms to assess the need and appropriate timing to activate the plan.
- Notify key employees when potential storms are being tracked to ensure their availability.
- Assemble key materials and supplies, such as sandbags, plywood and nails, tarps, portable pumps, power tools and hand tools, mops, buckets, etc.
- Ensure that any personnel that are staying on site have emergency supplies, such as drinking water, non-perishable food, radios, first aid kits, lighting, and necessary personal protective equipment (PPE).
- Fill all fuel tanks, such as vehicles, emergency generators and fire pumps.
- Check all fire protection equipment to ensure all are in service.
- Move any machinery, equipment, inventory, valuable records or other movable property to higher levels.
- Secure flammable/combustible liquids containers. Shut down all flammable liquids lines at the source (except emergency generators and fire pumps).
- Shut down electrical power if it will be affected by rising water levels.
- Put sandbags at building openings or dig trenches to divert water if possible.

Grace Wang is an Account Executive with HUB International Insurance Brokers' Strata Division, located in Burnaby, BC. Grace joined HUB International in 2014, and has been in the insurance industry since 2012.

As an Account Executive, Grace is responsible for developing and placing insurance coverage for both new and existing strata clients.

Actions – During the Flood

The safety of all employees who remain on-site must be top priority:

- Do not attempt to move or service wet electrical equipment.
- Do not go outside in periods of heavy rain, lightning or during other hazardous conditions. Floods are often accompanied by high winds so be aware of falling trees and flying debris.
- Shelter in-place within the building, above the grade level, and in an internal room with no windows.
- If authorities order evacuation, leave the facility immediately. DO NOT STAY under any circumstances.

Recovery – After the Flood

Once flood waters subside and the site is safe, the company should begin to assess damage and start salvage efforts. The following steps should be considered:

- Be aware of downed power lines or other hazards caused by the storm. Report any outages or damage to the utility companies.
- Repair damaged fire protection equipment.
- Communicate with contractors regarding repair work as their services may be in short supply following a major storm event.
- Clean drains and roofs of debris.
- Dry and clean all electrical equipment. Do not energize without first having a licensed electrician inspect for damage.
- Check equipment for mechanical damage caused by flood waters. Be aware that salt water can be especially corrosive.
- Clean and purge gas lines prior to restarting boilers.
- Obtain necessary permits from the local jurisdiction prior to beginning construction work. ■

HUB International Coastal Insurance Brokers

400 - 4350 Still Creek Drive
Burnaby, BC V5C 0G5
Tel: 604.269.1000

www.hubinternational.com
grace.wang@hubinternational.com

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FROM THE STRATA EXPERTS

Appraisals, Valuations, Depreciation Reports, Engineering Consultation



By Cameron Carter,
BCom, RI (BC), CRP
Normac

Determining Total Insurable Value and Understanding Fluctuations

There are many practical ways to measure the value of a condominium property in Canada, some being more useful than others in specific circumstances. For insurance purposes, the value of a condominium asset is defined by its full replacement cost, known to appraisers as the Total Insurable Value. This total insurable value (TIV) is the all-encompassing cost to fully replace the property in the event of a total loss and includes items such as the cost of materials, labour, bylaw and building code revisions, as well as changes to standard materials deemed no longer appropriate.

Total Insurable Value Explained

Determining TIV is different than the methods used for other property valuations. Market Value appraisals, a report an owner would obtain to finance their home purchase includes a consideration for the value of the land which can impact the overall valuation drastically. Properties that generate revenue would normally be appraised using the Income Approach which estimates the value of a property based on how much net income is created.

The approach an owner would take to establish an accurate TIV for insurance purposes is different and starts by hiring a reputable third-party firm to complete an insurance appraisal. Once hired the company starts the process of identifying, assessing, analysing, and reporting on the current replacement cost of the property.

As mentioned, there are a multitude of components that must be evaluated: building structure and systems, all common assets, applicable bylaw and building codes, landscaping, and even the cost of demolition. Once all factors have been accurately accounted for, the insurance appraiser can provide the condominium with the TIV, which enables the owners or manager to insure the property sufficiently. If appraised too high, the condominium corporation will be paying excess amounts of money in premiums for insurance. If appraised too low, the asset is at high risk in the unfortunate event of a total loss. This issue is more complex when considering the many external factors that can cause fluctuations of the TIV of a property.

TIV - Factors and Considerations

- **Construction Type, Materials, and Labour Considerations**

Looking at insurance appraisals through the lenses of an appraiser, the three major considerations for costs are the type of construction, materials, and labour. As economic conditions fluctuate, so do these variables. Changes to supply and demand, workforce composition, even international trade can all contribute to rapid and profound TIV fluctuations.



- **Location and Scale**

While the TIV has nothing to do with the market value of the land, location can have a substantial impact on the replacement cost. Many contractors charge more for their services in urban areas than in rural areas. Locations that are considered affluent will often get higher quotes from contractors. Demolition is another significant contributor to the total replacement value. Demolition and removal jobs in urban areas will cost significantly more due to space limitations, traffic considerations, imposed standards for separating materials, and development permits that may be required.

Smaller properties do not benefit from economies of scale that exist on larger projects. For example, material suppliers typically offer discounts on larger orders, and this can lead to an overall lower cost per square foot of construction. Furthermore, small suites do not equate to lower costs because all suites still require all the same utilities and amenities such as appliances. In larger units, those expenditures are spread across more floor area, thus the price per square foot can be lower.

- **Bylaw and Building Code, Building Practices**

Bylaws and building codes are an important consideration when appraising condominium assets. Due to variations between municipalities and provinces, bylaws and building codes must be assessed in detail on a case-by-case basis as discrepancies between current standards and older structures can reflect large portions of a building's full replacement value. Experienced appraisers have seen cases wherein new building codes and bylaws represented up to 30% of an asset's TIV. Examples include updates to fire protection standards, elevator codes, and parking requirements that would entail large amounts of capital to rebuild to current day standards.

... continued on page 16



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Current fluctuations explained

The aggregate of all previous factors results in total insurable value fluctuations which, when shifting above the insured value of a condominium property, pose a serious concern for owners and managers. During Normac's 20-year involvement in industry, we have had vast amounts of experience in monitoring, analyzing, and sharing our understanding of these major fluctuations with our clients to keep them updated and protected. Currently, certain economic conditions have had a great impact on TIV, including:

- **Supply and Demand of Raw Materials**

Supply and demand of materials such as steel, concrete, and softwood lumber has been transitioning through a period of major imbalance, causing extreme price increases¹. With an overall decline in steel production, global increases in demand for steel have drastically affected pricing. According to the World Steel Association, the cost of steel has been increasing since July 2017 and is expected to rise again by 8% through 2018². Canadian softwood lumber production has been stifled by recent, record-level forest fires, beetle infestations, and by climate change³. In 2017 alone, building and construction costs saw an increase of 10% - 40% due to BC's wildfires. This reduction in supply has led to sawmill closures in Canada, further contributing to record level pricing⁴.

- **International Trade**

A deterioration in trade relations between Canada and the USA has further affected increases in material costs. The USMCA is the new trade deal to replace NAFTA and it may have a significant impact on the exchange rate between the two countries. Tariffs on raw materials are another main consideration regarding fluctuating prices. It is expected that steel tariffs alone could raise condominium prices by \$10,000 CAD⁵.

- **Labour Market Shortages**

Lack of skilled labour equates to higher charges by contractors and construction companies as wage increases are needed to attract workers. As of December 2017, Canada was reported to have a national shortage of 38,000 construction jobs, third on the list of industries

experiencing labour shortages⁶. By March of 2018, the construction industry had jumped to the number two spot⁷. This year, overall labour costs are expected to raise an additional 2-3%, influencing overall construction costs as well as expenses such as demolition and debris removal, both major components of a condominium's TIV. With labour shortages affecting many other industries besides construction, we believe that this issue will have a profound affect on construction costs for the foreseeable future.

The TIV is the essential figure to replace a property in the event of a major loss. With so many variables to consider, your best protection from the risk of loss is to obtain an appraisal from specialists in the field. ■

Sources

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Cameron Carter is a seasoned professional in the real estate industry and Canada's leading insurance appraisal expert. He is the founder and president of Normac and has been successfully serving strata and condominium corporation clients for over 20 years. Cam's mission is to provide the highest quality insurance appraisals in the industry while offering exceptional customer service.

Normac

#308 - 788 Beatty Street
Vancouver, BC V6B 2M1
Tel: (604) 221-8258

www.normac.ca
info@normac.ca

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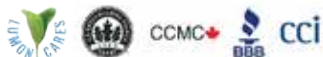
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Case Law 2 ... continued from page 9

- **Document any undue hardship.** The strata's duty to accommodate is limited to the point of undue hardship. If there is no solution to the smoke ingress possible without causing the strata to suffer hardship, the strata council should document that hardship. For example, if the cost of a potential solution is too expensive, the strata should obtain estimates for that work and keep them on record. If there are competing needs of other strata members with disabilities, the strata council should document that in writing. Always have a paper trail.

- **Make a decision.** The strata council will ultimately be responsible for deciding how to respond to a request for accommodation. The council cannot offload that decision onto the owners by calling a vote at a general meeting. When recording the council's decision in the meeting minutes, make sure not to disclose more than necessary about the accommodation. The complainant's name and the details of their medical condition should never be recorded in the minutes.

If the strata council is unsure about the strata's obligations when responding to a smoking complaint or whether it has fulfilled the duty to accommodate, consider seeking legal advice. While smoking complaints may often seem trivial, the strata corporation faces very real consequences if it fails to adequately respond to them. ■

Amanda M. Magee is a member of the strata property law group at Lesperance Mendes and focuses on a solicitor's practice. She regularly works with strata corporations, strata owners and property managers on a variety of strata property matters.

Lesperance Mendes

Amanda M. Magee

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CondoSTRENGTH

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Email: margarita@normac.ca
Website: www.normac.ca

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Christina Dhesi
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Kevin Grasty
930 West 1st Street, Suite 112
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1321 Johnston Road
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Lesperance Mendes

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Tel: 604-685-3567, Fax: 604-685-7505
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Burnaby, BC V5C 5Z9
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Website: www.stratawest.com

Teamwork Property Management Ltd

Joe Hackett
34143 Marshall Road, Suite 105
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Website: www.teamworkpm.com

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Your Strata Connection to Education

Condo 101 Course for Council Members

Through our **NEW Condo 101** course, CCI Vancouver is committed to providing a friendly, supportive educational environment to help Strata Council members become better equipped to perform their duties.

Taught by Strata Lawyers, this course provides information on the duties, obligations and procedures that all strata council members, or those who would like to join the council, should know. Topics include legal elements of Stratas, discerning various responsibilities of Stratas, administration, finance, insurance, and procedures of Strata Corporation meetings.

This is a complimentary course available to the council members of Strata Corporations with active CCI Vancouver memberships. Owners who would like to join their council in the future are also welcome to register for this course. The registration fee for non-members is \$150. Participants will receive a Condo 101 package including course materials, handouts and a certificate of completion.

Syllabus Content Includes:

- Council Member Basics
- Getting Started as a Council Member
- Council's Responsibilities and Governance - *The Act, Strata Plan, By-laws and Rules*
- Property Management
- Planning, Financial and Other Responsibilities - *The Annual Plan, Financial Responsibilities, Money and Banking, Contingency Reserve Funds, Insurance*
- Legislation That Affects Strata Corporations

- ▶ To register for the course fill out the [form on the CCI website](#) and send it to us at contact@ccivancouver.ca
- ▶ If you are not a member, to be eligible for **FREE** registration for Condo 101 have your strata council fill out the "Condominium Corporation Membership" category at the top of the first page of the [Membership Application Form](#) and return it to us at contact@ccivancouver.ca
- ▶ For the benefit of your strata community, please encourage your fellow strata council members and owners to [Subscribe to CCI Vancouver E-News](#) at our website to be notified of all Strata educational opportunities offered by CCI Vancouver.

Sponsorship Opportunities are available to Business Partner Members* for Condo 101 Sessions

- ▶ To become a Condo 101 sponsor, [fill out the form on the CCI website](#) and send it to us at contact@ccivancouver.ca
- ▶ If you are not yet a member of CCI Vancouver, fill out the "Business Partner Membership" category on the second page of the [Membership Application Form](#) and return it to us at contact@ccivancouver.ca

* Strata Management Company Business Partner Members are not eligible.

How Becoming a Member of CCI Vancouver Can Benefit You

Find the category of Membership that is applicable to you:

■ Condominium Corporation Membership Category:

Under this membership category, all owners and strata council members of the strata corporation member will benefit from special members' rate for **Strata Educational Seminars** and **Lunch & Learns**, and strata council members can register for **FREE** for strata courses such as **Condo 101** and **CondoSTRENGTH** program which are specifically designed for council members. In addition, the strata corporation member can be nominated for the **CCI Vancouver Strata of the Year Award** by owners, council members, service providers or strata managers.

■ Business Partner Membership Category:

Companies that provide services to strata corporations can become a Business Partner member. Under this membership category, companies can **sponsor** strata educational seminars, Lunch & Learns and the Condo 101 course. They can **advertise** in the CCI Vancouver quarterly publication, **Condo News**, and can **submit educational-only articles**, useful for strata council members, to be published in **Condo News**. All employees of the company, can attend the **strata educational seminars and Lunch & Learns** at the members' rate.

■ Professional Membership Category:

A Professional Member is an individual who participates professionally in a field or endeavour related to Strata Corporations. Professional members can **submit educational-only articles**, useful for strata council members to be published in **Condo News**. They can also attend the **strata educational seminars and Lunch & Learns** at the members' rate.

■ Individual Membership Category:

This classification of membership is devoted to those individuals who live in a strata corporation and wish to become personally involved in CCI. It is not a replacement for strata corporation or professional membership. Individual members can attend the **strata educational seminars and Lunch & Learns** at the members' rate.

■ STRATA EDUCATION SEMINARS (Members Discount)

■ CONDO 101 COURSE (FREE for Members)

■ CondoSTRENGTH PROGRAM (Members Only)

■ STRATA OF THE YEAR AWARD (Members Only)

■ SEMINAR SPONSORSHIP OPPORTUNITIES

■ CONDO 101 COURSE SPONSORSHIP

■ CONDO NEWS ADVERTISING OPPORTUNITIES

■ SUBMIT EDUCATIONAL ARTICLES

All Members and Non-Members who subscribe to CCI Vancouver e-News will be notified about upcoming Strata Education Seminars, Condo 101 courses, the CondoSTRENGTH program and will receive the electronic version of this quarterly Condo News publication. Print versions of Condo News are available at seminars, courses and program sessions or by request at contact@ccivancouver.ca.

TO **BECOME A MEMBER** OR LEARN MORE ABOUT CCI VANCOUVER VISIT OUR WEBSITE: ccivancouver.ca

CCI Vancouver Chapter Upcoming Events:

- | | |
|---------------------|----------------------------|
| ▶ November 22, 2018 | Evening Seminar, Cannabis |
| ▶ February 16, 2019 | Half-day Seminar Topic TBA |
| ▶ March 13, 2019 | Lunch and Learn Topic TBA |
| ▶ April 18, 2019 | Evening Seminar Topic TBA |

▶ To receive issues of Condo News by email and be notified of upcoming CCI-Vancouver Strata Educational Seminars and Courses:

Subscribe to
CCI Vancouver E-Newsletter



CCI Vancouver Chapter

JOIN



Membership Benefit from educational and networking opportunities as well as the experiences of hundreds of other strata council members and industry professionals.

LEARN



Condo 101 Course

Through our **NEW Condo 101** course, taught by Strata Lawyers, CCI Vancouver is committed to providing a friendly, supportive, educational environment to help Strata Council members or those considering joining their council to become better equipped to perform their duties. **Condo 101** will be offered on:

To Be Announced

SUPPORT



CondoSTRENGTH Program

You Are Not Alone.

Other strata council members out there can relate to your challenges.

- ▶ This **NEW** program offers strata council members the opportunity to draw on one another's wealth of knowledge, experience and support helping each other to build better strata communities. By sharing ideas and finding solutions council members will achieve both success and recognition.

RECOGNITION



Strata of the Year Award

Your Strata Could Be The Next Winner!

- ▶ An opportunity for well managed stratas to be recognized and rewarded for their achievements.
- ▶ Nominations accepted from July 1st, 2018 until the June 30, 2019 deadline.
- ▶ Finalists selected in July 2019 and the winner will be awarded at the CCI Vancouver Chapter's AGM in the fall of 2019.

Any **CCI Vancouver Strata Corporation Members** can be nominated