

CONDO NEWS

YOUR STRATA CONNECTION TO EDUCATION
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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Vancouver Chapter

Spring 2018

THIS ISSUE

- ▶ Additional Living Expense Coverage for Owners
- ▶ Crane and Shoring Easements
- ▶ Decisions, Decisions, Decisions...
An Overview of How to Make Decisions at the Strata Council Level



PRESIDENT'S MESSAGE

Paul Murcutt,
President, CCI Vancouver

Spring is certainly in the air. As the days get lighter and warmer, it is with renewed energy many are looking forward to summer. Another telltale sign is that our membership renewals are due at the end of June. It is also nearly time for the *CCI National Spring Conference*. This year, the South Alberta chapter has the pleasure of hosting Condo professionals from across the country in beautiful Banff. The theme for the event is "The Greatest Indoor Show on Earth" and along with some fantastic networking opportunities, there will be a packed educational schedule. Our board of directors will be making a special effort to attend this rewarding conference to share condo success stories with our friends and colleagues.

Back here in Vancouver, we continue to be busy planning the year's educational events and seminars. We are planning to host the ever-popular Condo 101 sessions and have finalized the 2018/2019 fiscal year events. The membership committee is preparing renewal packages that include a peek into this schedule. Be sure to keep a look out for that.

Our next seminar in May is on a topic that always draws a crowd – By-Laws That Work. Remember to register early for this one.

We look forward to seeing you and wish you a wonderful spring.

Paul Murcutt – President CCI Vancouver

Welcome New Members

- ▶ Tribe Management Inc.
- ▶ Entuitive
- ▶ Strata Plan NWS 0138



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

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SPRING 2018

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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:

Summer – May 1
Fall – September 1

Advertising Opportunities in *Condo News* are available (only) to Business Partner members of CCI Vancouver. To become a *Business Partner Member* and to see *Ad Pricing and Specifications* visit *Our Website*.

Articles and ads can be forwarded to:
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or contact@ccivancouver.ca

➤ JUST CLICK

All links in the electronic version of this newsletter are live. **Just click** to email, go to a website or find out more about CCI Vancouver and how we can help you.

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Everything You Need To Know About Strata Living

***Stratology** is written by Phil Dougan, a strata lawyer with Access Law Group, 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.*

Common Property

The Strata Property Act describes common property as:

(a) that part of the land and buildings shown on a strata plan that is not part of a strata lot, and

(b) pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located

(i) within a floor, wall or ceiling that forms a boundary

- (A) between a strata lot and another strata lot,
- (B) between a strata lot and the common property, or
- (C) between a strata lot or common property and another parcel of land, or

(ii) wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property

Seems confusing?

What is common property typically? Many things: driveways; parking garages; elevators; lobbies; hallways; electrical and utility rooms; amenity rooms such as gyms, pools, meeting rooms and hobby rooms; stairways and fire escapes; the roof, the outside walls; the foundation of the building; main water, sewer and heating pipes; landscape areas, patios and balconies; storage lockers and bike storage; managers' offices; garbage chutes and ventilation shafts; and many more.

The most common concern and misunderstanding arising from a designation of common property (or strata lot property, which is the opposite of common property) is 'who repairs and maintains it?'

Any of the property in the list above would presumptively be the Strata Corporation's responsibility, but remember, that does not mean the Strata Corporation will necessarily pay for a repair to common property.

Responsibility for payment of repairs arises from the cause or source of the damage. If the source is also from common property (perhaps the roof leaks or a main water pipe bursts) then the Strata Corporation is responsible. If damage arises because of a flood or fire started in a strata lot, then that owner may be responsible to pay.

If you buy a strata lot, you will be jointly responsible with your neighbours to pay for common property expenses. ■



The CRT Clarifies How to Manage Conflicts, Repairs and Renovations for Strata Corporations

The Civil Resolution Tribunal (CRT) recently ruled on how a section executive managed a major repair and renovation project in *Page v. Section 1 of The Owners, Strata Plan NW 2099, 2017 BCCRT 84*. The project involved significant landscape renovations, including the demolition and replacement of decks and canopies.

The owner brought a number of complaints against the residential section regarding how the project was managed by the section executive, which is the equivalent of a council for the residential section and governed by the same rules. The complaint included that:

1. the section executive improperly approved changes to the project
2. one of the executive members was in a conflict of interest because:
 - a. he is a professional architect who provided design input for the project; and
 - b. his was one of the limited common property decks being affected by the repairs.

Approval of Changes to Projects by Councils

As with the many major repairs, the project was approved and financed by a $\frac{3}{4}$ vote resolution of the owners at a general meeting. However, the claimant alleged that after the vote the executive should not have approved changes to the project's design. The owner alleged that these changes were significant and should have been approved by a $\frac{3}{4}$ vote pursuant to s. 71 of the Strata Property Act (SPA), which provides that significant changes to the use or appearance of common property require a $\frac{3}{4}$ vote resolution.

Change orders are very common in large scale projects. The CRT accepted the section's argument that requiring all change orders to be voted on by $\frac{3}{4}$ vote would be impractical, holding that:

... if every change needed to be approved by a $\frac{3}{4}$ vote during the course of such a Project, then work would inevitably stop, delays would occur, and costs to a strata or section would significantly increase.

The CRT held that a $\frac{3}{4}$ vote was only required if the change order contemplated was a significant change from the plans that had already been approved by $\frac{3}{4}$ vote. Considering the factors for what is considered significant, the CRT concluded that the change orders did not cause significant changes from the original design and therefore did not require a $\frac{3}{4}$ vote.

Stratas should provide in their resolutions that their councils or executives have express authority to make reasonable changes to their projects. However, this CRT decision clarifies that the councils also have implicit authority to authorize reasonable changes even without such a resolution.

Council and Executive Conflicts

The SPA provides that a council or executive member has conflict if they have a "direct or indirect interest" in the matter. However, an overly broad interpretation of what is a conflict is not practical because councils are typically made up of owners who by definition have a direct or indirect interest in every decision the council makes. Where a conflict arises the member must (1) fully disclose the conflict to the council, (2) abstain from voting, and (3) physically leave the meeting while the final discussion and vote takes place. So obviously not every direct or indirect interest can give rise to a conflict because if it did, everyone would have to abstain and councils would not function.

The CRT decision helpfully accepted this point by saying "if the conflict provisions apply to any interest of a council member then the strata council's work would be stymied because everyone would be in a conflict." The CRT then concludes that executive decisions involving the executive member's limited common property deck did not in itself give rise to a conflict.

... continued on page 6

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With respect to the owner's other allegations, the CRT concluded that there is nothing inappropriate in an executive member providing free professional services. However, the CRT also found that the member was correct in recusing himself when voting on his own architectural suggestions. The suggestion that he correctly abstained is paradoxical because the CRT held he had no underlying conflict. If there is no conflict then why would abstaining be correct? A possible interpretation is perhaps that even where a conflict does not exist it can be proper to abstain from a vote where it could give rise to the appearance of a conflict.

What is and is not a conflict is fact specific and sometimes nebulous. If a council member feels that a vote is necessary, he or she should seek legal advice if they are concerned that they have a conflict. However, as a practical matter, council members who are more directly impacted by decisions should consider recusing themselves in order to avoid any conflict or appearance of a conflict. ■

Alex Chang is a lawyer with Lesperance Mendes specializing in advising strata corporations and owners in all manner of condo issues including construction deficiency claims, bylaw enforcement, repair disputes, collections, and tenancy issues. He has acted for strata corporations and owners at all levels of court in BC and publishes articles regularly on strata law matters.

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Case Law 1

Getting your foot in the door; without breaking your ankle.

Legal Update

If any of our readers have ever been on a strata council dealing with an owner who is somewhat paranoid, or who is excessively secretive, you will know the complications that can arise from the enforcement of this otherwise innocuous bylaw:

- 7 (1) An owner, tenant, occupant or visitor must allow a person authorized by the strata corporation to enter the strata lot (a) in an emergency, without notice, to ensure safety or prevent significant loss or damage, and (b) at a reasonable time, on 48 hours' written notice, to inspect, repair or maintain common property, common assets and any portions of a strata lot that are the responsibility of the strata corporation to repair and maintain under these bylaws or insure under section 149 of the Act.
- (2) The notice referred to in subsection (1) (b) must include the date and approximate time of entry, and the reason for entry.

The policy for this bylaw seems sensible enough. When living in close quarters, an emergency in one unit can quickly become an emergency in another. [Ask anyone who has been flooded]. But gaining entry to 'inspect' an owner's unit can cause ruptures. Many stratas add to this bylaw, a third sub-paragraph along the lines of:

- (c) to confirm adherence to the bylaws.

This has some owners seeing red, as no doubt they have lots of things rearranged in their unit to their own liking without much reference to the council, the bylaws, the Building Code, or any other safety-oriented regulation!

The basic items that a strata corporation has the right to 'inspect' are the 'fixtures' that are insured by the strata corporation's insurance policy. These fixtures are defined in the Strata Property Act Regulations:

- 9.1 (1) For the purposes of sections 149 (1) (d) and 152 (b) of floor and wall coverings and electrical and plumbing fixtures, but does not include, if they can be removed without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers or other items.

Thus arguably, carpet, hardwood, linoleum, cork, drywall, cabinetry, sinks, toilets, showers, tubs, countertops, closets, light fixtures, light switches, water tanks, and 'built-in' appliances are all up for 'inspection' by the strata.

The procedure is simple, but often fraught with contention:

1. "An owner, tenant, occupant or visitor must allow a person authorized by the strata corporation to enter the strata lot. . ." It is unclear what "authorized by the strata corporation" means. Generally, it is assumed that means authorized by the strata council, acting reasonably, fulfilling its duty to administer the strata corporation's business and to enforce the bylaws. Clearly, enforcing the 'owners must repair and maintain strata lot property' must be a key element in many entry demands. But this is not black and white in law.

2. "In an emergency," may mean many things to many people, but water pouring out from under the front door, smoke coming from the unit, or blood curdling screams from within, are all images that conjure up the phrase 'emergency'. In such circumstances too, we do not believe it necessary to be worrying about the niceties of 'knocking' or getting a locksmith. The door needs to be broken down and the emergency dealt with quickly.

... continued on page 8

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3. "At a reasonable time," again, may be in the eye of the beholder, but 9 am to 5 pm seems reasonable; or by agreement.

4. "On 48 hours' written notice," to whom? Where? Section 61 sets out how notice may be given by a strata corporation:

in person [s. 61(1)(a)(i), (b)(i)] – presumably, in this case with an owner, tenant, occupant or visitor;

or, by mail – putting it under the door, putting it in a mail slot, faxing it or even emailing it if an email has been given for the purpose.

If you do not put into the hands of the person you intend notice to be given to; then you also must wait four days (not including the day you dropped off the notice (s. 61(3)) before you count the 48 hours to make your notice valid.

5. "The notice referred to in subsection (1) (b) must include the date and approximate time of entry"; this sounds so pedestrian doesn't it? Until you have dealt with a strata owner whose only purpose in life is to torment council members, you will not understand the significance of this. Thus – if you say 10 am on Tuesday – be there at exactly 10 am, or expect to hear days later that, the owner waited till 10:01 am and you did not show – so they went out.

6. "The reason for entry"; this is what is going to cause the fireworks. Many owners will assert that no one has any right to come into their place – it is their home and private. This is however, a strata corporation, it is not a single-family home. To live corporately, owners give up a substantial amount of privacy, anonymity and independence. Those that hold onto these values tenaciously can cause big problems for their councils. Thus, be very clear as to the need for entry and be very reasonable about making the arrangements; otherwise, access and entry are the last things you will be enjoying.

If an owner will not provide entry, it is advisable to get a court order; do not try and force your way in. In *Ward v. The Owners, Strata Plan VIS #6115, 2011 BCCA 512 (CanLII)*, (www.canlii.ca/fpbqv) the Court of Appeal considered briefly, the rights of a strata to gain entry to an

owner's unit. The owner whose unit had been entered, somewhat 'forcefully' argued the entry was illegal, in fact it may have been a crime. The Court noted:

[51] The chambers judge did not expressly address Mr. Ward's alternative submission that the entry was unlawful, even if the Strata Council was entitled to make a lawful entry. Because the entry was made with the intent to use force, if necessary, the entry was "forcible" within the meaning of s. 72 of the Criminal Code. Why else, he asks, would the respondents have caused the presence of the locksmith, spoken in advance with the police, and advised Mr. Ward the police might be present "to keep the peace?"

[52] Counsel for the respondents answered that fair question with a claim that it is common practice among property managers of strata buildings to attend with a locksmith to gain entrance to units in the event the owner or other resident is not available to open the door to permit entry in an emergency or on notice. If that is so, such a practice would merit review by this Court in an appropriate case.

Unfortunately, the Court then said:

[53] This is not an appropriate case.

Thus, until standard bylaw 7 and its sometimes added sub-paragraph about bylaw enforcement ends up in front of the Court of Appeal, it is probably advisable to not simply slap a note on someone's door two days before you appear again at the door with a locksmith and a couple of burly lads to 'help' with the entry. Talk to a judge first. However, if you have an 'appropriate case' that could end up in front of the Court of Appeal, please talk to your lawyer about bringing on such a case; the rest of us would appreciate the clarity! ■

Phil Dougan is a strata lawyer with Access Law Group. He appears at all levels of BC Court and has recently begun representing clients at the new Civil Resolution Tribunal (the CRT). From pets, to parking, to provocative people, Phil has seen it all; and can represent his clients to insure the 'problem' goes away.

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LEGAL CORNER

STRATA CASE LAW IN BC

Case Law 2

Maslek et al v. The Owners, Strata Plan LMS 2778, 2018 BCCRT 10

By Jamie Bleay,
Access Law Group



Case Comment

In this case the applicants applied for an order that they could keep their 4 ferrets and that they did not have to pay fines and legal fees in connection with the alleged breach of the strata corporation's pet bylaw.

The bylaw in place at the time the applicants brought the ferrets into their strata lot (without strata council approval or registration of the ferrets) stated that:

"No pets of any kind shall be permitted in any strata lot except those approved by the strata council, and those pets registered by occupiers with the strata council. Bylaw 15(b) says that an owner, tenant, or occupant must not keep any pets on a strata lot without the prior written consent of the strata council, except for 1 cat or 1 dog."

The applicants argued that the strata corporation could grant permission under the bylaws and after they had apologized for misunderstanding the bylaw and for breaching it, they asked for permission to keep their ferrets but permission was denied without an explanation.

The applicants claimed that the decision not to allow them to keep their ferrets when the bylaw gave council discretion to allow the pets was significantly unfair. The adjudicator, after reviewing the legal test for determining "significant unfairness" as set out in *Dollan v. Strata Plan BCS 1589, 2012 BCCA 44*, found that:

1. The applicants' had an expectation that the strata council would allow them to keep the ferrets and this expectation was objectively reasonable; and
2. The decision to deny the request was not made on reasonable grounds.

As such the adjudicator found that the applicants' expectation was violated by the decision, without reasonable grounds, to deny their request to keep their ferrets and that the decision to deny their request was significantly unfair.

The Adjudicator ordered that the applicants could keep their ferrets and ordered the removal of bylaw fines and legal fees. ■

Jamie Bleay has practiced extensively in the area of condominium/strata law for most of the past 27 years, working with/acting for several hundred strata corporations in that time including dealing with major construction projects, contract review and interpretation and contract disputes.

He is the former president and one of the founding directors of CCI Vancouver.

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CondoSTRENGTH

Program for Strata Councils Coming in 2018

You are not alone. Other strata council members are out there who can relate to your challenges.

CondoSTRENGTH is a new program offered by CCI-Vancouver through which strata council members can draw on one another's wealth of knowledge, experience and support to build even better strata communities. The program, originally developed by a condominium mediator from Ontario, has been met with very positive feedback in other CCI chapters. Now it will be offered right here in BC through CCI Vancouver!

It consists of three key components:

► Resources:

Council members are provided with success stories from other strata council members which aim to provide possible solutions and the benefits of hindsight in resolving similar challenges.

► Networking:

The program also facilitates gatherings of council members to discuss relevant topics. The location of the meetings are disclosed only to other council members who will be attending.

► Recognition:

Council successes will be recognized and celebrated, as evaluated by other council members.

LEGAL CORNER

CONDO CASES ACROSS CANADA

Summaries provided by
James Davidson,
LLB, ACCI, FCCI,
Davidson Houle Allen LLP
Condominium Law



British Columbia

The Owners, Strata Plan BCS 1721 v. Watson (BC Supreme Court) February 2, 2018

Court determines standard of review on an appeal from Civil Resolution Tribunal

The Civil Resolution Tribunal (CRT) had determined that the strata corporation's \$100 moving fee was unreasonably high. On appeal, the Court held that the standard of review, in relation to a decision of the CRT, is reasonableness. The Court said:

In this case, where the CRT interpreted and applied its own statute and the Strata Property Act, a statute closely connected to its function, the presumptive standard of review is reasonableness. Weighing all of the relevant factors, I find that on balance, the contextual analysis does not indicate that the legislature intended the standard of review to be correctness. While the jurisdiction of the CRT is not protected by a strong privative clause, the tribunal's purpose, its specialized jurisdiction for the economical resolution of strata property claims and the particular questions at issue on this appeal all weigh in favour of the reasonableness standard of review.

The Court then held that the CRT had come to a reasonable determination respecting the corporation's by-law imposing the moving fee. The Court said:

Here, the tribunal member applied an objective standard of reasonableness to the evidence before her. The CRT's determination that the \$100 moving fee was not reasonable and contravenes s. 6.9 of the Strata Property Regulation falls within the range of defensible outcomes and satisfies the standard of reasonableness. I conclude that the CRT made no reviewable error in applying the test for reasonableness of the Bylaw.

The Court also held that the CRT **"had, and continues to have, jurisdiction to remedy significant unfairness on the part a strata corporation."**

The strata corporation's appeal was dismissed.

Ontario

Dewan v. Burdet (Ontario Court of Appeal) February 28, 2018

Appeal Dismissed. Court orders termination of condominium.

This case deals with a long-standing dispute between the majority and minority owners of the units in Carleton Condominium Corporation No. 396.

Following a 35-day trial, the lower Court had determined various rights between the parties, including an accounting of debts as between the parties and the condominium corporation as well as obligations in relation to common expense arrears. The lower Court also ordered termination of the condominium. The majority owners appealed and the minority owners cross-appealed. The majority owners' appeal was dismissed. A portion of the minority owners' cross-appeal (relating to costs) was allowed. The order to terminate the condominium was confirmed.

Nova Scotia

Sigut-Mercer v. Halifax County Condominium Corporation No. 156 (Nova Scotia Small Claims Court) May 3, 2017

Condominium corporation responsible for owner's costs relating to concrete floor failure

The concrete floor on the lower level of the unit was cracked and crumbling and had subsided a certain amount. The owner brought this to the attention of the condominium corporation. After some delay, the condominium corporation hired an engineer to investigate, but the engineer initially provided only a verbal report suggesting that the problem could be resolved by applying a levelling agent. The engineer did not identify any structural problem. The owner asked for a written report from the corporation's engineer and also sought input from an independent engineer. The corporation supplied the written report and also ultimately went ahead with the repairs recommended by its engineer. The Court said that the owner's concerns about a potential structural concern were reasonable. It was accordingly reasonable for the owner to request a written engineering report and also to seek commentary from an independent engineer.

In the end, the Court said that the condominium corporation was responsible to pay various costs to the owner, including:

- Costs for alternate accommodation during the repairs;
- The cost for the owner's engineer;
- Compensation for lost work; and
- The cost for professional cleaning following the work ■

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.

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By Grace Wang,
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Additional Living Expense Coverage for Owners

Most people who purchase a Unit Owners Insurance Policy to cover their possessions from loss or damage believe that they are fully covered for any claim that may arise. However, not all insurance policies are the same. It is important that your unit owner insurance provides all the necessary coverage in the event of a loss that leaves you without a home.

Additional Living Expenses

Some Strata policies provide *Additional Living Expenses* for unit owners as a result of an insured loss ONCE coverage under their unit owner policy has run out, is insufficient or is non-existent.

As an owner/occupier of the building, you may be entitled to limited additional living expense coverage under the strata's policy of insurance. The average Additional Living Expense (ALE) provided by a unit owner policy is \$20,000. It is important to review the limit of the unit owner's policy as well as strata's policy limit and ask the question: Is it enough for a major insured loss such as an earthquake?

Misconception

Many people think their unit owner policy will cover mortgage costs and strata fees while not living in the unit.

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1. One piece of picture ID

Example of acceptable picture ID:

- a) Driver's license
- b) BC ID
- c) Passport

2. Documentation proving your ownership of the suite and your current occupancy of same

Examples of acceptable documentation proving your ownership and occupancy:

- a) ICBC insurance papers showing suite address in your name
- b) Mortgage papers in your name or your spouse's name
- c) Tax documents showing suite address in your name or your spouse's name

Documentation should be submitted to the assigned adjuster for the Strata Corporation ■

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.

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Crane and Shoring Easements

Having a construction project starting next door can fill some strata owners with a sense of dread. Nobody likes living or working next to a construction site. However, if the developer next door needs an easement to complete its construction, your strata corporation may have an opportunity to financially benefit, and even lessen the inconvenience of the construction for its owners.

The Basics – What Is An Easement?

A common property easement is a right to access the common property of a strata corporation for a specific purpose. The common property of a strata building is typically thought of as including the common spaces in the building. However, the common property also includes the earth below the building and the airspace above.

Developers often need easements for those parts of the common property to swing their construction cranes within the strata corporation's airspace or put shoring in the strata corporation's land to support their projects. Without appropriate easement rights, developers risk trespassing on their neighbors' property.

Section 79 of the Strata Property Act requires a 3/4 vote at an annual or special general meeting for a strata corporation to grant an easement over the common property.

How Can Strata Corporations Benefit From Giving An Easement?

Developers are sometimes prepared to pay strata corporations for giving them an easement. If a developer approaches your strata corporation to ask for an easement it is likely because that developer has determined that it is cheaper for them to do the construction with the easement. Developers may even be willing to offer other promises and guarantees in addition to money.

What Should a Strata Corporation Consider Before Granting an Easement to a Developer?

A strata corporation should consider the following points when considering an easement agreement:

- In addition to the payment price, is the developer prepared to cover the strata corporation's costs such as legal costs for considering the agreement?
- Are any other expert reports necessary to ensure the construction will not harm the strata corporation? For example, if the project involves shoring, the strata corporation may want to get a geotechnical report. Will the developer cover those costs as well?
- Allowing anyone to use the common property and having construction next door creates risks. A strata corporation should consider if the developer has sufficient insurance and indemnities to protect the strata corporations from those risks. Also, consider getting guarantees from the development company's owner or parent company.

When does the easement expire?

Easement agreements are typically not permanent but a developer may draft an agreement that makes them last for decades. If the easement has a long expiry date, the developer does not have to come back to the strata corporation to get a new easement if the construction project becomes stalled or is abandoned. The strata corporation should consider negotiating a reasonable termination date so that the owners know approximately how long the construction will last and that they will be compensated again if the developer has to come back to renew the easement after leaving their project abandoned or unfinished for too long.

The above are just a few examples but there are many other considerations that come with easement agreements.

Easement agreements are complicated documents and a strata corporation should seek legal advice before entering one. ■

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Decisions, Decisions, Decisions...

An Overview of How to Make Decisions at the Strata Council Level

While the Strata Property Act (SPA) reserves the most important decisions for the owners (i.e. the enactment of bylaws, the raising of money, the winding up of a strata corporation) many important decisions are made by the strata council; most notably those related to the enforcement of bylaws, including whether to impose fines and whether to seek the assistance of the Civil Resolution Tribunal (CRT) in enforcing a bylaw. Those decisions often come under attack; particularly by the owner(s) to whom the decision pertains. It is therefore important to make sure the proper steps are followed when making a council decision and to understand how those decisions might be treated if challenged.

In order for the strata council to make a decision it must follow the procedural rules set out in the strata corporation's bylaws. For the most part those will be the Standard Bylaws under the SPA (and for the purposes of this article those will be used).

In order for the strata council to be in a position to make a decision it must be properly constituted. That means it must be composed of the minimum number of members required by the bylaws. Standard Bylaw 9(1) sets the minimum number of council members as three. (That number can, of course, be changed by way of a bylaw amendment). Regardless of the number of members who are on council the quorum requirements of the bylaws must be met in order for business to be able to be conducted. However, where a council member resigns and the number falls below the minimum required that is not necessarily fatal to the council's decision making capability. In *Clayton v. Chandler et al* 2017 CRTBC 18 the CRT held that where the strata corporation's bylaws do not make the replacement of a resigning member mandatory the council can continue to act so long as the quorum bylaw allows it to do so. For example, Standard Bylaw 16(1) provides that the quorum of the council is two if it consists of two, three or four members. In other words, if a council consisting of the minimum number of three is reduced to two by way of a resignation, it can continue to function so long as the two remaining members are both present at the meeting.

Decisions must also be made at a duly convened strata council meeting. Standard Bylaw 14 governs the calling of council meetings and provides as follows:

- 14 (1) Any council member may call a council meeting by giving the other council members at least one week's notice of the meeting, specifying the reason for calling the meeting.
- (2) The notice does not have to be in writing.
- (3) A council meeting may be held on less than one week's notice if
 - (a) all council members consent in advance of the meeting, or
 - (b) the meeting is required to deal with an emergency situation, and all council members either
 - (i) consent in advance of the meeting, or
 - (ii) are unavailable to provide consent after reasonable attempts to contact them.
- (4) The council must inform owners about a council meeting as soon as feasible after the meeting has been called.

Any council member can call a meeting. It does not have to be the president. Whoever calls the meeting must give at least seven (7) days notice. As is the case with the notice requirement for general meetings, the phrase 'at least' adds two extra days to the seven day period. In other words, nine days notice is actually required. (This is not always observed and that bylaw should be amended to be consistent with actual practice). Notice must be given to all council members even if they are precluded from participating in the meeting pursuant to s.32 or s.136 of the SPA.

Meetings can be held with less notice on an emergency basis. The SPA does not indicate what would constitute an emergency. The Canadian Oxford Dictionary defines 'emergency' as: a serious, unexpected, and often dangerous situation requiring immediate action.

If a meeting is for the purpose of dealing with an emergency it may be held on less than one week's notice provided that all council members consent in advance to a shorter notice (they do not have to attend but simply have to consent) or they were unavailable to provide consent after reasonable attempts were made to contact them. What constitutes reasonable attempts will vary from circumstance to circumstance. If a council member routinely responds to email then emailing them asking for consent would be appropriate. If a council member does not have email then a phone call (or series of phone calls) would be appropriate. The use of the word 'unavailable' is interesting. Does a failure to reply to an email constitute being unavailable? Arguably it doesn't. The failure to reply could just as well be taken as a refusal to give consent. Emails requesting an emergency meeting should be worded such that a failure to reply within a certain period will be deemed as them being unavailable to provide consent or the bylaw amended. If even one council member refuses to consent to the meeting then it cannot proceed on less than one week's notice no matter how urgent the matter is. In such a circumstance if there is true emergency requiring action (such as repair to the common property) then Standard Bylaw 21(2) permits a single council member to spend the strata corporation's money if doing so is "immediately required to ensure safety or prevent significant loss or damage".

The holding of council meetings and the making of decisions by email remains a questionable practice. On the face of it, a decision by email does not comply with the provisions of Standard Bylaw 14. Decisions made by email are often made with less than one week's notice. They are often also made without the full participation of all council members. The court in both *Azura Management (Kelowna) Corp. v. The Owners, Strata Plan KAS 2428 2009 BCSC 506* and *Yang v. Re/Max Commercial Realty Associates 2016 BCSC 2147* has indicated that decisions by email can be valid council decisions. However, when a decision is made by email the results of that decision must be recorded in a set of minutes. Alternatively, strata corporations should consider passing a bylaw specifically allowing for decisions by email. That bylaw should address things such as how long council members have to respond, whether a response from all council members must be received before the decision is deemed to be made and how to record those decisions. Decisions by email should not, however, be a routine practice.

Pursuant to Standard Bylaw 18(1) decisions of the strata council are to be made by a majority vote. (Since this is a bylaw it can be amended to provide for a different threshold, say 2/3, if the owners wish). Where the vote results in a tie, Standard Bylaw 18(2) provides that the president may cast a second tie breaking vote. Standard Bylaw 18(3) requires that the results of any such vote be recorded in the minutes.

In *Yang* the court examined Standard Bylaw 18. The first thing it determined is that the definition of 'majority vote' found in s.1 of the SPA does not apply to the bylaw. That of course makes sense since the definition refers to votes cast by eligible voters – a concept which does not apply at the council level. However, that decision raises the question about what to do with abstentions. Under the s.1 definition they are not to be counted. Under Roberts Rules of Order, however, an abstention is counted as a vote against. The court also held that the language used in Standard Bylaw 18(3) requires that there be an actual vote and that the minutes record the votes for and against the resolution. The minutes cannot simply reflect that it was 'carried' or 'decided'.

The court in *Yang* confirmed that minutes do not require any particular level of information beyond recording the decisions made. However, where a decision is being made in respect to a certain strata lot (i.e. to impose a fine for a breach of a bylaw) the minutes should record the strata lot or unit number. This is to ensure that there is a clear record with respect to the decision being made and to what strata lot it applies. Recording the strata lot number or unit number is not contrary to the provisions of the Personal Information Protection Act (PIPA). Recording an owner's name is however. (The only exception to recording strata lot or unit numbers is with respect to hardship applications under s.144 of the SPA. In that case the PIPA guidelines suggest the strata lot not be identified). Having a record of a decision to impose a fine, grant permission or take other action in relation to a strata lot is important. The strata corporation may need to prove at some later date that it did in fact make a decision. For example, if the strata corporation has made an application to the CRT to collect outstanding fines it will need to prove that it made a decision (after compliance with s.135 of the SPA) to impose those fines.

The decisions of the strata council are, of course, open to challenge. S.164 of the SPA permits a decision to be set aside or varied on the basis that it was significantly unfair to an owner. The CRT also has jurisdiction to intervene and set aside a decision of the strata council either on the basis of a failure to comply with the SPA or the bylaws, or on grounds

... continued on page 18

similar to that of s.164. Generally speaking though the decisions of the strata council are given deference — see *Dykun v. Cravenbrook Condominium Corp.* No. 032 1893 2009 ABQB 104 and *Strachan v. Owners Strata Corp.*, 1992 CanLII 2233 (BC SC) This means that an owner or tenant challenging a decision of the strata council has the burden of proving the decision was so unreasonable that it should be set aside. A failure to comply with the procedural requirements of the SPA or the bylaws would be grounds enough to do that.

In 3716724 Canada Inc. v. Carleton Condominium Corp. No. 375 2016 ONCA 650 the Ontario Court of Appeal applied the 'business judgment rule' (developed from corporate case law) in assessing whether the decision of a condominium board (ie. strata council) was sound. In reviewing the lower courts decision, the Court of Appeal began by recognizing the general principle that the decision of condominium boards should be owed deference. What that actually means has not been made very clear by prior case law. Hence the court applied the business judgment rule which "recognizes the autonomy and integrity of corporations and the fact that directors and officers are in a far better position to make decisions affecting their corporations than a court reviewing a matter after the fact. . . . Where the rule applies, a court will not second guess a decision rendered by a board so long as it acted fairly and reasonably. . . .". The court noted that the rule had been applied by American courts to condominium boards there. At paragraph 51 of its decision the court noted that "as representatives elected by the unit owners, the directors of these corporations are better placed to make judgments about their interests and to balance the competing interest engaged that are of the courts". In the end, the court determined that so long as the board reached a decision within the range of reasonable choices, the court should not interfere. Applying the business judgment rule to the decisions of strata councils means that those decisions will not (and should not) be interfered with where they are otherwise reasonable. Just because an owner, a judge or an adjudicator would have reached a different decision does not mean that the decision made is wrong. In short, simply because an owner does not like the outcome of a decision does not mean they can do anything about it.

In *Condominium Corp. No. 072 9313 v. Schultz* 2016 ABQB 338 the Alberta Court of Queens Bench was asked to review a decision of a condominium board with respect to a fine imposed against an owner. The challenge against the fine was brought pursuant to s.67 of Alberta's

Condominium Act which is similar in nature to s.164 of the SPA. In considering whether deference should be given to the decision of the board, the court applied administrative law principles arising from the Supreme Court of Canada's decision in *New Brunswick (Board of Management) v. Dunsmuir* 2008 SCC 9. Where the decision of the strata council is an exercise of discretion the test against which the decision is made is that of reasonableness. (Where there is no discretionary element, the test is correctness).

What is most interesting about the decision in *Schultz* is the court's conclusion at paragraphs 30-33 that when making a decision such as imposing a fine the strata council should provide reasons for its decision. In other words, what was the basis on deciding to impose a fine and how doing so would bring about compliance with the bylaws? Specifically, the court stated:

"A reviewing court might just as well assume that the absence of reasons means that the decision is arbitrary, or that there are no proper purposes for it. And this may not be such a wild assumption here; there is no apparent reason how a fine could correct Ms. Schultz's behavior or to cause her to do anything other than what she had diligently been doing."

No reasons are provided. We cannot tell what the Board had in mind.

"... There is no consideration of the purpose of sanction in the Board's decision. The fines levied here appear to be pointless except, possibly, from the standpoint of deterrence. Otherwise the decision seems to be punitive and to serve no useful purpose. It might have been different if Ms. Schulz was unwilling to comply."

Although the decision in *Schultz* has not been applied directly in British Columbia, its principles have. In *Doig v. The Owners, Strata Plan VR 1712* 2017 BCCRT 36 the CRT determined that the strata corporation acted in a significantly unfair manner when deciding that the owners had breached one of the strata corporation bylaws. The basis for the CRT's conclusion lay in the fact that the strata council did not provide reasons for its decision after the owners had requested a hearing. In other words, how did it reach the decision there was a breach? At paragraph 64 the CRT said "a written decision must allow a party (in this case, the owners) or a reviewing tribunal or court to understand the meeting's outcome, and why the outcome was reached. The form and detail of adequate reasons can be different in different situations." It held that an adequate decision under s.34.1 of the SPA (which criteria

would apply equally to a hearing requested pursuant to s.135) should contain:

- (a) a list of who is present at the meeting;
- (b) who voted on its outcome;
- (c) the process followed at the hearing;
- (d) the facts the Council relied upon in reaching its conclusion;
- (e) the reason why it reached its decision; and
- (f) the outcome of the hearing (i.e. the decision reached).

Following procedure and process (although at times cumbersome) helps to ensure that a decision is validly and properly made. It also goes to strengthen the argument that deference should be given to the decision. A decision which is reasoned and explained is one to which deference can be much more readily be given than one which appears on the face of it to be arbitrary (even if that is not the case). While most decisions of the strata council would perhaps not warrant such a degree of attention to detail it is nonetheless a good habit to develop to ensure that all decisions, if challenged, can be properly and fully upheld. ■

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

Shawn Smith was called to the bar in British Columbia in May of 1999. He practices almost exclusively in the area of strata property law. He has almost 20 years of experience drafting bylaws, assisting in the enforcement of bylaws, providing legal opinions on the application of the Strata Property Act, collecting unpaid strata fees and representing client's in disputes. He routinely acts as legal counsel to strata corporations, strata management firms and individual owners. He has appeared as counsel in Provincial Court, the Supreme Court and the Court of Appeal on a variety of matters. He often contributes to the newsletters for strata associations.

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Email: williamwhleung@gmail.com
Website: www.qondo.ca

Reserve Fund Planning & Depreciation Reports

Constructive Condo Reporting Corp.

Jean-Francois Proulx
232 Tenth Street, Suite 14
New Westminster, BC V3M 3X9
Tel: 778-232-6707
Email: jfproulx@constructivecrc.com
Website: www.constructivecrc.com

Restoration & Mould

Phoenix Restorations Ltd.

John Wallis
1800 Brigantine Drive, Suite 100
Coquitlam, BC V3K 7B5
Tel: 604-945-5371
Email: johnw@phoenixrestorations.com
Website: www.phoenixrestorations.com

Service Master Restore of Vancouver

Steve Page
7978 North Fraser Way
Burnaby, BC V5J 0C7
Tel: 604-435-1220
Email: spage@servicemaster.bc.ca
Website: www.svmvancouver.ca

Superior Flood and Fire Restoration Inc.

Mayank Anand
1066 West Hastings Street, 20th Floor
Vancouver, BC V6E 3X2
Tel: 604-773-5511
Email: mayank@superiorrestoration.ca
Website: www.superiorrestoration.ca

Strata Management & Real Estate

All Property Consulting Inc.

Kevin O'Donnell
PO Box 45694, Sunnyside Mall
Surrey, BC V4A 9N3
Tel: 778-323-7335
Email: kevin@allpropconsulting.com
Website: www.allpropconsulting.com

Ascent Real Estate Management Corporation

Michael Roach
2176 Willingdown Avenue
Burnaby, BC V5C 5Z9
Tel: 604-431-1800
Email: mroach@ascentpm.com
Website: www.ascentpm.com

Assertive Northwest Management Group Inc.

Jim Allison
3847 B Hastings
Burnaby, BC V5C 2H7
Tel: 604-253-5224
Email: jim@assertivenorthwest.com
Website: www.assertivenorthwest.com

Blueprint Strata Management Inc.

David Doornbos
1548 Johnston Road, Suite 206
White Rock, BC V4B 3Z8
Tel: 604-200-1030
Email: ddoornbos@blueprintstrata.com
Website: www.blueprintstrata.com

Dynamic Property Management

Mike Young
37885 Second Avenue
Squamish, BC V8B 0R2
Tel: 604-815-4654
Email: myoung@dynamicpm.ca
Website: www.dynamicpm.ca

FirstService Residential

Max Gajdel
200 Granville Street, Suite 700
Vancouver, BC V6C 1S4
Tel: 604-683-8900
Email: maximilian.gajdel@fsresidential.com
Website: www.fsresidential.com

Gateway Property Management Corporation

R. Scott Ullrich
11950 - 80th Avenue, Suite 400
Delta, BC V4C 1YC
Tel: 604-635-5000, Fax: 604-635-5003
Email: scott.ullrich@gmail.com
Website: www.gatewaypm.com

Obsidian Property Management

Sean Michaels
7495 - 132nd Street, Suite 2005
Surrey, BC V3W 1J8
Tel: 604-757-3151, Fax: 604-503-3457
Email: askme@opml.ca
Website: www.opml.ca

Rancho Management Services (BC) Ltd

Chris Sargent
1190 Hornby Street, 6th Floor
Vancouver, BC V6Z 2K5
Tel: 604-684-4508
Email: csargent@ranchogroup.com
Website: www.ranchogroup.com

Stratawest Management Ltd.

Cory Pettersen
224 West Esplanade, Suite 202
North Vancouver, BC V7M 1A4
Tel: 604-904-9595
Email: cpettersen@stratawest.com
Website: www.stratawest.com

Teamwork Property Management Ltd

Joe Hackett
34143 Marshall Road, Suite 105
Abbotsford, BC V2S 1L8
Tel: 604-854-1734
Email: jhackett@teamworkpm.com
Website: www.teamworkpm.com

Tribe Management Inc.

Jaclyn Jeffrey
1155 West Pender Street, Suite 419
Vancouver, BC V6E 2P4
Tel: 604-343-2601
Email: info@tribemgmt.com
Website: www.tribemgmt.com

The Wynford Group

Brad Fenton
815 - 1200 W. 73rd Avenue
Vancouver, BC V6P 6G5
Tel: 604-261-0285
Email: bfenton@wynford.com
Website: www.wynford.com



Condo 101

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

Saturday, October 20, 2018

- ▶ 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:

- | | |
|------------------|---|
| ▶ May 26th | Half-day Seminar, <i>Bylaws That Work</i> |
| ▶ September 29th | Half-day Seminar & AGM, <i>Marijuana</i> |
| ▶ October 20th | Condo 101 Course |

▶ 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:

October 20th

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, 2017 until the June 30, 2018 deadline.
- ▶ Finalists selected in July 2018 and the winner will be awarded at the CCI Vancouver Chapter's AGM in the fall of 2018.

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