

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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Spring 2019

THIS ISSUE

- ▶ Smart Doorbells, Smart Locks And Security Cameras in Stratas
- ▶ Council Decision Making In The 21st Century – Are E-Mail Decisions Alright?
- ▶ Course Of Construction And Wrap Up Liability Insurance

PRESIDENT'S MESSAGE

Paul Murcutt,
President, CCI Vancouver



As the days get lighter and warmer, I think many people are looking forward to the summer. For the CCI we gear up to focus on our membership renewals that take place at the end of June. We are also back fresh from the Annual CCI Spring Leaders forum. This year we had the opportunity to visit St. John's in Newfoundland. Condo professionals from across the country met to discuss many aspects of condo living. What stood out to me was the organization's awareness of the change in our demographics of people living in condos. There was a session that profiled millennials and the need for an educational association like CCI to be aware of the changing landscape with respect to delivery of education. We were also able to announce the creation of a CCI Okanagan chapter! We have a dedicated team of 9 professionals in the Kelowna area that are committed to delivering education to strata councils. The expansion of the CCI in BC has been long awaited and was received with great excitement. Their first seminar was held on June 17th where our very own Jamie Bleay and Sean Ingraham presented a very informative session on Bylaws. The session received rave reviews and I have all the confidence that the CCI Okanagan will become a very successful chapter – perhaps even chapter of the year, if they accept the challenge!

Closer to home we are planning a Lunch & Learn to be held in July on the restoration process and are also turning our focus on our upcoming AGM / Seminar in September.

Mental Health will be the focus of this session and we are very happy to announce Michael Landsberg as

our Keynote speaker. Michael is a famous sports journalist who has suffered from Mental Illness and so, with this in mind, we will compliment his presentation with some information on the stigma of mental health and dealing with hoarding in stratas. Stay tuned for further details.

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

Paul Murcutt – President CCI Vancouver



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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 – June 15

Fall – September 15

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or contact@ccivancouver.ca

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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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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

Bylaws

The Strata Property Act states that:

119 (1) The strata corporation must have bylaws.

(2) The bylaws may provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation and for the administration of the strata corporation.

The significance and impact of the bylaws of a Strata Corporation are often missed by owners not used to community living. In past iterations of the bylaws, there was a preamble that articulately set the stage for the importance of the bylaws in the strata community.

That Preamble said:

These bylaws bind the strata corporation, and the owners, tenants and occupants to the same extent as if the bylaws had been signed by the strata corporation and each owner, tenant and occupant and contained covenants on the part of the strata corporation with each owner, tenant and occupant and on the part of each owner, tenant and occupant with every other owner, tenant and occupant and with the strata corporation to observe and perform their provisions....

1.1 All residents and visitors must comply strictly with the bylaws and rules of the strata corporation adopted from time to time.

The preamble sets out the 'social contract' that the bylaws are, and that they apply to every person and entity within the strata equally. Everyone must comply with the bylaws.

In many ways, this is self-evident; bylaws are made by the owners, binding themselves to a minimum code of conduct. If these are the 'house rules' obviously, anyone coming into the house must keep the rules. But, particularly for people 'down-sizing' from their own family homes, the bylaws and the powers of a strata corporation can seem obtrusive and draconian.

Notice what the Act says the Strata Corporation can control: the use and enjoyment of the strata lots. That means what an owner does within their own home, and how they enjoy the place they have legal title to, remains in the control of their neighbours (see the definition of a Strata Corporation).

New owners to strata living must be given the bylaws to review, and they must understand the significance of the rules they create. They are not optional, they cannot be contracted out of, an owner cannot be made an exception. If such exceptions are sought, expect a "significantly unfair" complaint from others who must still obey a bylaw that an owner has apparently been given an exemption to. Strata Councils cannot make exceptions; they must enforce the bylaws against all residents and visitors. ■

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.

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The Owners. Strata Plan VR1973 v. D. E. Pezzot Inc. et al, 2019 BCCRT 747

Many British Columbians are unaware that their duplexes are actually governed by the Strata Property Act, even though there are only two units, and some of the resulting issues that could arise in one. This complex was a great example of what is often referred to colloquially as a "non-conforming strata",

This dispute involved an older, two-unit strata corporation in Vancouver. In the summer of 2016, the strata lot 2 ("SL2") owner approved the installation of wiring servicing on the south exterior wall of the building outside SL2. The owner of strata lot 1 ("SL1") was concerned about how the wiring had been installed and requested that the owner of SL2 fix up the siding around the works so the building could be washed.

Frustrated when the SL2 had not yet repaired the siding by Fall 2017, the SL1 owner wrote on behalf of the strata corporation indicating that the damage to the siding was contrary to bylaw 3(2) which states, among other things, an owner must not cause damage to the common property. The parties obtained independent reports which presented conflicting views on whether the wiring installation caused damage to the siding. The SL1 owner then commenced an action at the CRT on behalf of the strata corporation.

Since there had never been a council election properly conducted at the strata corporation and no president had been elected, there was no tie breaking vote for either respondent, and the strata council could not have acted by majority (i.e. 50% + 1) in bringing the claim against the SL2 owner. The tribunal chair suggested that the SL1 owner should be bringing the claim in her own right, rather than on behalf of the strata corporation, and the SL2 owner agreed; however, she declined to amend her claim to bring it in her personal capacity, arguing that the SL2 owner had consented to having the action brought by the strata.

Since the SL1 owner was acting unilaterally without the necessary authority to bring the claim on behalf of the strata, the claim was dismissed on the grounds of section 11(1)(c) of the Civil Resolution Tribunal Act: "issues in the claim or the dispute are too complex for the dispute resolution process of the tribunal or otherwise impractical for the tribunal to case manage or resolve". The CRT also declined to consider any of the substantive issues in the case.

This decision raises two important points:

1. starting or continuing a dispute improperly can result in the CRT refusing to consider the issues you have raised; and
2. when living in a non-conforming strata, it is prudent to consider issues of how dispute resolution will work prior to conflict arising, as the strata council will be not be able to function without a majority vote (which can be extremely challenging to achieve in a small strata, especially once a dispute has arisen).

Thinking ahead about these issues can save a lot of headache down the line.

... continued on page 6

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O'Brian v. The Owners, Strata Plan BCS 2550, 2019 BCCRT 721

This decision explores the subtle differences in bylaw drafting that can have an effect on whether a strata corporation can charge common property damage back to an owner or tenant, as the case may be.

In this situation, an owner accidentally dropped a pane of glass in the elevator, and the strata determined that broken glass then went on to damage the elevator. It attempted to charge back the tenant for the repair costs to the elevator, which were approximately \$1,500.

Upon careful examination of the use of property bylaw which the strata relied on to impose the charge back, the CRT found that it clearly differentiated between where a tenant is liable to the strata for damage to common property, and where an owner is liable. Only one subsection of the bylaw required that a tenant pay the strata for damage, and it dealt specifically with marking or defacing of interior or exterior walls or floors - which was not the nature of the damage that occurred (which was to the elevator piston and vacuum seal).

The other bylaws allowed the strata to pursue the owner, but not the tenant. Since there was no express provision in the bylaws, or the Strata Property Act, allowing the strata to pursue a tenant in these circumstances, the charge back was reversed.

Whether the strata corporation deliberately intended that tenants would only be charged back in limited circumstances when it drafted bylaw 3(2) is not clear from the CRT decision. However, in any event, this decision illustrates how easy it would be for a strata corporation to unintentionally draft an incomplete chargeback mechanism while appearing to have a fulsome framework set out in its bylaws. In this case, adding in details about the type of damage that a tenant would be charged back for was interpreted by the CRT to exclude other types of damage. It is therefore advisable to review one's chargeback bylaw from time to time to confirm that it is sufficiently broad for the strata's purposes and that the strata has the power to recover its expenses from all intended parties. ■

Lisa Frey is a real estate lawyer with Lawson Lundell LLP. Her practice focuses on condominium development, strata governance matters, such as drafting bylaws and resolutions, and a wide variety of commercial real estate transactions. She has been a CCI Vancouver Chapter member since 2014 and is passionate about strata education.

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LEGAL CORNER

STRATA CASE LAW IN BC

By Jamie Bleay,
Access Law Group



Case Law 1

The Owners, Strata Plan VR812 v. Yu, 2019 BCSC 693

This case is the most recent of a litany of legal proceedings involving Ms. Yu and her strata corporation. Initially a dispute alleging that she was, among other things, in breach of the strata corporation's short term rental bylaws went before the Civil Resolution Tribunal (the "CRT"). On September 21, 2017 the CRT determined that she had breached the bylaws of the strata corporation by renting her strata unit for short-term leases in a business endeavor. While Ms. Yu appealed the decision she continued to rent her strata lot claiming that she was grandfathered from the bylaws and that she was entitled to rent out rooms in her unit to pay for her mortgage and other costs.

In May of 2018, her appeal of the CRT ruling was dismissed by the Supreme Court and the order made by the CRT became an order of the Supreme Court allowing the strata corporation to enforce the order in the Supreme Court. Ms. Yu continued to rent her strata lot even in the face of the dismissal of her appeal of the CRT decision, which resulted in the strata corporation bringing contempt of court proceedings in the Supreme Court.

On October 24, 2018 at the contempt of court application Mr. Justice Davies found that the strata corporation had proven that Ms. Yu was in contempt of not only the CRT order but also of the order of the Supreme Court. He then adjourned that part of the proceedings to determine the punishment for the contempt of court for a period of four months. The effective purpose of the adjournment was to allow Ms. Yu an opportunity to stop defying the CRT order and the Supreme Court order.

Apparently that cooling off period did little to curb Ms. Yu's actions and in December 2018 the strata corporation made another application alleging further contempt of court actions by Ms. Yu who continued to rent her unit and advertise her unit for short term rentals. While Mr. Justice Davies was not able to find, on the evidence beyond a reasonable doubt, that Ms. Yu was in further contempt of court, the parties did agree to the terms of a consent order which stated that Ms. Yu would take all possible steps to prevent further advertising of her unit for rent. In that December application, the strata corporation also sought an order for the conduct of the sale of Ms. Yu's unit because of the alleged continuing contempt and the failure to pay outstanding fines. That application was adjourned as Ms. Yu had advised Mr. Justice Davies that she had taken steps to list her unit for sale.

The sentencing proceedings were heard on April 1, 2019. At that time Ms. Yu advised the court that she did not want to sell her unit claiming some type of emotional attachment to it and to the neighbourhood. In addition she made claims of poverty and her difficulty in being able to find alternate accommodation for her two dogs.

The Judge was tasked with deciding what the appropriate sanctions should be for her contempt of court, including whether or not to grant the strata corporation an order for conduct of sale of her unit. After considering the legal principles and the court's jurisdiction to exercise the power of contempt to enforce its court orders, Mr. Justice Davies went on to consider any aggravating and mitigating circumstances in connection with the form of contempt of court order that he might make. He also considered the principles of deterrence and rehabilitation as they applied to the circumstances of Ms. Yu's contempt of the court's order. After considering all of the circumstances, including her ongoing position that the bylaw in question did not apply to her, the fines that had been imposed against her that had been paid up as of the date of the sentencing hearing, the costs to the strata corporation and Ms. Yu's recent compliance with the last two orders of the court, Mr. Justice Davies determined that a fine of \$5,000.00 was sufficient to compel compliance with the court's order and as punishment for the contempt of court. The court did not order incarceration due to Ms. Yu's payment of the fines that had been imposed and her compliance with the last two orders of the court.

... continued on page 8

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The court concluded that it was not appropriate to grant the strata corporation conduct of sale of Ms. Yu's unit as further punishment for her contempt of court. That part of the strata corporation's application was adjourned for 60 days during which the strata corporation was to proceed with taking steps to deal with cost issues, including recovery of reasonable costs of the sentencing application and cost orders made in the earlier court applications.

Author's note: An order that an owner's home be sold for steadfastly ignoring court orders and based on a finding of contempt of court has been made in an earlier proceeding involving a strata corporation and the owner and her husband. Time will tell if the court entertains the strata corporation's conduct of sale application which will be dependent on the willingness of Ms. Yu to pay the strata corporation's costs. ■

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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LEGAL CORNER

STRATA CASE LAW IN BC

By Lisa Frey,
Lawson Lundell, LLP



Case Law 2

Is This Unit Really Occupied? BC Court of Appeal Weighs In HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS2478. (BC Court of Appeal) February 21, 2019

The court of appeal recently upheld a decision regarding the important distinction between "rentals" and "licenses" in the context of strata corporation bylaws. In this case, the strata corporation had passed a bylaw that restricted occupancies, including a prohibition of short-term occupancies (less than 180 days in duration). The tenant of one of the strata lots, HighStreet Accommodations Ltd., is company well-known in BC for placing tenants and subtenants in higher end strata corporations for various temporary purposes (i.e. short term work in BC, such as in connection with the film industry, or relocation of individuals whose houses are being restored following flooding, etc.). As tenant, HighStreet had been granting short-term licenses of the strata lot to the tenant's clients. That tenant challenged the bylaw as being in contravention of Section 143 of the Strata Property Act - commonly known as the "grandfathering" of existing tenants. Section 143(1) provides as follows:

- 143 (1) Subject to subsection (4), a bylaw that prohibits or limits rentals does not apply to a strata lot until the later of
- (a) one year after a tenant who is occupying the strata lot at the time the bylaw is passed ceases to occupy it as a tenant,
 - and (b) one year after the bylaw is passed.

HighStreet argued that it was the tenant of the strata lot, and therefore was exempt from any rental restriction bylaw until one year after its tenancy ended, pursuant to subsection (a). The lower Court, however, upheld the bylaw and found that it applied to the unit one year after it was passed, pursuant to subsection (b).

The owner appealed, and ultimately, the Court of Appeal dismissed the appeal. The Court of Appeal provided a rationale for Section 143 as follows:

[This section] establishes a grace period of at least one year before a rental restriction bylaw applies to a residential strata lot regardless of whether an existing tenancy is in place, providing the owner with a reasonable period in which to adjust previously-held expectations (based on a Rental Disclosure Statement or existing bylaws). However, where an owner has no relevant previously-held expectation, there is no grace

period and a rental restriction bylaw applies to a strata lot immediately (s. 143(4)). In addition, s. 142 limits the scope of permissible rental restriction bylaws by providing that they cannot prevent an owner from renting to a family member and s. 144 enables an owner to apply for an exemption on the grounds that a rental restriction bylaw causes the owner hardship.

...

The words "occupying" and "ceases to occupy" in s. 143 are used here in a provision which establishes a reasonable grace period before a valid rental restriction bylaw passed by the collective membership of a strata corporation applies to an individually-owned residential strata lot. In this context, in my view, they must mean physical occupation by a tenant, whether that tenant is a corporation or a natural person. If it were otherwise, an individual owner could defeat the collective will of the strata membership by renting a residential unit to a non-resident tenant who would be free for an indefinite period thereafter to ignore duly passed rental restrictions applicable to other strata lots in the development. In my view, such an interpretation would undermine the carefully calibrated balance of individual and collective rights established by the SPA and defeat the intention of the legislature. It is not required by the plain meaning of the words in s. 143 and, in any event, would produce an absurd result.

As noted, Bylaw 46.5 is, at least in part, a rental restriction bylaw. HighStreet, as the tenant, did not physically occupy the strata lot when it was passed. Therefore, Bylaw 46.5 applied to the strata lot one year later, rather than one year after the tenancy ends (which could be perpetual).

This case may also have important implications for other provisions in the Strata Property Act and other pieces of housing legislation which use the word "occupancy".

Decision: Appeal Dismissed. Court of Appeal upholds strata corporation's rental restriction by-law. ■



British Columbia

Interville Development Limited Partnership v. The Owners, Strata Plan BCS2313
(BC Supreme Court) January 30, 2019 Appeal Dismissed.

Court of Appeal upholds strata corporation's rental restriction bylaw.

Valid Shared Facilities Agreement existed between the parties

The Plaintiff, Interville, had developed a large commercial and residential project, which ultimately included six separate parcels, one of which was the Defendant strata plan. Prior to proceeding with the development, Interville had entered into a written "cost sharing agreement" (in relation to certain matters to be shared by the various parcels) as the then owner of the six parcels. After its creation, the Defendant strata corporation had for a number of years contributed to the shared costs in accordance with the cost sharing agreement. The strata corporation then alleged that this had been done in error, and asserted that it had no such obligation because this is a "positive covenant" that is not binding upon the strata corporation as a subsequent "owner" of one of the six parcels (without the strata corporation having "signed on" to the agreement).

The Court held that the strata corporation was bound by the cost-sharing agreement because the strata corporation had verbally agreed to be bound by the agreement. The Court said:

I conclude that upon the Strata Corporation coming into existence, an agreement was formed between the Strata Corporation and Interville pursuant to which the Strata Corporation agreed to pay 23.72% of the Keefer Steps Costs as invoiced by Interville from time to time. The material terms of the agreement were as expressed in writing in the Disclosure Statement: the Strata Corporation would pay 23.72% of the Keefer Steps Costs, based on the buildable area of the Firenze. In the circumstances, it is not necessary to consider whether, in the absence of an agreement, the Strata Corporation would be unjustly enriched by not paying a proportionate share of the Keefer Steps Costs.

I declare that the Strata Corporation is and was legally obliged to pay 23.72% of the Keefer Steps Costs, as invoiced by Interville from time to time. Interville shall have judgment against the Strata Corporation in an amount reflecting the unpaid obligation to date. If the parties are unable to agree as to the specific quantum of the judgment, they have leave to appear. Interville shall have its costs at Scale B.

Manitoba

Winnipeg Condominium Corp. 479 v. 520 Portage Avenue Ltd. et al
(Manitoba Court of Queen's Bench) December 13, 2018

Condominium corporation declared to be beneficial owner of parking unit

The Developer had made the seven-stall parking area in the building a unit rather than a common element. The Developer retained title to this parking unit and, while the Developer still had control of the condominium corporation, the Developer entered into an agreement to lease the parking unit to the condominium corporation.

The condominium corporation subsequently asserted that the lease constituted a breach of the Developer's fiduciary duties and sought a declaration that the parking unit "is a common asset of the Condominium Corporation" and an order for the transfer of the unit from the Developer to the Condominium Corporation.

The Court held that the Developer had not provided adequate disclosure of the intention to retain and lease the parking unit. The Court said:

The Parking Lease does provide disclosure that the Condominium Corporation is merely a tenant of the parking area and the Developer is the landlord, and that there is an option by the tenant to purchase the parking area from the Developer for \$167,000. However, the Parking Lease between the Developer and the Condominium Corporation is not referred to in the Condominium Declaration or in the Disclosure and Status Certificates set out in the evidence. The Parking Lease is also inconsistent with the Condominium Declaration and Plan and the Disclosure and Status Certificates, which are the documents that govern the legal relationship in this matter. It is inconsistent because the Parking Lease refers to the retention of the parking area by the Developer, while the Condominium Plan and Declaration as well as the Disclosure and Status Certificates make no reference to this, but instead read as though parking is a common element. In my view, merely providing a copy of the Parking Lease constituted insufficient disclosure to unit purchasers in this case. This case is therefore governed by the principle set out in the Newrey Holdings case.

Ontario

LaFramboise v. York Condominium Corp. No. 365 (Ontario Superior Court) January 15, 2019

Court determines that borrowing bylaw was properly passed

The condominium corporation, while under the control of an administrator, sought to pass a borrowing bylaw at a meeting of the owners. On a subsequent uncontested application, the administrator sought the Court's direction as to whether or not the bylaw had been properly passed.

At the meeting called to consider the bylaw, the owners of a majority of the units had been in attendance (either in person or by proxy). A majority of those in attendance had voted in favour of passing the by-law. However, those in favour did not represent a majority of all units in the condominium.

The Court held that the bylaw had been validly passed. The Court said:

The correct and reasonable interpretation of the current provisions of section 56(10) is that those provisions did not on their face (despite any arguable punctuation errors) amend the requirements in section 50 and 53 of the Act.

A majority of all unit owners were in attendance, and a majority of those present unit owners approved the bylaw. The by-law in question has been validly passed.

Editorial Note: In my respectful view, this case was wrongly decided. The wording of Section 56 (10) of the Condominium Act, 1998 is clear: For a bylaw to be passed, the owners of a majority of the units in the corporation must vote in favour of confirming the bylaw. I suspect that this case might have been decided differently had the application been contested. ■

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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Smart Doorbells, Smart Locks and Security Cameras in Stratas

A growing trend in today's home is the use of digital security devices such as smart doorbells, smart locks and security cameras. In a strata environment, this means compliance to bylaw and privacy issues.

Stratas generally have a specific bylaw on the "look and feel" of common property such as the front door and entrance way. For townhouses and apartment condos, this would be the uniform style, shape and finish of exterior hardware such as door handles, locks and doorbells.

In BC, the Personal Information Privacy Act (PIPA) regulates what cameras can view or record on strata common property. Identifying an individual, either directly (e.g. name, image, job title) or in combination with other information cannot be used by a strata for enforcement, such as bylaw violations. However, given there are personal Smartphones and vehicle Dashcams which have video cameras, there has to be **a balance between security and privacy**.

Stonebrook, an 87-townhouse community in northeast Burnaby, has published guidelines that other stratas may find useful regarding smart doorbells, smart locks and security cameras. These may also be applicable for similar situations with apartment condos, such as common interior hallways.

SMART DOORBELLS

Unlike the standard pushbutton electric doorbell, the Smart Doorbell has a video camera to view and often record whoever is at the front door. Using the built-in microphone and speaker you can talk to who is there, without opening the door, whether you are home or away. These is a proximity sensor to ring the home door chime or trigger an alert on a smartphone via the home Wi-Fi network or the Internet. Events can be recorded for periodic storage on the Internet cloud through a subscription service. A smart doorbell uses the existing low voltage wiring between the door entrance and the chime for power and ring signal. If no wiring exists, there are also battery powered ones. Some recent models replace the door peephole viewer, ideal for owners or tenants who do not want to remove an existing doorbell.

As shown below, Stonebrook's policy permits Smart Doorbells that comply with our Bylaw -9- on approved "look and feel" of the exterior front door hardware as well as PIPA requirements to limit camera viewing to the same detail as a peephole. In early 2019, the most popular brands are made by August, Nest, and Ring. Prices range from \$130 to \$300.



Original Push Button Doorbell



August Smart Doorbell



Nest Smart Doorbell



Ring Smart Doorbell

SMART LOCKS

Smart Locks can replace part or all of a standard door lock. Key or pushbutton type smart locks replace a exterior side of a door lock. Retrofit ones only replace the interior side of the door deadbolt. Smart locks can be opened or closed using a Bluetooth signal from a Smartphone when standing by the door or remotely by a Wi-fi signal from the home network or the Internet. Some can be integrated to Smart Doorbells and/or Security Cameras.

As illustrated here, Stonebrook only allows Smart Locks that retrofit the inside door latch to preserve the style and finish of the exterior lock and door handle as defined for a uniform exterior "look and feel" of strata common property.

Popular ones that replace the inside of the deadbolt latch are the August Smart Lock Pro or the Weiser Kevo Convert Smart Lock Conversion Kit, each priced about \$250 or more.



SECURITY CAMERAS

While it is common today to install security cameras WITHIN the home, those that look OUTSIDE on strata common property must comply to personal privacy issues as governed by the BC Strata Act and the Personal Information Protection Act. From a practical point of view, any OUTSIDE (exterior) viewing camera must be limited to looking at the townhouse front door or garage entrance, without anything further if possible. The view should be similar to that seen from a door peephole: *focussed short range, not much detail beyond that.*

Stonebrook does not allow security cameras on any exterior surface of the townhouse as any mounting fasteners (such as screws) would penetrate the moisture barrier which could result in water damage. Until now, no exterior security cameras have been approved as the surveillance provided by a Smart Doorbell's built-in video camera is sufficient in most cases.

It is better for a strata to have a proactive approach to adopting smart home technology through a well thought out and researched policy in writing. It makes life easier for the strata, property management and residents alike. Hopefully, this article on Stonebrook's experience in the last year will help others. ■

Strata Matters Articles are submitted by **Strata Councils** and 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.





COUNCIL DECISION MAKING IN THE 21ST CENTURY ARE EMAIL DECISIONS ALRIGHT?

The Standard Bylaws under the Strata Property Act (SPA) contemplate decisions being made by the strata council at a face-to-face meeting, scheduled in advance and which owners can attend. By and large, that works for most strata corporations and in most cases. However, there are times when that more conventional arrangement isn't practical. People have busy lives and can't always meet on short notice to deal with urgent issues. For strata corporations which are vacation properties, the council may be in distant places, unable to actually get together in person. In such cases, new practices and amendments to the bylaws may be necessary to allow for these situations.

The Standard Bylaws contain the following provisions with respect to calling and holding council meetings:

Calling council meetings

- 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.

Council meetings

- 17 (1) At the option of the council, council meetings may be held by electronic means, so long as all council members and other participants can communicate with each other.
- (2) If a council meeting is held by electronic means, council members are deemed to be present in person.
- (3) Owners may attend council meetings as observers.

(4) Despite subsection (3), no observers may attend those portions of council meetings that deal with any of the following:

- (a) bylaw contravention hearings under section 135 of the Act;
- (b) rental restriction bylaw exemption hearings under section 144 of the Act;
- (c) any other matters if the presence of observers would, in the council's opinion, unreasonably interfere with an individual's privacy.

"Electronic means" is not defined but undoubtedly includes mediums such as conference calls and internet based platforms like, Skype. It can also arguably include decisions by email.

There are, however, several practical problems which can arise with respect to making decisions by email:

- How are the notice requirements to be complied with? (Standard Bylaw 14 requires at least 7 days notice of a meeting be given).
- In order for council to conduct business there must be a quorum. How does one establish a quorum in an email conversation?
- Standard Bylaw 17(2) requires council members and other participants to be able to communicate with each other. (Does email allow for the same degree of discussion and debate as an in person meeting)?
- How do you notify the owners of an electronic meeting done through email?
- How to accommodate the requirement that owners be permitted to observe council meeting?
- What if not every council member has email?

The practice of making decisions by email is not expressly provided for in the Standard Bylaws. Nonetheless, decisions made by email have been upheld on more than one occasion: *Azura Management (Kelowna) Corp. v. The Owners, Strata Plan KAS 2428 2009 BCSC 506*; *Yang v. Re/Max Commercial Realty Associates 2016 BCSC 2147*.

In *Kayne v. The Owners, Strata Plan LMS2374 [2007] BCJ (QL) 2381 (BCSC)* the court didn't approve the process but noted that:

"... In any organization, there will be occasions when people who are members of a council or an executive will meet informally to discuss matters of relevance to the organization. Those are not meetings of the council and it would be unrealistic to expect minutes to be kept of such meetings. Of course no decision that may be taken at any such meeting has any validity unless and until it is taken or ratified by a properly constituted and minuted meeting of the council."

This passage would suggest that email decisions amount to nothing more than an informal discussion and should not be acted upon. The CRT was of a similar view in *The Owners, Strata Plan VR 942 v. Thompson, 2018 BCCRT 4* where it held that hiring a lawyer based on discussions with some, but not all, council members did not constitute proper approval. Acting on the email responses of some, but not all, council members is arguably no different.

The practice of making decisions by email was recently given attention by the Civil Resolution Tribunal (CRT) in its recent decision in *Mueller v. The Owners, Strata Plan LMS2195 2018 BCCRT 773*. It said the following with respect to it:

While decisions of the strata council are generally made at strata council meetings, the law also recognizes that there will be situations where decisions will need to be made between meetings. For example, decisions may have to be made in emergencies. There may also be situations where day to day decisions may need to be made to move issues along and so that the business of the strata does not grind to a halt between periodic strata council meetings. ... I note it is important that the strata council should ratify any decisions at the next strata council meeting and ensure the ratified decision is recorded in the strata council minutes. Whether the strata council has acted appropriately will depend on the facts. Where the strata council has substantially followed the requirements of the SPA and the strata bylaws, the strata has some flexibility and leeway in its process and procedures.

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It is important to note the conclusion that the decision should subsequently be "ratified" at the next strata council meeting. However, "ratification" is different than merely recording the decision in the next set of minutes. Ratification requires a further vote to approve the decision made. This is what makes the practice inherently dangerous. What if someone changes their mind and votes differently? What if council members who did not participate in the original decision, participate in the ratification and skew the vote? What if that changes the outcome?

In Mueller the CRT addressed some of the initial concerns outlined above, noting that:

- All council members must be given the opportunity to communicate in council meetings (but need not actually do so);
- Communication need not be simultaneous (as it is in a conversation);
- Not every strata council member has to cast a vote in order for there to have been a decision reached (otherwise each council member is effectively given a veto power through not voting);

In the end, the CRT held that any irregularities in relation to compliance with the bylaws can be overcome by ratification at the next council meeting.

Despite both the court and the CRT having given their blessing to the practice of making decisions by email, it remains an inherently dangerous practice. Decision making by email should be the exception and not the norm. Where it is the norm, then the bylaws should be amended to establish a framework for making decisions by email without the need for ratification and address the concern that such exchanges are not formal meetings. A bylaw permitting decisions by email should:

- Provide a time frame for providing a response, giving all council members an opportunity to respond and persuade their fellow council members to their point of view;
- Require that all council members (except those excluded under s.32 of the SPA) be included in the original email;

- Require the decision be recorded (but not ratified) in the next set of minutes and a copy of the email chain kept as a record of the strata corporation;
- Exclude the right of owners to be present as observers for that particular "meeting";
- Eliminate the need to notify owners of the impending meeting;

Even with such a bylaw, email decisions should still be restricted to matters which are of lesser importance or more routine in their nature. Significant decisions should still be dealt with in a formal meeting in to avoid allegations later on that a decision was not properly made; which is an easy way to attack a decision one does not like. The more structure to the process, the better is chance to withstand attack.

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

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From The Strata Experts articles are written by CCI Vancouver Business Partner and Professional Members who are service providers to the strata industry. For a list of member service providers go to the Service and Business Members directory on our website or **page 20** in Condo News.

By Grace Wang,
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COURSE OF CONSTRUCTION AND WRAP UP LIABILITY INSURANCE

While smaller projects may be covered under an existing strata policy, typically any projects in excess of \$1 million require a Course of Construction (COC, also called Builder's Risk) and Wrap Up Liability.

The COC policy insures buildings or projects against repair or reconstruction costs while they are in the course of construction, reconstruction, repair or installation. The COC also covers the building materials, fixtures and appliances; all of which are intended to become an integral part of the structure under construction.

The Wrap Up Liability provides third party liability coverage for all trades, subtrades, engineers, architects, etc who come onto the property. This eliminates the need to request a certificate of insurance from every trade that enters the property to ensure they have adequate liability coverage in force. It also saves the strata from following up to ensure they have renewed it.

The other benefit to the Wrap Up is Completed Operations coverage. As an example, if a plumber does work as part of a project and 6 months later an elbow joint breaks and it's deemed that the plumber installed the joint incorrectly. The plumber has since gone out of business which means the strata cannot subrogate against the plumber to recoup the cost of the loss. Under the Wrap Up Liability, there's a built-in completed operations window which will respond in the event of an incorrect installation.

Should an insured loss occur as a result of the construction, the loss would go under the COC or Wrap Up Liability policy (depending on the type of loss) and not fall under the strata's policy which is beneficial for the strata as it won't negatively affect the strata's loss history. ■

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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From The Strata Experts articles are written by CCI Vancouver Business Partner and Professional Members who are service providers to the strata industry. For a list of member service providers go to the *Service and Business Members* directory on our website or **page 20** in *Condo News*.

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► 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.

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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

- ▶ 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:

- | | |
|----------------------|---|
| ▶ September 28, 2019 | Trade Show and Half Day Seminar, Hoarding & Mental Health |
| ▶ October 26, 2019 | Condo 101 Course |
| ▶ November 21, 2019 | Evening Seminar |

▶ 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 26, 2019

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