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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

Canadian
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Vancouver Chapter

Winter 2018

THIS ISSUE

- ▶ Borrowing Funds to Complete a Capital Project
- ▶ The Importance of Unit Owners Insurance
- ▶ Electric Cars Are Coming – Is Your Building Ready?



PRESIDENT'S MESSAGE

Paul Murcutt,
President, CCI Vancouver

It is both an honour and privilege to start my term as the newly elected president for the Canadian Condominium Institute – Vancouver Chapter. I would like to start by saying a big thank you to Jamie Bleay for his leadership and commitment in growing the CCI in Vancouver into what it is today. His dedication of 15 years as the chapter president is outstanding. Luckily, for us, he is not going too far but needless to say, I have some very big shoes to fill!

As I reflect on the 6 years I have been involved with the organization, I am more excited for the future today, than I ever have been. Looking back over the last year alone, we have a lot to be proud of. Two standout achievements include, our seminars for the year where we hosted 5 successful educational events with over 410 attendees and our incredible newsletter won "Best Newsletter" at the CCI National Event in Thunder Bay, Ontario.

With the experience and expertise of our 15 board members, I am confident 2018 will be an exceptional year for the CCI. We are busy planning another packed and informative educational program for our members and we are working hard to deliver exceptional membership value. I am particularly excited about launching our new CondoSTRENGTH program – a free program for members that has been very successful across the country. It is built on three core elements; access to a toolbox of resources, community recognition and networking events. Be sure to keep an eye out for its launch next year.

As we head into the new year and I develop goals and objectives for my time as president, my vision for the chapter will stay close to the CCI's core values. We will aim to continue to lead the condominium industry by providing council and board members from coast to coast with access to education and information.

I wish everyone a Happy New year and I look forward to my future with you all.

Paul Murcutt – President CCI Vancouver

Welcome New Members

- ▶ Community Fire Prevention Ltd.
- ▶ Gateway Property Management Corporation
- ▶ Safesidewalks Canada BC Ltd.
- ▶ Obsidian Property Management

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

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WINTER 2018

IN THIS ISSUE

President's Message

Contributing to CCI Vancouver Chapter

Condo News

Stratology

Insurance

Civil Resolution Tribunal Updates

Jurisdiction of the Civil Resolution Tribunal
for Strata Property Claims

Legal Corner

Strata Case Law in BC

Case Law 1

McKnight v. Bourque, 2017 BCSC 2280

Case Law 2

The Owners, Strata Plan KAS 2428 v. Baettig,
2017 BCCA 377 (CanLII)

Condo Cases Across Canada

From the Strata Experts

Borrowing Funds to Complete a Capital Project

The Importance of Unit Owners Insurance

Electric Cars Are Coming — Is Your Building Ready?

Business Partner and Professional

Members Directory

CCI Vancouver Services at a Glance

2

3

4

5

7

9

10

12

14

16

20 - 22

24

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:

Spring – March 1

Summer – May 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:

The Editor, The Condo News
Canadian Condominium Institute (CCI) - Vancouver Chapter
P.O. Box 17577 PRO The Ritz
Vancouver, BC V6E 0B2
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.

Insurance

Issues around insurance could likely fill many books but here are some key elements you and your clients need to know:

The Strata Corporation **must** have insurance on common property, common assets, buildings, and fixtures – insurance sufficient to completely rebuild the whole building if utterly destroyed, insure against major perils, and liability insurance against personal injury and property damage.

Sounds good! And it is. But, pay attention. The premiums on these policies are high, and the deductibles are even higher. As split between many owners, the premiums become very manageable generally. The deductibles can be another story.

As of this writing, the average flood deductible on strata policies is likely \$25,000. The average flood claim is more than \$30,000, and 70% of strata insurance claims are floods.

Floods, in this case means water escape from washing machines, dishwashers, bathtub overflows, sink overflows and the like.

Section 158(2) of the Act says:

Subsection (1) does not limit the capacity of the strata corporation to sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.

Let's be clear – if it is from your washing machine or dishwasher the flood originates, you will be 'responsible' and you will be paying the \$25,000 deductible; either voluntarily, via your own home owners' insurance policy, or involuntarily via the sale of your unit.

The Act does not require owners (for some inexplicable reason) to have their own insurance, but the homeowners policy can include deductible insurance that can reduce the payment for the home owner from \$25,000 to perhaps \$250.

Guess what advice we suggest regarding home owner insurance? ■



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Jurisdiction of the Civil Resolution Tribunal for Strata Property Claims

The Civil Resolution Tribunal (CRT) has been accepting applications for strata property dispute resolution since July 2016. As of August 31, 2017, 614 applications for strata property dispute resolution have been accepted resulting in 63 resolutions by agreement and 83 binding decisions (19 by default). The CRT has refused to resolve 3 disputes and 102 disputes have been withdrawn or closed. There are 131 awaiting responses (where the dispute notice has been issued), 215 in facilitation, 14 in adjudication and 2 are suspended.

What types of strata property claims can the CRT decide?

The CRT's jurisdiction over strata property disputes is set out in the Civil Resolution Tribunal Act (Act). Under section 3.6(1) of the Act, the CRT has jurisdiction over a claim concerning one or more of the following:

- a) the interpretation or application of the Strata Property Act, its regulations, or a strata corporation bylaw or rule;
- b) the common property or common assets of the strata corporation;
- c) the use or enjoyment of a strata lot;
- d) money owing, including money owing as a fine, under the Strata Property Act, its regulations, or a strata corporation bylaw or rule;
- e) an action or threatened action by the strata corporation or council in relation to an owner or tenant;
- f) a decision of the strata corporation or council in relation to an owner or tenant;
- g) the exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.

There is no doubt that this jurisdiction covers a broad number of claims. However there are also certain restrictions regarding the CRT's jurisdiction over strata property claims contained in the Act. Section 3.6(2) of the Act sets out a number of provisions of the Strata Property Act that are expressly outside the jurisdiction of the CRT which may only be addressed by the Supreme Court of BC. These restrictions include orders for the forced sale of a strata lot, the appointment of an administrator, various orders regarding leasehold and phased strata corporations and orders regarding the winding up of a strata corporation.

Claims that fall under the Residential Tenancy Act and claims to which the parties have agreed the Arbitration Act applies are also outside the jurisdiction of the CRT. The Act allows for claims prescribed by regulation to be excluded from the CRT's jurisdiction but, at present, no such regulations have been enacted.

Other factors considered by the CRT regarding jurisdiction

The Limitation Act applies to strata property disputes which generally bar an applicant from applying for dispute resolution if the incident giving rise to the claim was known, or ought to have been known, over 2 years before the application is made.

Additionally, the same dispute cannot be decided twice or heard simultaneously in different legal proceedings. If the dispute has already been decided through another process, the doctrine of res judicata applies and the CRT will not hear the dispute. Also, if the same parties to a dispute are involved in another legally binding process involving the same issues, the other process must be suspended to allow the CRT dispute to continue.

The CRT cannot hear a dispute that involves the Federal or Provincial government as a party or if the dispute involves a constitutional issue. While the CRT may apply the Human Rights Code at its discretion, it does not have jurisdiction over a question of whether there is a conflict between the Human Rights Code and other legislation.

Under section 11, the CRT has the general authority to refuse to resolve a claim or dispute if it considers the claim or dispute:

- a) has been resolved through a legally binding process (e.g. court) or other dispute resolution process (e.g. another tribunal, arbitration or mediation);
- b) is unreasonable or is an abuse of process;

... continued on page 6

- c) the issues are too complex for the dispute resolution process of the CRT or otherwise impractical for the CRT to facilitate or resolve;
- d) may involve a constitutional question or the application of the Human Rights Code; or
- e) the CRT is satisfied that if the matter was brought before the Supreme Court, the Supreme Court would grant an order that the tribunal not resolve the claim or dispute under section 12.3 of the Act.

What orders can the CRT issue for strata property claims?

The CRT has general discretion under section 61, to make any order it thinks is necessary to achieve the objects of the tribunal in accordance with its mandate of providing dispute resolution services in a manner that is accessible, speedy, economical, informal and flexible, and applies the principals of law and fairness recognizing any relationships between the parties that will likely continue.

Further, under section 48.1 and the CRT's rules, the CRT has very broad authority and may order a party to do or refrain from doing something, order a party to pay money or make an order that it considers necessary to prevent or remedy a significantly unfair action or decision of the strata corporation or council or in the case where one person holds more than 50% of the strata corporation's votes. However, the CRT cannot make an order requiring the sale or other disposition of a strata lot.

Jurisdictional decisions made by the CRT

As the CRT continues to grow and evolve, jurisdictional issues will continue to be considered by the tribunal based on the merits of the dispute. Although not binding on future decisions, several jurisdictional decisions have already been made by the CRT that can provide some guidance to those working in the industry as well as owners and tenants living in strata corporations. Examples of these decisions can be found at www.civilresolutionbc.ca and include the following types of decisions:

- Limitation period (2017 BCCRT 3, 2017 BCCRT 48, 2017 BCCRT 50, 2017 BCCRT 55)
- Former owners (2017 BCCRT 28)
- res judicata or previously decided (2017 BCCRT 22, 2017 BCCRT 55)
- Suspension (2017 BCCRT 41)

What can you do if you're not certain a dispute is within the jurisdiction of the CRT?

If an owner tenant or strata corporation representative (council member) is not certain their claim falls under the jurisdiction of the CRT, they should first use the solution explorer. If, after completing their exploration they are still uncertain, they can make an application to the CRT. The CRT processes of screening, facilitation and adjudication will determine if the dispute is within the CRT's jurisdiction. ■

J. Garth Cambrey is Vice Chair – Strata for the Civil Resolution Tribunal and earned his B. Comm. from UBC. He has over 30 years' experience in BC's real estate industry including owning a property management firm for 20 years and serving on the Real Estate Council for 5 years. He is an active member of the Real Estate Institute, the BC Arbitration and Mediation Institute and holds a Charter Arbitrator designation with the ADR Institute of Canada. Mr. Cambrey has arbitrated many strata disputes and been appointed by the BC Supreme Court as an Administrator for several strata property issues.

Civil Resolution Tribunal Team
www.civilresolutionbc.ca

LEGAL CORNER

STRATA CASE LAW IN BC

Case Law 1

McKnight v. Bourque, 2017 BCSC 2280

By Silvano Todesco,
Access Law Group



Case Law Update

This case involves an application to the BC Supreme Court to seek leave to appeal a final decision of the Civil Resolution Tribunal (CRT) pursuant to the Civil Resolution Tribunal Act (the Act). This decision is noteworthy in that it is only one of two leave applications relating to the CRT that have been heard by the courts thus far.

Background/CRT Decision

This dispute originated at the CRT and involved two owners (the applicants, Mr. Bourque, Ms. Lloyd and the respondent, Ms. McKnight) that lived within a duplex strata property. A dispute arose between the parties in relation to the maintenance and repair of common property and certain portions of Ms. McKnight's strata lot.

Mr. Bourque alleged that certain parts of the common property as well as an oceanfront seawall on Ms. McKnight's portion of the duplex had not been properly maintained. As such, it was unsightly and potentially unsafe. Ms. McKnight argued that her maintenance approach was reasonable.

The CRT adjudicator held in favour of the applicant and made various orders that Ms. McKnight complete certain repairs and maintenance. Further, the CRT adjudicator made several orders relating to procedure relating to retaining contractors and resolving future disputes through the Condominium Home Owner's Association (CHOA).

In response, Ms. McKnight filed an application in BC Supreme court to seek leave to appeal the CRT decision.

Leave to Appeal Application

The issue the court considered was whether it should grant leave to appeal the CRT's decision. Pursuant to the Act, an appeal of a CRT decision is not automatic but can only occur if both parties consent or if the court grants leave to appeal. Further, an appeal of a CRT decision is not a new hearing: an appeal is only heard on an error of law arising from a CRT decision.

It should be emphasized that the court did not decide the actual appeal on its merits: it only decided if leave should be granted so that the appeal on the merits could proceed on another date.

As stated above, this is only the second time an application for leave to appeal a CRT decision has been heard at BC Supreme Court so far (see also: *The Owners, Strata Plan BCS 1721 v. Watson, 2017 BCSC 763*). Accordingly, there was little case law to guide the court on the new procedures/rules/legislation relating to the CRT and/or an appeal of a CRT decision.

In considering the framework for an appeal, the court confirmed that under the Act, appeals may only be brought on a question of law. However, the court also confirmed that distinguishing between questions of law and questions of mixed fact and law was difficult. The court held that the statutory language in the Act was less restrictive than other legislation and accordingly, appeals may be brought not only on questions of law but on questions that are "predominantly, if not exclusively issues of law."

The court also held that the list of factors to be considered in granting leave to appeal in section 56.5 (5) of the Act were not exhaustive: relevant factors would depend on the individual circumstances of the case.

The test set out in the Act is that leave should be granted if it is in the "interests of justice and fairness." However, the court emphasized that this is a broad inquiry that ought to be undertaken in a holistic manner. The standard used by Mr. Justice Kent in the Watson case (the other CRT leave to appeal application) was whether the grounds for appeal had "arguable merit." The court in this case approved of this approach. However, it added the clarification that a merely arguable case could be sufficient or other factors pull in favour of granting leave whereas other cases may need a very high level of merit or other factors are weak or absent.

... continued on page 8

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The court refused to make any final determinations of the standard of review for the leave to appeal citing the lack of case law. However, for the purposes of this case the court decided the preliminary assessment of the CRT's decision on the standard of 'correctness' which was an approach favourable to the party seeking leave.

The court then went through the exercise of addressing each error of law alleged by Ms. McKnight to determine if leave should be granted. The court dismissed certain grounds of appeal. However, it held that there was 'arguable merit' in some of the alleged errors of law and granted leave for those grounds of appeal. These included:

- the decision of the CRT Adjudicator to vary the terms of a final order, potentially contrary to section 48 of the Act;
- the decision of the CRT Adjudicator to sub-delegated the authority of the CRT by ordering the parties submit to a binding decision of another entity, in this case CHOA;
- the order binding third-party decision-making by a professional inspector akin to the powers of an administrator which may have exceeded the CRT's statutory authority;
- applying an incorrect legal definition of "nuisance"; and
- accepting expert opinion evidence that may have been contrary to the CRT Rules.

It must be emphasized that this application was for leave only. Therefore, the decision of the court was as follows.

Conclusion

The CRT is a new tribunal and its processes are in their infancy. In these early days, there is much uncertainty relating to the limits of the CRT's jurisdiction, statutory authority and procedures as well as ambiguity in some provisions of the Act.

This is a very important case as it helps clarify certain procedures and standards to be used for similar applications going forward. As more CRT decisions are appealed, the courts will provide much needed clarity on the process and legal tests to seek leave for appeal.

More importantly, as more appeals are heard by the courts, there will be more clarity on jurisdictional and procedural issues relating to the CRT. This should make the CRT process much more predictable and easier to navigate for Strata Corporations and property managers. ■

Silvano Todesco became a lawyer later in life and has had the benefit of over 12 years of business and management experience providing him with keen business insight and a practical approach to law.

Silvano views himself as a risk manager and views every step in litigation as a business decision with a constant goal of reaching practical solutions for his clients helping to reduce the economic impact of litigation as well as mitigating the stress that inevitably accompanies legal action.

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Case Law 2

The Owners, Strata Plan KAS 2428 v. Baettig, 2017 BCCA 377 (CanLII)

Case Comment

In many circumstances, a Strata Corporation is obligated to take legal action against an owner because they have not paid moneys owed to the Strata, or perhaps work needs to be done to remedy a breach of the bylaw, and the Strata is entitled to claim those funds back from an owner.

Up until recently, in those circumstances the Strata was only entitled to 'reasonable legal fees'. This term we defined by the court as fees pursuant to the Court Rules' Tariff. The Tariff sets out certain payments for certain legal steps taken in litigation. The net effect of the Tariff is often however that a Strata Corporation could only recoup about 40% of its legal expenses. No longer.

In **The Owners, Strata Plan KAS 2428 v. Baettig, 2017 BCCA 377 (CanLII)**, the Court of Appeal has recognized that such a rule actually penalizes the owners who have properly paid their strata fees and levies and have not breached the bylaws by any alteration or destruction of property, and these 'good' owners have to subsidize the 'bad' owners who have not complied with their obligations. The Court saw this as fundamentally unfair and has said in these circumstances a Strata Corporation is entitled to its 'actual' legal expenses, as long as they are reasonable. So, as long as the work is related to the problem, and at a rate commensurate to the legal advice, then it can be paid in full, and taken, if need be, from the proceeds of sale of the 'bad' owners' unit.

Sections 116 – 118 relate to the application to a judge to sell an owner unit for non-payment of strata fees or levies etc. Section 133 relates to remedying a contravention of the bylaws:

The Court said:

[66] *In my view, it is consistent with the remedial objective of ss. 116–118 and with the purposes of the SPA as a whole to interpret s. 118 as providing a strata corporation with the means to recover costs reasonably incurred in registering and enforcing a lien against a delinquent strata owner. If actual reasonable legal costs are not included in s. 118(a), legal fees not covered by the tariff must be borne by non delinquent strata owners by way of increased common fees. This would further increase the financial burden on owners who are paying their share. In my view, this interpretation would be inconsistent with the philosophy and scheme of the SPA.*

[67] *Parenthetically, I note that s. 133 of the SPA, which appears under "Part 7 – Bylaws and Rules", "Division 3 – Enforcing the Bylaws and Rules", provides that a strata corporation, in doing what is reasonably necessary to remedy a contravention of its bylaws or rules, may require that the 'reasonable costs' of remedying the contravention be paid by the owner who is responsible or who is deemed to be so pursuant to s. 130. A similarly worded provision in s. 127 of the old CA provided that 'any costs or expenses' incurred by the strata corporation in remedying a violation of its bylaws or rules were payable by the unit owner. In cases decided under s. 127, it was held that strata corporations were permitted to recover actual legal costs expended in enforcing their bylaws by way of court action: Strata Plan VR 243 v. Hornby, [1986] B.C.J. No. 2353 (S.C.), Hill v. Strata Plan NW 2477, 57 A.C.W.S. (3d) 662, [1995] B.C.J. No. 1906 (S.C.). There has been scant judicial consideration of the meaning of 'reasonable costs' in the context of s. 133 of the SPA, although one case is capable of being read as suggesting that the phrase encompasses the actual legal costs associated with bringing a court action: see Strata Plan VR19 v. Collins, 2004 BCSC 1743 (CanLII) at para. 17.*

[68] *In my view, the same legislative intent underlies both ss. 133 and 118 of the SPA – that strata owners who comply with the bylaws and rules of the strata corporation should not have to shoulder the financial burden of remedying infractions committed by non compliant owners.*

... continued on page 19

LEGAL CORNER

CONDO CASES ACROSS CANADA

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



British Columbia

Shields v Strata Plan VIS 5030 (BC Supreme Court) August 28, 2017

Hot water supplied to the Plaintiffs' unit was not of acceptable quality. It was grossly discoloured and contained excessive heavy metal concentration. There was no health risk, because the water could be made potable by flushing the lines. Even so, the Court said that "no strata owner anywhere in Canada would reasonably be expected to accept water of such deficient quality without complaint."

For a period of six years, prior to 2015, the strata corporation had not met its obligation to take reasonable steps to try to solve the problem. The Court said:

It is quite evident from the above recitation of the facts that the defendant's attempts to address the plaintiffs' complaints between 2009 and 2015 were a mixture of inadequate investigation, half-measures in implementing recommendations, inadequate follow-up to determine the efficacy of the steps that were taken, and a lack of continuity in retaining qualified outside help.

However, the strata corporation did take reasonable steps to try to resolve the problem beginning in 2015. As at the date of trial, it wasn't clear that the problem had yet been finally resolved. Further steps still might be required. However, the Court declined to issue a mandatory injunction (ordering that the strata corporation resolve the problem). The Court said:

The court cannot simply order the defendant to "fix the problem", because the defendant's duty of repair is not absolute. It is bounded by considerations of reasonableness, and what additional steps if any may reasonably be required cannot be determined at present.

Due to the strata corporation's delay in taking proper hold of the matter, the Court ordered the strata corporation to pay the plaintiffs "jointly the sum of \$15,000."

Manitoba

Shen v Winnipeg Condominium Corp. No. 16 (Manitoba Court of Queen's Bench) June 22, 2017

The condominium corporation had installed safety ladders on the outside of the building, to allow workers to gain safe passage to and from the roof.

One of the safety ladders was located very close to a balcony of the Applicant owner. She objected to the ladder and applied for an order that the ladder be relocated "to a part of the complex that is out of the direct sight-lines from inside her unit." The Applicant also asked that the costs of this re-location "be allocated to the other unit holders and not her."

The Court held that the installation of the ladders was a substantial change requiring written consent of 80% of the owners (which consent had not been obtained). The Court said that this was not a necessary change, despite the safety concern. The Court said:

What really happened here is that the Board came to the view that some kind of change to the existing method of roof access was prudent or necessary and it chose one of six options open to it to effect that change. There is no evidence that the installation of safety ladders was necessary or essential to ensure safety as defined in section 175(1)(b) of the Condominium Act or that the safety ladders were installed to prevent imminent damage to the property or common assets as contemplated by section 175(1)(b).

The Court held that the Board's actions (in installing the ladders) were oppressive. The Court said:

On these facts however, I cannot get past the fact that the Board did not act in a manner consistent with the duty resting on boards as set out in the (3716724 Canada Inc. v Carleton Condominium Corporation No. 375) decision, which is the duty to act honestly and in good faith, and that it exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The Board's breach of this fundamental obligation by completely ignoring its duty to obtain the written consent of 80 per cent of unit owners to substantial changes or giving the prescribed form of notice means that I am not obliged to show deference to its decision as to how it balanced the competing concerns between an individual complainant and the common interests of all unit owners.

The Court made the following orders:

1. that the Board permanently remove the Ladder from its existing place adjacent to Ms. Shen's unit and relocate it to one of the end walls of the Building as far away as possible from the sight lines of Ms. Shen's unit;
2. that the Board refrain from allocating any costs associated with this relocation to any common elements fees that might be charged back to Ms. Shen or her unit and further that the Board avoid any other kind of fee, levy or allocation which may directly or indirectly require Ms. Shen to pay or contribute to the costs of the relocation of the Ladder; and
3. that the Board pay compensation to Ms. Shen of \$10,000.00 for the interference with her view and her loss of enjoyment of the property that took place without giving the benefit of due process as set out under the Act. Again, the Board must avoid any charge back to Ms. Shen with respect to this payment or any allocation of this expense to her unit.

[Editorial Note: I was a little surprised that the Court didn't decide to give the condominium corporation a reasonable opportunity to obtain the necessary (80%) consents. The decision includes the following sentences:

Ironically, this may well have been a situation where the written consent of 80 per cent of unit owners would have been given on proper notice. In that case, the reasonableness standard of review may have called for deference to the Board's decision to proceed with the installation of caged safety ladders in the locations that were ultimately decided on.

On the other hand, I suppose the location of the one ladder (near the Applicant's balcony) might have been determined to be oppressive in any event – even if approved by the necessary vote of the owners.]

Ontario

YRSCC No. 1253 v. Hashemi (Ontario Court of Appeal) June 30, 2017 rk Condominium Corp. No 163 v. Robinson (Ontario Superior Court) April 19, 2017

The condominium corporation had installed additional security cameras in the stairwells in order to try to identify persons who were vandalizing the stairwells.

The camera footage revealed that the vandals were tenants of the defendant's unit. The condominium corporation sought to recover its expenses (including costs incurred to repair the stairwells as well as charges for installing the cameras) from the defendant owner.

The Court confirmed the obligation of the owner to pay the corporation's expenses (including the cost to install the cameras) and determined the amounts payable, as well as the corporation's entitlement to costs of the proceeding. ■

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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Borrowing Funds to Complete a Capital Project

Strata councils continually face the challenge of keeping maintenance fees low while maintaining and repairing common elements. As buildings age, the number of necessary large-scale capital projects increases, putting a greater strain on reserve funds and unit owners. This challenge is particularly true for stratas built in the 1980s and 1990s as main components, such as the enclosure, reach the end of their useful life.

Overview

- After six years of ongoing remediation and special levies, a strata complex still had four major capital repair projects to complete
- Council sought out a strata loan that allowed the four projects to be completed while avoiding another special levy and reducing overall project costs

The Client

A strata complex located in the Greater Vancouver Area required balcony replacements, new sliding doors, elevator modernization, and new roofs. Built in the 1980s, the large complex has generous floor plans and is in an up-and-coming area on the rapid transit line that is seeing significant investment in new construction, parks, infrastructure, and businesses.

The Challenge

After many years of putting off necessary repairs while damage worsened, the complex began systematically tackling major capital repair projects. The previous deferral of so many projects had increased the cost of refurbishing the buildings, and the complex got caught in a cycle of trying to catch up as costs and repairs continued to increase. After six years of ongoing remediation, the reserve fund was depleted, and the unit owners had special levy fatigue. With four major projects still to complete, the strata council needed a financing solution that allowed the projects to be completed without additional levies or continued financially inefficient piecemeal construction.

How a Financial Partner Helped

After the outstanding repairs were discussed with council and the engineering firm, and concerns of the council and unit owners were listened to, a financing package was designed to cover the remaining \$3.6 million in repairs. The loan agreement also included an annual prepayment option that will allow the strata corporation to pay down a portion of the principal owing each year without penalty, providing additional savings as the complex returns to an operating surplus.

Per the BC Strata Property Act, a strata loan is subject to a $\frac{3}{4}$ vote; when presented at the AGM, the resolution passed the first time through with well over the required number of votes. Owners expressed relief at the option of a monthly payment solution instead of another levy and were excited to complete the work they had already started.

Results:

- Avoided the use of yet another special levy
- Concurrently completing all projects to lower overall costs
- With construction still underway, value of units has already increased 35% this year, an average of approx. \$80,000 in additional personal equity per owner*

* Figures based on year-over-year MLS sales data from Jan. 1, 2016 to Nov. 30, 2017

Summary

With a strata loan, the complex can finish all repairs without the additional strain of another special levy. By simultaneously tackling the remaining projects, the complex saved money through the elimination of piecemeal remediation, uninterrupted workflow, and other budget efficiencies. The loan structure also allows the strata council to maintain other operational expenses and reserve fund contributions. Property values have already increased and are expected to go even higher after all repairs are completed. The options exist to make paying for large-scale capital projects more manageable and less of an up-front burden on owners. Be open to finding a solution that works best for the community. ■

Kelly McFadyen is the Western Canada Account Manager with CWB Maxium Financial. Kelly works directly with property managers and strata corporations to design financing solutions that meet the needs of owners while allowing major capital projects to get quickly and efficiently underway. Most commonly Kelly supports enclosure projects but enjoys working on anything under the repair and maintenance umbrella including roofs, balconies, windows & doors, underground parkades, HVAC systems, elevator modernization, energy retrofits, and more.

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The Importance of Unit Owners Insurance

Most condo unit owners dutifully attend the Condominium Corporation's annual general meeting, doing their best to contribute to the community a condo corporation constitutes. When owners are provided with the Strata's insurance report, some mistakenly believe the Corporation's insurance policy will protect their personal assets in the event of a loss; such is not the case.

Unit owners, whether living in the unit or as an investor, should always make sure their personal assets and liabilities are adequately protected by their own personal insurance policy.

A typical unit owner's policy provides a variety of coverage:

PERSONAL PROPERTY: In general terms, this coverage includes all the content items a unit owner brings into the unit or keeps in a storage locker on premises, such as furniture, electronics, clothing, etc. Most policies will also cover the personal property while it is temporarily off premises, on vacation for example.

ADDITIONAL LIVING EXPENSES: This coverage helps unit owners and their families deal with the extra expenses which can often result if the home is made unfit for occupancy due to an insured loss or damage. Whether it is a fire or significant water damage due to no fault of their own, unit owners may have to move out while their unit is being repaired. In the case of an investment unit, this coverage helps pay the owner's rental income loss due to the tenant moving out.

BETTERMENTS & IMPROVEMENTS: Many unit owners spend considerable money making the unit their own; old carpet is replaced with hardwood flooring, cabinets and counter tops are updated and fixtures modernized to the 21st century. The unit owner's personal insurance policy provides coverage for these items, which are specifically excluded from coverage under all Strata Corporation's insurance policies.

STRATA DEDUCTIBLE ASSESSMENT: More and more Strata Corporations have by-laws in place to facilitate charging back the Strata deductible to the unit owner responsible for a loss or damage. Unit owners or their tenants need not be liable for this significant assessment to be made, in many cases the mere fact the damage originates in the unit is sufficient to make the assessment valid. Strata deductibles can be as low as \$1,000 and as high as \$500,000.



Unit Owner's personal policies cover this risk to a specific limit; owners need to make sure they are fully insured.

It is equally important for Unit Owners to know their Strata Corporation's Earthquake deductible should there be an assessment. This amount will be shared amongst the Strata lots based on individual unit entitlement. The Earthquake deductible is shown as a percentage; usually 10% - 20% of the insured value stated on the certificate of insurance or policy declarations.

PERSONAL LIABILITY:

At home or pretty much anywhere in the world, unit owner's policies also provide comprehensive protection for claims against them for property damage and bodily injury.

Why get personal insurance? Because not getting it is much too risky and expensive!

NOTE: Each unit owner has specific insurance requirements which should be discussed with an insurance broker to ensure the right protection is in place for the right price. To facilitate the process, have a copy of your Strata Corporation's certificate of insurance or summary of coverages for the current policy period at hand. ■

Paul Murcutt is an Insurance Broker working in the real estate sector. He began his insurance career at BFL in 2003 and has worked in various capacities. Today, Paul is a Vice President and Unit Leader in the Real Estate Division running a large team and book of business. His diversified role sees him working in both management and sales in the Property and Casualty insurance field ensuring the highest level of service and client satisfaction is achieved.

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- 700 + unit strata thermo energy and green roof installation
- 200 + unit Whistler strata project that included lobby, hallways and exterior refurbishment
- 150 unit townhouse project that includes new siding, windows, roofing, parkade and carport repairs
- 45 unit condominium renovation that included windows, eaves troughs, roof, siding and painting
- 40 unit recreational townhouse complex acquisition of waste treatment facility and related land
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Electric Cars Are Coming – Is Your Building Ready?

Eve Hou,
Air Quality Planner,
Metro Vancouver



In the past few years, there has been a lot of hype about electric cars in the media, and as a strata corporation, chances are you've had to deal with the issue of electric vehicle charging already. This article explores questions such as: What is this technology and where is it headed? And, what does it mean for condo-dwellers and strata corporations?

What are Electric Vehicles?

Electric vehicles (EVs) are cars that can draw power from a wall outlet. These include battery electric vehicles, which run entirely on electricity, as well as plug-in hybrid electric vehicles, which can 'fuel up' on both electricity from an outlet AND gasoline (typically as a back-up fuel). Traditional hybrids are not considered EVs because they do not have the ability to 'charge up' by connecting to an outlet. This is an important distinction because EVs require infrastructure that hybrids don't – namely, an electricity supply for charging.

Although accessing charging can sometimes be a challenge, EVs offer many advantages over internal combustion engines, which is what is behind their growing popularity. These include:

- ▶ Quieter, smoother ride;
- ▶ Power and performance, instant torque, and better handling;
- ▶ Less maintenance, fewer repairs;
- ▶ Cheaper fuel (electricity is about 1/5th the cost of gas); and
- ▶ Lower environmental impact: (no exhaust emissions and 90% reduction in greenhouse gases).



To encourage their uptake, a number of incentives are available today which make EVs even more attractive:

- ▶ Purchase incentives of up to \$5000;
- ▶ Access to HOV lanes even when driving alone; and
- ▶ Free charging in priority parking spots.

Rapid Rise

For the reasons described above, consumer interest in EVs is growing.

Last quarter, 4% of new vehicle sales in BC were electric or plug-in hybrid. While this number may seem small, what's important is how quickly it is growing. In 2012, there were only 220 electric cars Province-wide. Today, a mere 5 years later, there are almost 7,000! In 2012, there were only a half-dozen makes and models available on the market, whereas today there are approximately 30 models from virtually every major automaker. And these trends are showing no signs of stopping.

A recent survey of attendees at the 2017 Vancouver International Auto Show found that over half of respondents were open to the idea of buying electric for their next vehicle, with approximately one out of ten seriously considering it.

In April 2017, Joel Couse, chief economist for Total, predicted that sales of electric cars will surge from about 1% globally in today's new car market to up to 30% of the market by 2030. More localized forecasts predict that by 2030, there could be as many as 300,000 EVs in BC, and one in 10 vehicles will be electric in this region by as early as 2025.

Condo Challenges

When it comes to refueling, electric cars are less like gas vehicles and more like your cell phone. They typically recharge over a matter of hours – not minutes. This is relatively easy to accommodate because vehicles spend the vast majority of the time parked. In fact, 80-90% of EV charging takes place at home overnight. Where it becomes a challenge is when vehicles are parked for long hours in places where there is no or limited access to power. Shared parking garages in multi-family buildings can be such places.

As a strata council member, you have likely been (or will be soon) approached by residents with requests for access to charging their vehicles. Initially, it will be one or two early adopters, but – if forecasts are correct – within the next decade the volume of requests will grow. Already EV owners and prospective EV buyers are beginning to seek out condos that are "EV-friendly." In the near future it is expected that access to EV charging will be a requirement of most condo buyers, analogous to in-suite washer and dryers.

To address this future expectation, municipalities are beginning to require developers to include EV charging facilities in new buildings. City of Vancouver has been requiring 20% of the parking stalls in multi-family buildings to have a receptacle for EV charging since 2011. Similar requirements are in place in District of North Vancouver, City of North Vancouver and City of Richmond. Additionally, some developers are voluntarily installing EV charging beyond requirements, with a handful providing charging in 100% of the parking stalls and marketing this feature to buyers. But what about existing condos? How can a strata corporation prepare for this transition?

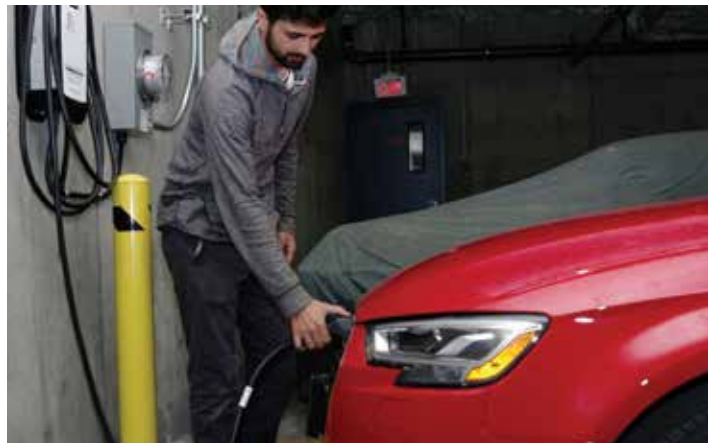


Photo Credit: Brendon James

Learn about the issue

- ▶ Go to EVCondo.ca – it provides information for strata councils and property managers on EV charging, including technical information, costing and resources.
- ▶ Gather a group of 10 or more (property managers, strata members) and request a presentation on EV Charging in Condos by Metro Vancouver staff. We are happy to come and answer questions. Smaller groups who are interested should contact us as well! You can reach us at:

EVInfo@metrovancover.org.

Take advantage of grants and incentives

In 2016 and 2017, the Province launched funding for EV charging infrastructure in multi-family dwellings. Many strata corporations took advantage of these grants, which covered 75% of the infrastructure costs. It is expected that new funding will be available in the near future, and strata corporations should take advantage of these funds. Information about the previous program can still be found here:

www.pluginbc.ca/charging-program/murb

Plan for service upgrades

Many older buildings are already stretched to provide power for the growing number of electrical devices in today's homes. If your condo has reached a stage where it requires major electrical work or a service upgrade, consider adding capacity for EV charging as part of your project. A bit of future-proofing now can save you lots of money down the road.

... continued on page 18

... continued from page 17

Consult with the experts

With the growth of EV charging in the Metro Vancouver region, a number of electrical contractors are quickly becoming experts in this field. You can find a list of EV charging installers with condo experience on the Plug In BC website:

www.pluginbc.ca/charging-program/murb/manuf_list/ ■

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Eve Hou has worked as an air quality and climate change planner for over a decade with Metro Vancouver Regional District. She currently leads up the electric vehicle file, and became an EV owner herself last year (and lives in a condo!). Eve is a registered professional planner and has a Master's degree in Community and Regional Planning and a Bachelor's degree in Economics, both from UBC.

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... Case Law 2 continued from page 9

[69] These two provisions should be given a consistent meaning in light of the common legislative goal that underlies both. It would make no sense to award actual reasonable legal costs to a strata corporation that takes action to remedy the contravention of a bylaw or rule, but limit the strata corporation to party and party costs where the strata corporation is compelled to take action under ss. 116 and 117 to recover strata fees from delinquent owners.

Going forward, owners who do not pay what they should, will be paying a lot more for that error; and conversely, no one else will be penalized for the bad behaviour of some. This is very good news. ■

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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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.

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... continued on page 22

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... continued from page 21

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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

2018 Dates To Be Announced

- ▶ 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:

- | | |
|-----------------|--------------------------------------|
| ▶ February 17th | Half-Day Seminar, Capital Planning |
| ▶ April 12th | Evening Seminar, Conflict Management |
| ▶ May 26th | Half-day Seminar, Bylaws That Work |
| ▶ TBA | 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** dates for 2018 to be announced.

SUPPORT



CondoSTRENGTH Program

You Are Not Alone.

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

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

RECOGNITION



Strata of the Year Award

Your Strata Could Be The Next Winner!

- ▶ An opportunity for well managed stratas to be recognized and rewarded for their achievements.
- ▶ Nominations accepted from July 1st, 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