

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
Condominium
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Vancouver Chapter

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condominiums

Winter 2019

THIS ISSUE

- ▶ New Building Warranties ...
their level of importance,
and the ins and outs
- ▶ Working Your Way Through
the Haze: Legalization of
Cannabis and its Impact on
Strata/Condominium Insurance

PRESIDENT'S MESSAGE

Paul Murcutt,
President, CCI Vancouver



While it seems the rest of North America has been enduring a polar vortex, for the most part Vancouver has seen mild temperatures and early signs of spring! The winter for the CCI is typically slower than with other seasons. People are busier with the year-end, planning for the year ahead and let us not forget the main event – Christmas. As we start 2019 we do so with a new energy and focus. Our board of directors have continued to meet to discuss our strategic plan for the year ahead. Our chapter has four main committees. Education, Membership, Communications and Finance.

Our Education committee plans and arranges the events for the year. While we unfortunately had to postpone our February educational session, Strata Wind Up, due to the weather, we will be rescheduling that soon. Stay tuned for details. We then have a Lunch and Learn, an Evening session and a Half-day session planned that will take us to the end of our fiscal year in May.

Our Membership committee has been hard at work creating a new members benefits package and are embarking on a membership drive offering \$25 memberships to new members! They also will be looking to renew existing memberships, so expect to see your renewal package in the coming months.

The communications committee spend a lot of their time collecting articles and putting this great newsletter together. If you have an article for consideration, please do not hesitate to send it onto us. We are always on the hunt for great strata educational content.

Finally, the finance committee keeps us heading in the right direction so we can continue to provide the industry with access to much needed advice, guidance, support and education.

We look forward to seeing you at one of our upcoming sessions.

Paul Murcutt – President CCI Vancouver

Welcome New Members

- ▶ Adventurers West Riverside
- ▶ Strata Plan BC 4182
- ▶ Strata Plan EPS 4052
- ▶ Strata Plan LMS 2919
- ▶ Strata Plan NW 2636
- ▶ Strata Plan VR 0198
- ▶ Strata Plan VR 0752
- ▶ Gateway Mechanical Services Inc.
- ▶ Strata Plan EPS 2633
- ▶ Strata Plan LMS 1564
- ▶ Strata Plan NW 0004
- ▶ Strata Plan NWS 1245
- ▶ Strata Plan VR 0286

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

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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:

Spring – March 15

Summer – June 15

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

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or **contact@ccivancouver.ca**

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

*By Phil Dougan,
Citadel Law Corporation*



Everything You Need To Know About Strata Living

Depreciation Reports

A Depreciation report is a key document for any strata corporation. In summary, it is a report created, usually by an engineer, reviewing all of the 'systems' of the building, the useful life of those systems, and the replacement or repair schedule and costing of each system. Thus, everything from the roof to the foundation, from windows to boilers, from garage doors to sprinklers, is given a 'check-up' and the useful life of the components set out in a timeline. Then, when something needs to be replaced, an estimated budget of that repair or replacement cost is added into the timeline.

This is of course very useful information for current and future owners, so they have a sense of the 'health' of their building. It also assists banks and insurance companies as to the relative risk the building poses to their respective investments in the building. Theoretically a bad depreciation report, not responded to aggressively by a strata corporation, could mean a loss of insurance or mortgage coverage.

The primary purpose of a Depreciation report is however financial. The report is intended to allow owners to 'save up' for future major

costs over a longer period of time, rather than receiving large demands for special levies for many thousands of dollars, that have to be paid within two or three months of the passing of a levy vote. Research shows that often large special levies are the reason many people lose their homes to foreclosure.

The Depreciation report allows owners to contribute monthly to the CRF (contingency reserve fund – the savings account of the strata) to 'save up' for the million dollar repair. Even if the strata as a whole decides not to institute a corporate saving regime by way of the CRF contributions, individual owners know the expense will be coming, so can save funds themselves and not be caught out by a large demand for funds payable in short order.

While stratas can opt out of commissioning a Depreciation report each year, we strongly recommend a report be commissioned, be updated regularly, and most importantly, it be acted on. Stratas without Depreciation reports risk being asked by banks, insurers and purchasers 'what are you hiding?' if they do not get a report. ■

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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Update On Dog Size Bylaws

The Owners, Strata Plan XX 1234 v. D.N. et al, 2019 BCCRT 284

In this decision, the CRT considered fines imposed by a strata corporation with respect to a dog who exceeded the strata's height restriction bylaw (14 inches at the shoulder). The owner argued that she required the companion animal to assist her with a certain mental health condition, even though the dog was not certified as a service dog pursuant to the Guide Dog and Service Dog Act (BC). In support of her response, the owner provided evidence from a psychologist that she suffered from acute agoraphobia.

The psychologist's evidence indicated that taking care of a dog would encourage her to go outside several times a day, which would be helpful in treating her condition. However, the psychologist did not specifically say that the owner required a large dog (over a smaller dog which would have complied with the strata's bylaws). The owner applied to have the dog trained to become a service dog, and the Ministry confirmed that the owner met the definition of a "person with a disability" under that Act. Unfortunately for the owner, however, at the time of the claim, her dog was too young to take the required test. In the meantime, the strata continued to fine her for her non-compliance with the bylaws.

The owner tried to argue that the bylaw was too vague as it was difficult to establish where would be the 'shoulder' of an animal, and that height was not a sensible factor to consider as opposed to behaviour, however the CRT found that this was an objective standard and was unable to interfere with the strata's democratic selection of this criteria in a pet bylaw.

In order to reasonably accommodate the owner's disability, however, the CRT found that the strata must give the respondents a reasonable opportunity to complete the dog's certification as a service animal, setting a timeline for the dog to complete its training and assessment once it is of the proper age. Whereas some previous CRT decisions have indicated that the fact an animal is not certified as a service animal does not "end the matter", in this case the CRT found that since a smaller dog which fit within the height restrictions would have provided the same advantages identified by the psychologist, if the dog did not receive certification it was not unreasonable for the strata to require that the dog find another home.

The CRT also declared fines imposed by the strata with respect to the dog's height, and several incidents involving the dog being let off leash, to be invalid because the strata did not follow the correct procedure for imposing them (see related article in the Fall Newsletter: The Anatomy of an Improperly Imposed Fine).

... continued on page 6

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Update On Hoarding

Weinrauch et al v. The Owners, Strata Plan NW 3119 et al, 2019 BCCRT 257

In this case, the applicants were the owners of three strata lots, seeking an order compelling their strata corporation to enforce hoarding bylaws against a neighbour and declarations that the unit was unsanitary, a fire hazard, and emitting foul odours. The strata argued that it had not been established that the bylaws had been breached. After 2.5 years of complaints, the situation had not been properly investigated and no fines had been laid.

The CRT found that the obligation to determine if the respondent owner has contravened the strata bylaws, in a hoarding context, is the strata's obligation after a reasonable investigation. The strata could not rely on the fact it had not inspected to not enforce these bylaws. Because of the implications for fire safety, the CRT also stated that it was a matter of possible interest to all owners, and was not trivial. Accordingly, although it was premature to determine that bylaws had been breached, the strata had failed in its duty to properly enforce them. An inspection was ordered.

Note that, in this case, there was no evidence before the Tribunal that the owner was suffering from a mental health issue in connection with the hoarding. The CRT noted that therefore there were a number of other issues it did not consider.

Update on Strata Administrative Compliance

Ciesek v. The Owners, Strata Plan VIS 4542, 2019 BCCRT 312

In this dispute among the owners of a 3-strata lot development, an owner brought a number of claims against his strata corporation, including some for non-compliance with the Strata Property Act (BC) (SPA). Most notably, he asked the CRT to order that the strata corporation provide him with copies of the annual financial reports from 2010 through 2018. However, despite the clear obligation to prepare and distribute such reports under the SPA, the CRT was not willing to order the strata to prepare the past annual financial reports for the owner. On the evidence that the reports did not currently exist, the tribunal stated that it would be inconsistent with its mandate to fairly, quickly, and economically resolve disputes to now require the council to prepare annual reports for years past.

Furthermore, the CRT declined to order any future compliance with the SPA in terms of financial administration, as "it would be meaningless". Since the strata is already obligated to act and conduct its business in accordance with the SPA, and the owner should bring claims as necessary to cause the strata to comply, rather than waiting years to do so.

This decision underscores the tribunal's practical approach to strata corporations — especially small ones — adhering to the technical requirements of the SPA. Owners whose strata corporations are not taking the proper steps, even those clearly set out in the legislation, must object and use their possible remedies in a timely manner if they wish to ensure that the strata corporation will be required to follow through. ■

LEGAL CORNER

STRATA CASE LAW IN BC

By Amanda M. Magee, Associate
Lesperance Mendes Lawyers



Case Law 1

BC Supreme Court Confirms That Commercial Use Restriction Bylaws are Enforceable and Not an Unreasonable Restraint on Trade

In a recent decision *The Owners, Strata Plan LMS1590 v. Yip*, 2018, the BC Supreme Court confirmed that commercial use restriction bylaws are valid and enforceable.

The case stemmed from a dispute between the owner and tenant of a commercial strata lot in the Richmond Public Market. The Market, which is a strata corporation comprised of commercial strata lots, had a use restriction bylaw in place that required each strata lot to conduct the business or trade specified in the purchase agreement between the developer and initial purchaser of the strata lot. To conduct any other type of business or trade, the owner would have to obtain approval from the strata council for a change in use.

In this case the owner's strata lot was restricted to the sale of "ginseng products and ginseng-related gifts". When the owner's tenant expanded the products sold in his store beyond ginseng products, the Market began fining the owner for a contravention of the use restriction bylaw.

The owner argued that the use restriction bylaw was unenforceable because it violated the common law rule against unreasonable restraint in trade. Section 121(1)(a) of the Strata Property Act provides that a bylaw is unenforceable to the extent that contravenes the Act, the regulations, the Human Rights Code or "any other enactment or law." The owner argued that this includes common law rules, and that by violating the common law rule against unreasonable restraint in trade, the bylaw must be unenforceable. The Court disagreed, and found that the use restriction bylaw was a legitimate and reasonable restraint on trade. In reaching this decision the Court explained that it was commonplace for mall leases to contain use restriction clauses that are designed to avoid competition between stores within the mall, which can hurt the mall's overall success.

The owner further argued that the use restriction bylaw was unenforceable because it restricted the right of an owner to freely lease a strata lot. Section 121(1)(c) of the Act provides that a bylaw is unenforceable to the extent that it prohibits or restricts the right of an owner to freely sell, lease, mortgage or otherwise dispose of his or her strata lot. The Court found that while the use restriction bylaw may have made the strata lot less desirable to potential tenants or purchasers, it did not actually prohibit or restrict the transfer or lease of a strata lot, and was therefore not unenforceable.

Having rejected both of the owner's arguments, the Court found the owner to be in contravention of the bylaws.

Strata corporations should keep in mind that while commercial use restriction bylaws are enforceable, they must still be passed by the requisite $\frac{3}{4}$ approval of the owners. In the case of a mixed-use strata corporation (i.e. both residential and commercial strata lots), section 128 of the Act requires any bylaw amendments to be passed by separate $\frac{3}{4}$ vote resolutions of the residential and commercial owners. This means that even if the commercial strata lot owners are vastly outnumbered by the residential strata lot owners, they will still have a say in what commercial use restrictions are passed that would affect their business. ■

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

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LEGAL CORNER

STRATA CASE LAW IN BC

Case Law 2

Don't Use a Sledgehammer to Kill a Fly -

Semmler v. Strata Plan NES3039, 2018 BCSC 2064

This case involved the interpretation of a strata corporation bylaw regarding short-term use of a strata lot. The Semmlers owned three strata lots in a recreational condominium development in Edgewater, BC, and had been using these strata lots since approximately 2010 for offering short-term vacation accommodations. In 2011, they hired a rental management company to assist with managing the properties.

At the time that the Semmlers purchased these strata lots, the strata corporation already had a bylaw which prohibited the use of strata lots for "business purposes". Later on, in 2015, the strata corporation passed a bylaw which restricted rentals of strata lots for periods less than 30 days.

The strata corporation attempted to fine the Semmlers for their alleged contravention of the bylaws. In particular, the strata corporation tried to establish that the Semmlers were using their strata lots for business purposes by offering them for vacation accommodations. The strata attempted to borrow an argument from tax law, that 30 day rental equated to business income, while rentals greater than 31 days were passive investment income. They also argued that this activity was not permitted within the zoning.

In response, the Semmlers sought an order that the rental restriction bylaw was significantly unfair to them or, in the alternative, that the bylaws were inapplicable to the short term licences they grant to people to use their property, and a return of fines levied under the bylaws pursuant to the Law and Equity Act.

Despite the usage of a strata management company, the court found that the Semmlers were just individuals getting passive investment income. This was not 'operating a business out of a strata lot' and therefore did not run afoul of the business use bylaw or the zoning restrictions.

By Lisa Frey,
Lawson Lundell, LLP



Furthermore, the bylaw only prohibited rentals of less than 30 days, not licenses of less than 30 days. Since the rental management company on behalf of the owners were providing license agreements and not rental agreements, the court found that these agreements were unaffected by the rental prohibition.

The court even went a step further finding that since the imposition of the rental restriction to address concerns about some of the guest's behaviour, was too heavy handed.

"The disturbances originating with the guests have been exaggerated and the effect of the bylaw is to take a sledgehammer to kill a fly."

On this basis the court found that even if it was wrong that the bylaw did not apply, the Semmlers had a reasonable expectations that they could use their properties in that way and the passage of the rental restriction bylaw was significantly unfair.

One of the key lessons arising from the case is to carefully word ones' bylaws and consult a legal professional when attempting to prohibit a particular activity as a minor wording difference could render the bylaw ineffective. The other key lesson is that strata corporations should, when creating a bylaw to address a particular problem, make efforts to ensure such a bylaw is specific and proportionate to the problem — using a swatter rather than a sledgehammer! ■

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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British Columbia

625536 B.C. Ltd. v. Strata Plan LMS4385 (BC Supreme Court) September 20, 2018

Strata fees were not retroactive and had been validly assessed

The strata corporation had levied strata fees, for the fiscal year beginning July 1, 2017, with increased payments commencing in October 2017 based on a budget approved at the AGM held in August 2017. The notice of the new fees also levied a lump sum adjustment "representing the difference between what had been paid for the months of July, August and September 2017 and what would have been paid for those months had the 2017 Budget been approved prior to July 1".

Some of the owners alleged that this was "retroactive assessment of strata fees" which they said was not permitted by the Strata Property Act.

The Court held that the strata corporation's budgeting and assessment of strata fees was proper (and was not retroactive). The Court said:

There is no requirement in the Act that strata fees be paid in equal installments. Plainly, the schedule of strata fee payments can require equal monthly installments, or installments that include adjustments to make up a deficit between what was paid and what would have been paid had the budget for the current fiscal year been in place at the commencement of the current fiscal year. Fees for one month may be different than for other months.

The Strata could easily have included the adjustments as part of the fee schedule included in the 2017 Budget materials which were sent to the strata owners and approved at the AGM. Instead, it merely set out in the materials a schedule showing what each strata unit's monthly fees under the 2017 Budget would be, based upon the unit entitlement. Alternatively, the Strata could have convened a meeting to approve a special resolution imposing a special levy for the adjustment: Act s. 108.

Instead, the Strata simply sent the petitioners (and the other owners) an invoice which included the adjustment in question. The strata fees that were invoiced were precisely those that had been approved at the AGM. Because the Strata's invoices for the months of July, August and September 2017 were based upon the previous fiscal year's fees, the October 2017 invoice simply included the deficit that had not been invoiced for those earlier months. The Strata could not have invoiced for the deficit any earlier than it did because the new fees had not been approved until the AGM. The deficit only became due and payable after the AGM as a result of the 2017 Budget being approved.

In my view, a full answer to the petitioners' argument is this: the 2017 Budget did not establish a new fee schedule for only the period after the AGM – it established a new fee schedule for the entire fiscal year, commencing July 1, 2017. The October 2017 invoices did nothing more than require payment of the fees that were approved by the owners.

... Condo Cases Across Canada continued on page 10

Semmler v. The Owners, Strata Plan NES3039 (BC Supreme Court) November 23, 2018

Short-term licenses did not contravene corporation's by-laws and did not trigger Section 146 of the Strata Property Act

In this recreational strata property, the petitioning owners hired a management firm to arrange for short-term occupancies of their strata lot (during times when the lot was not being used by the owners). The strata corporation argued that these occupancies contravened the corporation's by-law prohibiting short-term rentals (ie. rentals of less than 30 consecutive days) and/or the corporation's by-law prohibiting commercial uses.

The Court held that:

- (a) *the particular occupancies were 'licenses' that did not contravene the short-term rental by-law.*
- (b) *the use was also not a business use and accordingly did not contravene the by-law prohibiting business uses.*

The Court also held that Section 146 of the Strata Property Act (requiring that landlord's supply to the strata corporation Form K's signed by their tenants) does not apply to such short-term licenses.

The Court said:

(Previous) cases establish the following principles, which I agree with:

- a) *A person may occupy a strata lot under a tenancy agreement or a license agreement.*
- b) *A tenant is a person who rents all or part of a strata lot and who, through that arrangement, receives an interest in the property including exclusive possession of the premises.*
- c) *An occupant is a person other than an owner or tenant who occupies a strata lot.*
- d) *A licensee is an occupant but not a tenant.*
- e) *Provisions of the Strata Property Act which relate to tenants and tenancies do not apply to licencees.*

I find that the agreements Cobblestone enters into with guests are license agreements. The agreements permit guests to use the property on a short-term basis, and do not purport to convey an interest of any kind in the property to the guests. I find there is no intention to create a tenancy in the license agreements.

Alberta

Condominium Corporation No. 9312374 v. Aviva Insurance Company of Canada (Alberta Court of Queen's Bench) September 19, 2018

Damage to parking area not covered by corporation's property insurance

The condominium corporation hired a contractor to provide "parking rehabilitation and maintenance work to the parking surface in the parkade area" of the complex. The work involved cutting into the membrane of the parkade surface. The contractor cut too deeply, causing damage to the structural integrity of the parkade. The question was whether or not that damage was covered by the corporation's property insurance policy.

The insurance policy was an "all risks" policy that included an exclusion for faulty or improper workmanship. However, the exclusion said that the exclusion "does not apply to loss or damage caused directly by a resultant peril not otherwise excluded" in the policy.

The lower Court had held that the structural damage was not part of the contractor's work (or in other words went beyond the contractor's work) and accordingly was "resultant" damage covered by the policy. On appeal, the Court of Queen's Bench found that none of the damage was covered by the policy, and reversed the lower Court decision. The Appeal Court said:

In the case before me, however, the exception to the exclusion is that the faulty workmanship exclusion does not apply to loss or damage caused by a resultant peril not otherwise excluded; that is to say, loss or damage caused by an otherwise insured peril. So, for example, if the faulty workmanship caused a fire, damages arising from faulty workmanship which caused the insured peril of fire would be covered by the policy by virtue of the exception to the exclusion. However, if no insured (ie not excluded) peril occurs, then the exception to the exclusion does not apply.

This is the plain reading of the policy wording. No ambiguity arises in either the exclusion or the exception to the exclusion.

No such resultant insured peril occurred in this instance. The Respondent argues that damage to the structural integrity of the building is itself a "resultant peril", since it has not been specifically excluded from the "all risks" insuring agreement. However, damage is not a peril; it is a result. This argument by the Respondent must accordingly fail.

Editorial Comment: The Court seems to be saying that the damage in this case did not result from a new peril, but rather was part and parcel of the same risk, namely the risk of faulty work by a contractor. So in other words, the Court seems to be saying that the exception in the exclusion did not apply in this particular case.

Ontario

Thunder Bay Condominium Corporation No. 15 v. Ewen (Ontario Superior Court) October 26, 2015

Court enforces no smoking by-law and subsequent rule placing a time limit on grandfathering

In 2009, the condominium corporation passed a by-law to prohibit smoking in the units, but with grandfathering of existing smokers. The grandfathering was permanent in the sense that it didn't include any time limit. In 2015, the condominium corporation passed a rule to place a time-limit on the grandfathered smoking (in terms of smoking in the units).

The long-time owners of one of the units, who were smokers, challenged the rule. They argued that a rule could not properly amend a by-law. They also argued that the rule was unreasonable.

The Court held that the by-law was properly passed in accordance with Section 56 of the Condominium Act, 1998; and also that the rule was valid (including the time limit imposed upon grandfathered smoking in the units). The Court said:

Looked at together and in conjunction with sections 56, 58 and 117 of the Act, I am of the opinion that the intention and purpose of the impugned Rule and its general application are consistent with the By-law – both the By-law and Rule are intended to make the entire condo complex smoke free in order to promote the safety and welfare of the owners and to prevent unreasonable interference with the use and enjoyment of the common elements and units. ■

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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New Building Warranties ... their level of importance, and the ins and outs

Strata Councils of newer buildings/complexes have many important tasks and responsibilities; however, there is potentially no task or responsibility more important than ensuring that warranty reviews are completed and warranty claims are submitted, prior to the expiry of each of the respective Common Property warranties (i.e., the 15 month, 2 year, 5 year, and 10 year warranties mandated by the BC's Homeowner's Protection Act and its Regulations). The new home warranties protect homes from construction defects, such as materials and labour, building envelope, mechanical, plumbing, and electrical distribution systems, and structural defects, and help ensure that owners receive the best value from their investment as possible. The following is a breakdown of the coverage of each Common Property warranty and the benefits of completing the respective warranty reviews.

15 Month Warranty:

The 15 month warranty is arguably the most important warranty for a new building/complex as it has the most coverage out of all the new home warranties (i.e., the Strata would likely be able to get the majority of deficiencies addressed under the 15 month warranty and receive the best value for their investment in a warranty review report). The 15 month common property warranty covers all defects in materials and labour, including aesthetic deficiencies (e.g., paint or concrete splatters, poorly completed finishes, etc.), sound transmission issues between suites, and between suites and common areas, interior common area deficiencies, etc., and violations of the Building Code.



Construction material splatters, potentially 15 month warranty item

2 Year Warranty:

The 2 year warranty has less coverage than the 15 month warranty (i.e., the 2 year warranty only includes coverage for any defects in materials and labour supplied for the exterior cladding, windows, doors, and caulking that may lead to detachment or material damage to the common property, any defects in materials and labour supplied for the electrical, plumbing, heating, ventilation, and air conditioning delivery and distribution systems, and violations of the Building Code). It is still very important for the Strata to complete a 2 year warranty review, since many deficiencies that may not have been apparent at the 15 month mark may now be apparent (e.g., plumbing/mechanical systems may be pushed harder, and any deficiencies would likely become more apparent, closer to the 2 year mark as more people have moved into the building/complex or issues with caulking or cladding securement may be more apparent at the 2 year mark as they have had more exposure to the elements).



Openings in building envelope, potentially 2 year warranty item

5 Year Warranty:

The 5 year warranty only covers building envelope deficiencies, including a defect which permits unintended water penetration such that it causes, or is likely to cause, material damage to a new home. Although the 5 year warranty coverage is much narrower than the 15 month and 2 year warranties, it is still important for the Strata to complete the 5 year warranty review as any building envelope water ingress issues will likely not be covered by the Strata or the individual suite/unit owner's insurance as it would be considered seepage (i.e., over a period of time), which is typically excluded from home insurance policies. This is different from a pipe leak/burst for example (i.e., sudden), which typically would have insurance coverage.



Leakage, potentially 5 year warranty item

10 Year Warranty:

The 10 year warranty covers structural defects. The warranty defines structural defects as defects in the material and labour that results in the failure of a load bearing part of the new home and any defect which causes structural damage that materially and adversely affects the use of the new home for residential occupancy. Structural deficiencies are not common; however, if there are any structural deficiencies, the resulting repairs could be cost prohibitive for a Strata and the conditions may be potentially dangerous for residents/occupants in the meantime (i.e., there may be added liability issues for the Strata). This is why it is recommended that Stratats complete the 10 year warranty review, even if there are no apparent issues to the Strata. Even if the 10 year warranty review does not reveal any potential structural deficiencies, the Strata can then have the peace of mind knowing that a third-party professional has reviewed the property and determined that there were no structural deficiencies justifying a claim against the warranty.



Structural cracking, potentially 10 year warranty item

... continued on page 14

TOP 10 TIPS WHEN DEALING WITH NEW HOME WARRANTIES:

- 1 Maintain a good working relationship with the Developer/Builder, since most of them want to be reasonable, do a good job, and maintain a good reputation... the Strata should be reasonable as well. It is easier to work with the Developer/Builder rather than against the Developer/Builder (i.e., be on good terms, have open communication, have mutual respect, etc.).
- 2 Warranties typically expire at 12:01am on the date of expiry, so in essence they expire the day before the stated expiry date.
- 3 Do not wait until the last minute to review the building(s) for potential warrantable defects (Note: If retaining a firm to complete a warranty review, begin the process 4 months before expiry of the warranty, giving 1 month to solicit proposals and award the project, and 3 month to complete the review, including questionnaire, gaining access to suites/townhouse units, and submitting draft and final report... less time means that a full scope of review and reporting may not be possible, or at a reasonable cost).
- 4 Any deficiencies thought to be possibly warrantable should be submitted in writing to both the Developer/Builder and Warranty Provider, in a form known to be acceptable to the Warranty Provider, as soon as known (duty to report in a timely manner/to minimize damage).
- 5 Check how the Warranty Provider wants a claim to be submitted against their warranty, i.e., each warranty provider is somewhat different (Note: Some warranty providers only want to see a list, sequentially numbered, no photos, no background, and some want a separate list per warranty certificate, so if in a 10 block townhouse complex if each block has a separate warranty certificate, 10 separate reports/deficiency lists may be required).
- 6 Identify the specific location(s) of a defect, i.e., building, suite/townhouse unit, elevation, floor; otherwise the Warranty Provider will likely respond with "Not Warrantable" due to insufficient information.
- 7 Warranty Review Reports are for the Warranty Provider, the Developer, and the Strata which is why it is helpful to have photos (i.e., for easier Developer/contractor/Strata reference), though many Warranty Providers want text-only submissions. Make sure to take this into consideration when completing tip #5 above.
- 8 Always follow-up in writing to all parties to create a paper trail, particularly if the Developer or Warranty Provider commits to anything verbally.
- 9 Need to notify the Warranty Provider and Developer/Builder before undergoing repairs, even for emergency repairs.
- 10 Notify the Warranty Provider when repairs are completed, if not already done so by the Developer, so that extended warranty coverage (typically 1 year) can be confirmed.

On a final note, be prepared for a response from the Warranty Provider of "Not Warrantable", particularly if the above tips are not followed. If a defect has been deemed not warrantable by the Warranty Provider, if Tip #1 has been adhered to, there is a good possibility that the Developer/Builder will correct the defect(s) in good faith, this assumes both parties have been reasonable and may require some negotiations. If all else fails and both parties are at odds, as a last resort there is the ability to appeal the Warranty Provider's ruling and/or litigation, but you should hope to never go here since no party seldomly wins in such a situation. ■

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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.



Working Your Way Through the Haze: Legalization of Cannabis and its Impact on Strata/Condominium Insurance

On October 17, 2018 the Canadian federal government legalized the use of non-medical cannabis. Bill C-45, the Cannabis Act, creates a new national framework that allows adults to possess and consume a regulated supply of cannabis. While many will be lighting up in celebration, there are a number of considerations for strata/condo communities.

British Columbia, Alberta and Ontario will align with the federal legislation and will allow adults to grow up to four cannabis plants and allow consumption at a person's residence.

Consumption in a Strata/Condo – "What Risk?"

Consumption is a big issue. Although many owners and tenants are concerned about the possibility of the unit next door shrouding the building in a marijuana haze, consideration should also be given to cannabis vaping and edibles. A number of corporations have already dealt with this by amending their by-laws to restrict cannabis consumption much the same way they do for smoking — but with the inclusion of vaping and edibles.

Insurance Considerations

Smoking cannabis at home is likely to carry the same property insurance risk as tobacco smoking does, and we have yet to see the industry react to the pending legislation. This said, one could predict that at some point in the future, insurance companies may want to underwrite the risk and could start to ask additional underwriting questions to set out premiums.

From a liability standpoint, homeowners should be careful especially if others are consuming cannabis in their unit. What if during a party someone ate a cannabis cookie unbeknownst to them and had medical distress or got in an accident while driving home after smoking cannabis? This puts additional liability on the host.

Cultivation – "Let's Get Growing?"

Adults will be allowed to grow up to four (4) plants per household. From the experience of large scale grow operations, there is the assumption (right or wrong) that growing plants will add moisture in units, which could lead to mould and condensation issues. The risk assessment starts to get even trickier when you consider the powerful heating and lighting equipment used to make the plants grow quicker and taller. Many condominium communities across the country have addressed this issue by adding a strict 'No Cultivation' by-law.

Insurance Considerations

While the question of whether growing plants in your unit can cause additional moisture and condensation is under debate, your insurance policy is clear regarding how it responds to damage. Some strata and condominium policies include an absolute mould exclusion, and while others can include damage from mould, that damage has to originate from an insured peril. This essentially means that most, if not all strata and condominium insurance policies will exclude mould and rot damage as a result of the cultivation of cannabis. This will obviously have a big impact in the decision making process when people are considering growing cannabis in their home.

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Moving Ahead

As the legislation takes effect, a challenge regarding both consumption and cultivation in strata and condominium buildings will be regulating usage and dealing with accommodation. I suspect the Civil Resolution Tribunal (CRT) here in BC and the Human Rights Tribunal (HRT) will see a peak in disputes as communities navigate their way through these complex situations.

Conclusion

Because of the real risks associated with cannabis consumption and cultivation the insurance community will likely still consider cannabis a 'high risk' activity in the home. It may only be a matter of time before insurers launch independent reviews on the risks associated with use and cultivation, but until then we recommend your community take the following approach:

- Gather information and discuss with your broker how your strata/condo insurance policy will address any posed risks. For the most part, it will be business as usual until insurance companies assess the risk.
- Meet with the owners to get a sense on how your property will want to consider addressing consumption and cultivation.
- If your building will regulate cannabis use, get some legal help to develop by-law wordings.
- Message any changes to all owners.

We are sure that the legislation will continue to generate interest and so we will keep you up to speed on any insurance related developments. ■

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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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.

CondoSTRENGTH

Program for Strata Councils

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

CondoSTRENGTH is a program to be offered by CCI-Vancouver through which strata council members can draw on one another's wealth of knowledge, experience and support, to help 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 and 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.

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Evening Strata Educational Seminar

Topic: CRT Update

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**Find out more at ccivancouver.ca
CCI Membership**



Strata Council Members have the responsibility to govern and manage their Strata Corporation properly and effectively. Each day they are called upon to make important business decisions that affect the lives of all residents in their strata. As members of CCI Vancouver, Strata Council members are empowered to make informed decisions that will help them to successfully manage their Strata Corporation.



Advising Strata Corporations and Owners About:

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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.

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* *Strata Management Company Business Partner Members are not eligible.*

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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:

- | | |
|------------------|-----------------------------------|
| ▶ March 14, 2019 | Lunch and Learn, Asbestos |
| ▶ April 18, 2019 | Evening Seminar, CRT Update |
| ▶ May 11, 2019 | Half Day Seminar, Complex Stratas |

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

Subscribe to
CCI Vancouver E-Newsletter



CCI Vancouver Chapter

JOIN



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

LEARN



Condo 101 Course

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

To Be Announced

SUPPORT



CondoSTRENGTH Program

You Are Not Alone.

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

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

RECOGNITION



Strata of the Year Award

Your Strata Could Be The Next Winner!

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

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