



## UPDATE ON THE CIVIL RESOLUTION TRIBUNAL

### What is “Asynchronous Justice”?

On March 15, the B.C. government appointed an acting chair to start work on B.C.’s new Civil Resolution Tribunal, Canada’s first-ever online tribunal that will help citizens resolve strata and small claim disputes.

The new chair is Cheryl Vickers, who has served as chair of the Property Assessment Appeal Board since 2003. She has also served as chair of the Surface Rights Board, formerly called the Mediation and

Arbitration Board, since 2007.

Vickers was active in the development of the British Columbia Council of Administrative Tribunals. She obtained a law degree from the University of Victoria and was called to the B.C. bar in 1985.

Over the next six months, the new chair, Cheryl Vickers, will do the foundational work required to get the Civil Resolution Tribunal up-and-running. She will lead ongoing

consultations and the development of the tribunal’s processes, rules and technology. She is fully committed to having the CRT functional by the fall of 2014.

The Civil Resolution Tribunal will offer a full array of online tools, available 24/7, to help British Columbians solve common strata and small civil claims. The independent tribunal will provide families, small business owners, the strata community, and others with a convenient, speedy and cost-effective alternative to going to court.

This project is part of the government’s plan to modernize the justice system through the greater use of alternative dispute resolution techniques and sophisticated online tools. Alternative dispute resolution includes such things as party to party negotiations, a neutral case manager to facilitate a settlement, and where necessary the ability to get a binding decision.

A term used to describe the online system is “asynchronous justice”. What this means is that parties in a dispute can independently launch

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# Strata Insurance – A lawyer’s perspective

By Jamie Bleay



Jamie Bleay

Dating back some 57 years statutory requirements have been in place for strata corporations to obtain and maintain insurance on buildings, common facilities and any insurable improvements owned by a strata corporation to their replacement value against fire and perils that were usually the subject of insurance in respect of similar properties and against other perils, including liability, to the amount a strata corporation considered advisable. This type of language dates back to the days of the Strata Titles Act (per sections 19(1)(a) and section 30)) and the Condominium Act (per section 54).

Various professionals play various roles when it comes to strata insurance. There are brokers negotiating for the necessary insurance coverage and appraisers who are retained to identify what the full replacement value is. There are the adjusters who are called on (by strata corporations and owners/tenants) when insurance claims are filed and the restoration companies who

are hired to facilitate the cleaning up of damages caused by an insured peril. Then of course there are the lawyers who are retained when it comes to dealing with and defending claims against strata corporations by owners/occupants subjected to property damages and losses, or to try to negotiate coverage in situations where coverage has been initially denied and or to pursue the recovery of insurance deductibles. Recently it also appears to be a growth industry for the insurance industry as premiums and deductibles, especially for water damage claims, are rising at an alarming rate.

A “day” in my life when it comes to strata insurance matters either involves phone calls or e-mails from a strata manager advising me that someone has injured themselves in a strata building (such as a slip and fall), an owner’s vehicle has been damaged by a defective overhead gate or their client’s strata building has just experienced a significant amount of water leakage from a strata lot and water damage to strata lots and common property has happened. I am usually asked for one or more of the following:

- A legal opinion on the strata corporation’s liability/responsibility for the damages/

losses that have been reported;

- Who may be responsible for the costs of the resultant damage and/or the strata corporation’s deductible;
- Can the strata corporation charge back the cost of the insurance deductible;
- Does the strata corporation have to file an insurance claim for the damages/losses that have happened; and
- How much will it cost to recover the insurance deductible?

My answers and advice as legal counsel may vary depending on the type of claim involved. However sometimes it is evident from the e-mail or the conversation that the insurer has not yet been put on notice and is not aware of the claim. Whatever you do when it comes to insurance claims be sure that one of the first things you do is to put the insurer on notice of the claim.

## THE STRATA PROPERTY ACT:

For me and my clients the starting point when it comes to strata insurance and insurance claims is the Strata Property Act (the “Act”). So what does the Act say about insurance?

*Continued on page 3*



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## Strata Insurance - A lawyer's perspective

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First off strata corporations are required by section 149(1) of the Act to obtain and maintain property insurance for:

(a) common property,  
(b) common assets,  
(c) buildings shown on the strata plan, and  
(d) fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the original construction on the strata lot.

(2) For the purposes of subsection (1) (d) and section 152 (b), "fixtures" has the meaning set out in the regulations.

Subsection (1) (d) does not apply to a bare land strata plan

Section 149(4) of the Act says that property insurance must

(a) be on the basis of full replacement value, and

(b) insure against major perils, as set out in the regulations, and any other perils specified in the bylaws.

In order to fully identify what fixtures are to be insured by strata corporations, section 9.1 of the regulations defines fixtures (for the purposes of sections 149(1)

(d) and 152 (b) of the Act) to mean "items attached to a building, including floor and wall coverings and electrical and plumbing fixtures, but **does not include, if they can be removed without damage** to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers or other items."

Major perils! What are these? The regulations (section 9.1(2)) says that "for the purposes of section 149(4)(b) of the Act "major perils" means the perils of fire, lightning, smoke, windstorm, hail, explosion, water escape, strikes, riots or civil commotion, impact by aircraft and vehicles, vandalism and malicious acts". You will note in reviewing section 9.1(2) of the regulations that there is no mention of "earthquakes" as a major peril. Nothing is said about earthquake coverage – which we really should have on the west coast – so as part of the insurance "purchase" process, make sure this peril is included and perhaps also make sure the bylaws require the strata corporation to obtain insurance against earthquakes.

Apart from property insurance is the requirement to obtain and maintain liability insurance. Section 150(1) of the Act says that liability insurance coverage for property damage and bodily injury is mandatory for a minimum amount of \$2,000,000.00 (per the regulations). Section 151 of the Act says that

errors and omissions insurance coverage for council members "against their liability and expenses for errors and omissions made in the exercise of their powers and performance of their duties as council members is mandatory".

Section 152 of the Act makes it optional to obtain and maintain insurance that is not referred to in section 149 or 150 of the Act (and not defined as a major peril) and for fixtures built or installed in a strata lot that were not built or installed by the developer during the original construction of the building.

It is important to keep in mind that the obligation to purchase insurance is not a "one off" requirement; section 154 of the Act states that a strata corporation must review annually the adequacy of the strata corporation's insurance AND report on the insurance coverage at each annual general meeting.

It may seem like a rhetorical question but who receives the benefit of the strata corporation's insurance coverage (assuming it's available)? Pursuant to section 155 of the Act, the strata corporation, the owners and tenants in a strata lot and persons who ordinarily occupy the strata lots are all entitled to receive the protection of the strata

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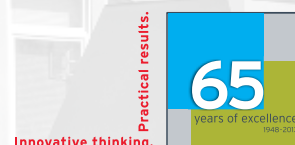
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corporation's insurance coverage.

**Note:** There are at least a few court decisions confirming that the beneficiaries of the strata corporation's property insurance coverage are "immune" from prosecution for recovery, by the strata corporation's insurer or the strata corporation, for repayment of any insurance paid out to repair property damage which they are responsible for.

The exception to this however is found in section 158(2) of the Act regarding recovery of the insurance deductible that has been paid.

When the strata corporation's insurance policy is called into action, section 158(1) of the Act states that the amount of the insurance deductible paid pursuant to a claim against a strata corporation's insurance is a common expense of the strata corporation. Section 158(3) of the Act states that strata corporation approval is not required for a special levy or for an expenditure from the contingency reserve fund to pay for the cost of the insurance deductible unless the strata corporation has decided not to repair or replace the damaged property.

Subsequent to the payment of the insurance deductible as a common expense,

a strata corporation can, pursuant to section 158(2) of the Act, sue an owner to recover the insurance deductible payment made on account of an insurance claim if the owner is responsible for the damage that resulted in the insurance claim.

While on the topic of insurance and insurance deductibles I often see a "chargeback" bylaw. One example I often see is as follows:

"Where any claim has been made against the insurance policy of the strata corporation as a result of a violation of any of the bylaws or any rule or regulation which may be established from time to time by the council pursuant to the Act or the bylaws, by any owner or any occupant, guest, employee, agent or invitee of such owner or occupant, a sum equal to the amount of the deductible charged by the insurer of the strata corporation as a result of the claim shall be payable by the owner of the strata lot and shall become due and payable on the first day of the month next following."

While I am all in favour of making it easier than it currently is to recover an insurance deductible it is my view that this bylaw is not enforceable. A section 158(2) law suit is, in my view, the only way to recover the insurance deductible from an owner.

One section of the Act that I have not mentioned yet is section 161 which states:

*161 (1) Despite the Insurance Act or any other law, an owner may obtain and maintain insurance for any or all of the following:*

*(a) loss or damage to the owner's strata lot*

*and the fixtures referred to in section 149 (1) (d)*

*(i) against perils that are not insured by the strata corporation, and*

*(ii) for amounts that are in excess of amounts insured by the strata corporation; (b) fixtures in the owner's strata lot, other than the fixtures referred to in section 149 (1) (d);*

*(c) improvements to fixtures referred to in section 149 (1) (d);*

*(d) loss of rental value of the owner's strata lot in excess of insurance obtained and maintained by the strata corporation;*

*(e) liability for property damage and bodily injury, whether occurring on the owner's strata lot or on the common property.*

*(2) Despite this Act, the Insurance Act or any other law, an owner of a strata lot in a bare land strata plan may obtain and maintain insurance on buildings or fixtures built or installed on the strata lot.*

Strata lot owners could avoid the stress and costs of a law suit if they have sufficient insurance coverage for their strata lots, including purchasing whatever endorsement or rider is required to cover payment of the cost of the strata corporation's insurance deductible. It would certainly improve the odds of a strata corporation being able to fully recover an insurance deductible without having to spend time and money chasing the owner responsible for the loss or damage that gave rise to the claim.

I briefly referred to section 149(4) (a) of the Act and the obligation to obtain property insurance on the basis of **full replacement value**. From a legal perspective the consequences of not obtaining property insurance on the basis of full replacement value could pose

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## Strata Insurance - A lawyer's perspective

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serious financial consequences to a strata corporation and perhaps to the members of the strata council. In a 2008 article written for CCI Vancouver, Natalia Szubocsev of Valuations Ltd., defined "Replacement Cost" as "the monetary amount required to reproduce property of like kind and quality at one time in accordance with current market prices for materials, labour, manufactured equipment, contractor's overhead, profit and fees, but without provisions for overtime, bonuses for labour, or premiums for materials." The article went on to say that "considering today's significant construction cost increases – due to the increased cost of construction materials and labour shortage – having an accurate, substantiated and updated insurance value for the strata property is very important."

The Act does not make an appraisal mandatory but from a legal perspective it is my view that it is imperative to obtain an appraisal (as well as regular updates) to allow strata corporations to know the amount of insurance it will take to have insurance coverage on the basis of full replacement value.

So is your strata corporation under-insured? All major perils, as that term is defined in section 9.1(2) of the Act, should be insured against and for full replacement value. Are you using the services of a qualified appraiser to ascertain the "full replacement value" for insurance purposes? Are you obtaining the "minimum" coverage that is required under the Act? Have you obtained insurance for earthquake coverage even though there is no mention of "earthquakes" as a major peril in the regulations?

It would seem to me that if the required due diligence is undertaken by the necessary professionals everyone would be able to answer "yes" to these questions. If not then, among other things, consider whether, in your capacity as a council member or strata manager, you are putting your building/your client at risk? As Ms. Szubocsev put it, "Remember if you are under-insured and suffer a loss, there could be serious financial and legal implications for your property owners, and specifically the strata council. On the other hand, if you are over-insured, you are wasting funds which could

be put to better use elsewhere. Having an up-to-date insurance appraisal ensures that the strata corporations complies with its duty to insure the common property and assets to its "full replacement value" and avoids self-insurance exposure in case of a loss." The legal implications of being under-insured are numerous. Suffice it to say that the strata council that does not fully comply with section 149(4) of the Act could face possible allegations of breach of the section 31 standard/duty of care and the unpleasant prospect of being sued for this breach and damages arising from it, by owners who are faced with significant special levies to pay for the loss which the strata corporation, as a "co-insurer", is required to pay!

### CONCLUSION:

It has been my experience that insurance is one of the most talked about and misunderstood topics for the majority of my strata clients. In my view it is vitally important to be aware of all of the various statutory requirements in the Act as they relate to obtaining and maintaining insurance and make sure you seek the advice of qualified professionals should you have any questions or concerns about insurance coverage, insurance claims and purchasing the right insurance coverage. While I am not aware of any legislative changes to the Act that will impact on insurance and insurance coverage, the passage of the Civil Resolution Tribunal Act could end up driving disputes over demands for insurance deductible payments and recovery of insurance deductible payments to the Tribunal for resolution. Perhaps in the next year or two the Act will be amended to either make it mandatory for owners to have property and liability insurance coverage or to make it optional for strata corporations to put insurance bylaws in place.

*Jamie Bleay is a lawyer with Access Law Group of Vancouver. He is the current President of the Canadian Condominium Institute, Vancouver Chapter, and Past President of the National CCI.*

## Update on the Civil Resolution Tribunal

Continued from page 1

or respond to a complaint and, if necessary, give evidence to a case manager using secure online forms. Both parties will have a given time frame in which to supply necessary information, but will do so at their own convenience – no need to both show up in a courtroom. If "synchronous" means "at the same time", then the definition of "asynchronous" is "at different times" – similar to having an emailed exchange of messages. By utilizing this modern form of justice, costs will be considerably less, and time frames will be undeniably shorter – which will in turn save more money. Consideration will be given with respect to users with literacy or computer literacy challenges, as well as English language issues. To date, testing has shown a strong user preference for remote proceedings, including telephone and video conferences, and that preference is not limited to residents of isolated communities; those in urban centres have also indicated this to be a popular alternative.

To say that the strata community is waiting for the CRT to open for business is an understatement. By enabling strata owners to participate fully in this new justice system, without the expense of Supreme Court proceedings, will be a long-awaited benefit.

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# You Asked: Can Council change part of the strata lot to LCP?



David Grubb

*Have a question about managing your strata corporation? Ask us, we've had a lot of experience helping strata corporations solve problems - perhaps we can help you. VISOA's Helpline Team will answer questions that they think will be of general interest*

*to readers. We do not provide legal advice, and our answers should not be construed as such.*

***This month's question is answered by David Grubb.***

## Question

There is a rumour in my building that the council wants to make our balconies into limited common property. I have been to Land Titles, and they can find no evidence that these balconies are LCP. The registered strata plan clearly shows that the balconies are part of the strata lots. My interpretation of the situation is that this "rule" seems to be intended to remove these areas from the individual units and, as common property,

to allow them to be allocated to other individuals at the whim of council. Could you offer any advice?

## Answer

Each strata lot, as you know, is identified on the strata plan as registered in the Land Title & Survey Authority (LTSA – formerly called the Land Title Office).

*SPA s. 68(2) applies to the particular parts of the strata lot you mention, since there is no wall, floor or ceiling involved:*

### **Strata lot boundaries**

*68 (2) If a strata lot is not separated from another strata lot, the common property or another parcel of land by a wall, floor or ceiling, the boundary of the strata lot is as shown on the strata plan.*

SPA s.244 specifies what must be on the strata plan when it is registered at the LTSA:

### **Strata plan requirements**

*244 (1) A strata plan must:*

*(c) show the boundaries of the strata lots in accordance with section 68, and distinguish the strata lots by numbers or letters in consecutive order;*

*(d) show the area in square metres of each strata lot, including the areas and spaces referred to in subsection (2), if they*

*are part of a strata lot,*

*(2) Parking stalls, garage areas, storage areas and similar areas or spaces intended to be used in conjunction with a residential strata lot must not be designated as separate strata lots but must be included as part of a strata lot or as part of the common property.*

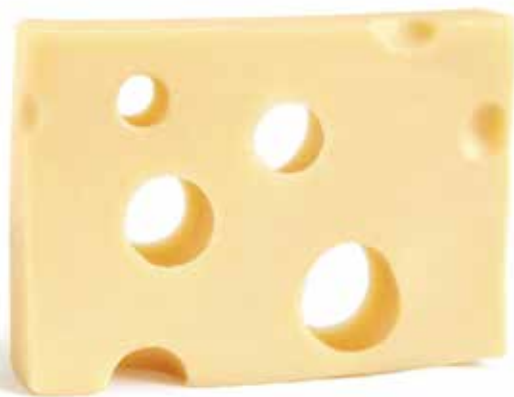
If your registered strata plan does not show those "similar areas or spaces" -- which would include balconies -- as common property, but are marked as part of the strata lot, they are an inalienable part of the strata lot.

The only way council could change this is by having the strata corporation amend the strata plan to make those areas part of the common property. This can only be done through a unanimous vote from the owners (almost impossible to get) under Section 257.

Certainly, the council cannot arbitrarily change the strata plan, so I am not sure what has motivated them to try to establish the balconies and patios as LCP in the first place.

The "negative" reason might be that since the balconies and patios are part of

*Continued on page 7*



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## You Asked: Can Council change part of the strata lot to LCP?

Continued from page 6

the strata lots the council still needs a  $\frac{3}{4}$  vote for a bylaw amendment in order for any "new regulation" to apply. Perhaps they are considering a no-smoking rule or some other control of owners' use of the balconies? But if they could make them LCP they could try to pass rules about the use of those areas because a rule takes effect immediately, then needs only a majority vote at the next AGM or SGM to continue in effect.

On the "positive" side, perhaps they want to ensure that the strata corporation is responsible for the repair and maintenance of those areas, which could be beneficial to everyone. But even then, they would be going about it the wrong way. They would still need a  $\frac{3}{4}$  vote bylaw amendment in accordance with SPA Section 72(3):

### Repair of property

72 (3) *The strata corporation may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.*

Perhaps you need to request a meeting with council under Section 34.1 to discuss the matter with them to determine what their intentions are and point out what the law actually says so that they can reconsider their approach to the matter.

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## BC Strata Legislation Updates to Note

### **Audited Financial Statements**

#### **Status: Not in Effect (February 2013)**

Based on input from stakeholders, government has decided not to bring into effect at this time a requirement that strata corporations have their financial statements audited each year.

Strata corporations may choose to have their financial statements audited as part of the budgeting process at the AGM (annual general meeting).

### **Form B: Allocation of Parking and Storage**

#### **Status: Effective January 2014**

Effective January 1, 2014 strata corporations will be required to identify how parking and storage lockers are allocated to strata lots on a new Form B (Information Certificate) that will be revised for that purpose. Prior to January 1, 2014, strata corporations should be clarifying and assembling this information and may voluntarily choose to disclose it, however this information will not be legally required on a Form B until that date.

It could be a big task to research and assemble the correct information, so we advise you to do the research NOW so you are ready for January 1, 2014. This is the information that will be required on the new Form B:

*Continued on page 10*

m) Are there any parking stall(s) allocated to the strata lot?

- no     yes

(i) If no, complete the following by checking the correct box

- No parking stall is available
- No parking stall is allocated to the strata lot but parking stall(s) within common property might be available

(ii) If yes, complete the following by checking the correct box(es) and indicating the parking stall(s) to which the checked box(es) apply.

- Parking stall(s) number(s).....is/are part of the strata lot
- Parking stall(s) number(s)..... is/are separate strata lot(s) or parts of a strata lot..... [strata lot number(s), if known, for each parking stall that is a separate strata lot or part of a separate strata lot]
- Parking stall(s) number(s)..... is/are limited common property
- Parking stall(s) number(s)..... is/are common property

(iii) For each parking stall allocated to the strata lot that is common property, check the correct box and complete the required information.

- Parking stall(s) number(s).....is/are allocated with strata council approval\*
- Parking stall(s) number(s)..... is/are allocated with strata council approval and rented at \$..... per month\*
- Parking stall(s) number(s)..... may have been allocated by owner developer assignment

**Details: (m)(iii)**

[Provide background on the allocation of parking stalls referred to in whichever of the 3 preceding boxes have been selected and attach any applicable documents in the possession of the strata corporation.]

\*Note: The allocation of a parking stall that is common property may be limited as short term exclusive use subject to section 76 of the Strata Property Act, or otherwise, and may therefore be subject to change in the future.

(n) Are there any storage locker(s) allocated to the strata lot?

- no     yes

(i) If no, complete the following by checking the correct box

- No storage locker is available
- No storage locker is allocated to the strata lot but storage locker(s) within common property might be available

(ii) If yes, complete the following by checking the correct box(es) and indicating the storage locker(s) to which the checked box(es) apply.

- Storage locker(s) number(s).....is/are part of the strata lot
- Storage locker(s) number(s).....is/are separate strata lot(s) or part(s) of a separate strata lot..... [strata lot number(s), if known, for each locker that is a separate strata lot or part of a separate strata lot]
- Storage locker(s) number(s).....is/are limited common property
- Storage locker(s) number(s)..... is/are common property

(iii) For each storage locker allocated to the strata lot that is common property, check the correct box and complete the required information.

- Storage locker(s) number(s).....is/are allocated with strata council approval\*
- Storage locker(s) number(s).....is/are allocated with strata council approval and rented at \$.....per month\*
- Storage locker(s) number(s).....may have been allocated by owner developer assignment

**Details: (n)(iii)**

[Provide background on the allocation of storage lockers referred to in whichever of the 3 preceding boxes have been selected and attach any applicable documents in the possession of the strata corporation.]

\*Note: The allocation of a storage locker that is common property may be limited as short term exclusive use subject to section 76 of the Strata Property Act, or otherwise, and may therefore be subject to change in the future.

# Strata Corporations and the New *Limitation Act*

By Shawn M. Smith, Esq. Cleveland Doan LLP



Shawn Smith

The application of limitation periods (being the time by which one must file a claim in court in order to assert a right or collect money, otherwise it disappears) has generally not been given much consideration in the strata community. That is set to change in the very near future. Effective June 1, 2013, a new *Limitation Act* comes into force. It will dramatically shorten the time within which claims must be pursued. How this will affect strata corporations is the subject of this article.

Under the previous *Limitation Act*, most claims (other than those for injury to a person or physical damage to property) were subject to a six-year limitation period. This meant that a person, after discovering a loss or damage and the identity of the person responsible for it, had six years to sue that person. Other claims, such as recovery of property subject to a trust, were subject to a much longer period. In all but a few instances, any claims that a strata corporation had against an owner were resolved within that six-year period and the issue of whether a claim was statute barred rarely ever arose.

As a result of a desire to simplify the limitation regime as well as to

bring British Columbia's legislation in line with that of other provinces, the government enacted a new *Limitation Act*. It provides for a basic limitation period of two years, commencing on the date the claim was "discovered". There is an ultimate 15-year limitation period after which no claim can be brought, regardless of when it was discovered. The limit applies to arbitration proceedings in the same manner as a court action.

Generally speaking, under the new legislation a claim is considered to have been "discovered" on the day a person knew, or ought to have known, the following:

- (a) that injury, loss or damage occurred;
- (b) that the injury, loss or damage was the result of someone else's act or omission;
- (c) a court proceeding would be an appropriate means to seek a remedy for the injury, loss or damage.

In most cases this will be the date that the event happened.

The change to a two-year limitation period will have an impact on strata corporations primarily in regard to collecting monies owed to it by owners. It will also affect claims it may have against third parties such as trades who may have improperly completed work.

In terms of strata fees and special levies that are unpaid, this means that strata corporations must take court action (either in Small Claims Court to obtain a judgment or in Supreme Court to enforce a lien) within two years of the date

the fees/levy were first due and payable. If not, their right to claim those monies, whether through a lien or a Form F, will be lost. A failure to act in time, resulting in lost money, may give rise to questions as to whether the strata council met its duty under s. 31 of the Strata Property Act to act prudently.

With regard to fines, the two-year period would arguably commence on the date the fines were imposed. This means that it is no longer a viable option (if it ever was) to simply impose fines for months on end for a bylaw violation. At some point they will become uncollectable, reducing their value as a deterrent. Additionally fines can no longer be left in anticipation of collecting them when an owner sells. If they remain on a ledger, uncollected, for more than two years, they will become uncollectible.

*Continued on page 12*

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Steps to collect insurance deductibles and “chargebacks” will need to be taken within two years of the date of the incident that gave rise to the costs being incurred. This is important to keep in mind since the costs, particularly deductibles, are often not invoiced until several months afterwards. By then the limitation period may be almost half over.

Amounts charged to an owner under s.133 of the Strata Property Act are more difficult to deal with. (Editor’s note: s. 133 allows a strata corporation to bill an owner for the costs of remedying a contravention of a rule or bylaw). Do they fall in the category of fines or are they more akin to chargebacks? Does the two-year period run from when the costs were imposed? From the date they were incurred? Or from the date the strata corporation was aware of the breach of the bylaw? Since the new *Limitation Act* is not specific to strata corporations this question is unanswered by it. In *Channa v. Carleton Condominium Corp. No. 429 2011 ONSC 7260*, a case dealing with unauthorized alterations to common

property, the Ontario Superior Court of Justice held that the limitation period began to run when the strata corporation became aware of the breach and that it would incur costs in relation to the same. Given the similarity between the British Columbia legislation and that of Ontario, the same decision would likely be reached by a court here.

Another common scenario faced by strata corporations is the discovery of defective work done by a contractor that has caused damage or that will have to be redone. It will be important to keep in mind that if the strata corporation intends to seek to recover those costs from the person who did the shoddy work, they will have to do so within two years of discovering the problem.

The same principles will apply to owners who wish to sue the strata corporation to recover money they say the strata corporation owes to them. Owners will have two years to do so, starting on the date the injury, loss or damage occurred.

Lastly, we must consider the impact of the new act on claims that don’t involve money such as seeking an order to enforce a bylaw. Arguably they too

are subject to the two-year limitation period. While sections 2 and 3 of the new *Limitation Act* set out a number of proceedings which are exempted from the two year limit, none of them refer to the type of orders contemplated under s.173 of the Strata Property Act. This means that if an owner breaches a bylaw the strata corporation will have two years from the date it became aware of the breach to seek an order that the owner comply with the bylaw, failing which a court may well say it is too late. The same can be said for claims that an owner may have against the strata corporation for a failure to comply with the act or the bylaws or for significant unfairness.

The end result is that both strata councils and strata managers will need to be diligent about pursuing matters and make sure that proper diary systems are in place.

*This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is lawyer whose practice focuses on strata property law. He frequently writes and lectures for a variety of strata associations. He is a partner with the law firm of Cleveland Doan LLP and can be reached at (604)536-5002 or shawn@clevelanddoan.com.*

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# Strata Insurance Changes - 2013



Shawn Fehr

Since the beginning of 2013, Strata Insurance premiums began to rise on Vancouver Island. A significant cause of the increased rates is directly attributable to Earthquake Insurance. I have summarized some of the reasons for this below:

## Updated Computer Modeling

When a disaster occurs anywhere in the world, the loss is analyzed from an insurance perspective. RMS (Risk Modeling Solutions) is a company that gathers data and provides information to organizations that work within the Insurance Industry. For example, when earthquakes occurred in Chile, Japan and New Zealand, RMS was able to obtain data and update their computer models to provide a more accurate assessment of what we could expect from a large earthquake on Vancouver Island.

## Government Regulators

OSFI is the Office of the Superintendent of Financial Institutions. Among other things, they oversee the sale of insurance in Canada. After OSFI received the updated data

from RMS, they amended their regulations to require that Insurers increase the capital reserves they must keep on hand to pay out potential losses that could occur.

## Insurance Company Options

The most recent amendment of the OSFI regulations essentially gave Insurance Companies two options: they could purchase more Reinsurance to cover the Earthquake accumulations that they have on Vancouver Island or they could reduce their Earthquake accumulations to a point where their existing reserves were adequate to cover what they had in their portfolios. Both of these options have lead to increased premiums.

### Option 1 – Purchase more Reinsurance

If the Insurance Company purchases more reinsurance to cover the cost of Earthquake, then they usually will pass that additional cost directly to the policy holder. The high demand for Earthquake Reinsurance forces an increase to the cost of this coverage in the first place. The end result is a higher reinsurance cost that is passed directly to the policy holder.

### Option 2 – Decrease Earthquake Accumulations

There are Insurance Companies that are

reducing their Earthquake accumulations on Vancouver Island. Specific postal codes (V8R, V8S, V8V) have been targeted as areas of higher exposure and some Insurers have elected to reduce their highest exposure accumulations by not writing business in these areas. Other Insurers are still willing to write insurance in these areas but will not offer Earthquake coverage. When one Insurer exits the marketplace it leaves a void that other Insurers are forced to fill. The result is that those markets must charge higher rates, for the reasons outlined in Option 1 above. The laws of supply and demand also have a significant impact at this level as the demand for Earthquake is very high but fewer Companies are able to provide the coverage.

## Deductibles

Another method that Insurance Companies are using to control their Earthquake exposure is to use higher deductibles. A few months ago, a standard Earthquake deductible in most scenarios was 10% but is now increasing to 15% or 20%. An increase in deductible means that the amount that must be paid out by the Insurer after a loss is reduced and, therefore, the money they must keep in reserve is reduced. It is important that all Strata Owners understand the amount of Earthquake deductible that

*Continued on page 15*

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could be assessed in the event of a loss and be sure that they have a high enough Loss Assessment limit on their Personal Unit Owner's policies to cover this. For example, a \$10,000,000 building with a 15% Earthquake deductible has a deductible of \$1,500,000. If there are 50 owners in that building, and it is destroyed, then each owner will be assessed their share. For the sake of the example, let's say each owner's share is equal – the share is \$30,000 per owner. (Of course, the actual amount would be calculated on the basis of unit entitlement, thus an owner's share could be significantly higher or lower than this average of \$30,000.) This could be a significant amount of money to come up with if it is not properly insured – especially at a time of trauma following a devastating Earthquake.

### Local Rating

For many years, Victoria has enjoyed below-market Strata rating. We have essentially flown under the radar. In spite of the fact that we live on an island that sits very near a significant fault line, we have enjoyed relatively low strata insurance rates when compared to Vancouver and other neighbouring Insurance markets like Seattle. Many Insurance Companies participated in Strata programs in Victoria and, based on large volumes, were able to maintain lower than market rating. With the changes required by OSFI, it no longer makes economic sense for them to continue on programs that demand low rates.

It is an interesting situation that arises when Earthquake Aggregate is in high demand and the Reinsurance Company looks at their options of where to sell their Earthquake coverage. If they sell it in Victoria, they can obtain a certain rate but if they sell it in Vancouver they could probably get twice the Victoria rate. Economically speaking, it makes much more sense to provide the coverage where they can get the most profit.

### The Future

Presently, in Victoria we are involved in a “transitional market” while Earthquake rating gets sorted out. Strata Corporations in Victoria and on Vancouver Island should prepare to see increases in insurance rates. As noted above, the rates in Victoria are still well below the Vancouver rates, yet it could be argued that the earthquake exposure is greater on Vancouver Island than in the Lower Mainland. Given the latest data collection and computer modeling it is

apparent that Victoria is now firmly entrenched on the radar – we can no longer hide.

### Water Damage Claims

Although Earthquake insurance is making a considerable impact on insurance, more significantly water damage claims have become the single most common type of claim reported to insurance companies in British Columbia, and as a result, deductibles for water claims are rising. Here's a common example of a water escape claim, and how it would be handled by the various parties involved:

Mr. Smith owns and occupies suite 307 in a 4-storey building. His washing machine hose broke and water came gushing out, damaging not only his floor, but also leaked down into Mr. Jones' unit in suite 207.

The damage was Mr. Smith's responsibility, and was threefold:

- Damage to his own unit and personal belongings
- Damage to Mr. Jones' unit and belongings
- Damage to the building (between the two units).

Assuming each of the three parties has insurance, each will report to their insurer. However, that insurer will subrogate against Mr. Smith, as he was the “cause”, and his liability insurance will have to pay out both parties.

### Here's another example:

There is a sudden rupture of a water pipe within the walls of the strata, which requires repairs to be made to the building. The strata corporation would file the claim with its insurer; however the deductible is \$50,000. Each unit owner would then be assigned a portion of that deductible, based on their unit entitlement. Strata owners should be certain that their individual unit insurance will cover such a claim.

### What can you do? Prevention can help avoid claims for water damage:

- ✓ Know who is responsible for plumbing maintenance (including leaks and other issues) in your

building. Whether your responsibility or that of the strata corporation, always ensure that your plumbing is regularly checked by a certified professional.

- ✓ Don't dispose of items such as cat litter, pills, or grease in your toilet.
- ✓ Before leaving home, check that your toilet isn't running. Don't leave your washing machine or dishwasher running if you're not there.
- ✓ Focus on the task at hand to avoid water overflows (e.g. watching television while running water in the bathtub).
- ✓ Check your washing machine hoses regularly for leaks and that your discharge hose is secured firmly in place. If possible, replace rubber washing machine hoses with stainless steel. Turn off your washer's shut-off valve after each use.
- ✓ To check your toilet tanks for leaks, drop some food colouring into it. If colouring appears in the toilet bowl, you have a leak.
- ✓ Have a trusted neighbour or friend check in on your home if you'll be away for more than a few days. (This is often a condition of your insurance coverage).

*Shawn Fehr is a commercial insurance manager with SeaFirst Insurance Brokers and can be reached at 250-652-1141 or [sfehr@seafirstinsurance.com](mailto:sfehr@seafirstinsurance.com)*



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# President's Report



Sandy Wagner

At our February AGM/Seminar you re-elected Tony Davis, David Grubb and Deryk Norton to the Board; and elected Esther Harvey, who was appointed by the board to fill the position of Treasurer, and Wendy Wall who was nominated from the floor, to fill our new position as Director of Social Media.

At the first meeting of your Board following the AGM, I was re-elected President, David as Secretary, Esther as Treasurer and John Webb was elected Vice-President.

Both Esther and Wendy have been busy already: Esther has re-organized our accounts and prepared the budget which was passed at our AGM; and Wendy has set up Facebook and Twitter pages for us and is sharing our news and other stories with our followers who, we hope, will grow in numbers because of the extensive reach of these media services. Check our website for more details, and please "like us" on both!

Our two guest speakers at the AGM were insurance broker Shawn Fehr and lawyer Jamie Bleay, who enlightened us all on strata insurance. Both of their presentations are included in this Bulletin. Jamie kindly agreed to speak again at our April seminar in Nanaimo where he gave us plenty of information on debt collection for stratas. The main topic of the day was Depreciation Reports, and although we have presented this topic many times over the last three years, the large attendance and the very lively discussions amongst participants, Business members, Board members and Jamie tells us it is still information that is very much needed. Thus, the May 5th seminar in Courtenay will again be on Depreciation Reports, with guest speaker lawyer Justin Hanson. The deadline of December 12, 2013 for completion of depreciation reports is fast approaching but even so, many stratas have not yet completed theirs.

At our June seminar we are changing the subject to something completely different! So often in VISOA's work of educating and helping other strata owners, we hear the negatives and the problems. (Alas, so many first come to us because of dilemmas!) But, there are so many stratas which manage their affairs very well in an affirmative manner, so this seminar will focus on those positive aspects of our collective experiences.

What we want to do is give you, our members, the opportunity to share some of your strata living "good news" stories.

We are looking for a number of owners to speak briefly at the seminar, and answer a few questions from the others attending, on the topic "I Enjoy Strata Living Because...!"

Is that you? If so please email me a brief summary, ideally as specific and personal as possible, and tell us how other stratas could benefit from what you do.

- Have you done things to encourage a feeling of community?
- Do you have a particularly good strata manager?
- Do owners get involved in gardening or other maintenance work?
- Other ways your strata runs smoothly?

We hope to have members speak on these and other reasons why you like strata living:

- It gives us the freedom to travel
- I enjoy living in a community
- My council does an excellent job of

managing our building

- Our management company handles the day to day management of our strata
- Sharing means that we have lower maintenance costs than we would have in a house
- I have made some good friends in our Strata

With approximately half of Greater Victoria homes now strata-titled and more under construction, we know there are plenty of good news stories out there, so let's share them!

If you wish to participate in June's seminar by sharing your experiences please email me at [president@visoa.bc.ca](mailto:president@visoa.bc.ca) and as usual, I encourage you to email me at any time with your thoughts on this Bulletin and our services to you.

In closing, for the past 40 years VISOA's mandate and purpose has been three-fold:

- To promote and encourage strata living as a desirable way of life
- To assist strata corporations and strata lot owners by providing education, training and assistance
- To represent the interests and concerns of strata corporations and strata owners to the government, its agencies and the public at large.

*I would like to thank you all for your sustained support of VISOA which has enabled your Board of Directors to pursue those purposes and as we grow we will continue to work to meet your expectations.*

Sandy Wagner  
VISOA Board President

## BULLETIN SUBSCRIPTIONS

VISOA provides four information-packed bulletins each year.

- Corporate membership fees include emailed bulletins to up to 4 council members.
- Individual membership fees include emailed bulletins. • Postal mailed bulletins are available to members for \$15 annually per address. Non-members may subscribe to these bulletins at the following rates:  
By email: \$15.00 per year and by postal mail \$25.00 per year

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*The material in this publication is intended for informational purposes only and cannot replace consultation with qualified professionals. Legal advice or other expert assistance should be sought as appropriate.*