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# BC STRATA AND CONDOMINIUM LAW NEWSLETTER

February 2016

Welcome to Fischer and Company's first newsletter! Not only do we now offer a newsletter, but we are also in the process of updating our website and adding new content to our website such as our Strata Law Basics Tips section. Check back soon for our refreshed website and content.

### Legal Pitfalls

#### The Dangers of Registered Mail

Taeya C. Fitzpatrick and Matthew D. Fischer

A recent decision of the BC Supreme Court highlights the dangers of using registered mail for Strata Corporation notices. Our office has been commenting on this potential problem for years. In the case of ***The Owners, Strata Plan BCS 3372 v Manji***, 2015 BCSC 2503, the Strata Corporation issued a section 112 demand letter to the owner by registered mail. The owner in question asserted that he didn't receive the registered mail even though the Strata Corporation was able to print out a copy of the signature card, confirming receipt.

The Court determined that the *Strata Property Act* requires that notice be sent by regular postal 'mail' and found that 'registered mail' is not 'mail'. Registered mail can involve a card being left at the address requiring that the owner collect the package from the noted post office. This procedure can invalidate the required delivery where the requirement is for

the notice to be delivered to the address, which does not happen when the owner picks up the package from the post office.

It makes no sense to use registered mail for strata corporation notices in the first place. Section 61 of the *Strata Property Act* includes an incredibly powerful provision that delivery of a strata notice by regular postal mail to the correct address is **conclusively deemed** to be delivered 4 days after it is sent – regardless of whether or not it is actually received. Besides being an invalid form of delivery, registered mail is more expensive and doesn't benefit from that deemed delivery, and, therefore, a recipient can avoid confirming delivery.

In the *Manji* case, the liens placed were found to be invalid by the Courts, the Strata Corporation's claim was dismissed and the Strata Corporation was not able to recover any legal costs.

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### Occupiers Liability can extend to Strata Corporations

#### Taeya C. Fitzpatrick

In the case of *Furlan v the Owners Strata Plan BCS 3202*, 2016 BCSC 213, a Strata Corporation in Vancouver near the sea wall was sued by a cyclist that was injured on the Strata Corporation's common property. Included as a defendant in the action was the strata management company.

The area in question was a common property driveway that extended into a walkway that lead to the sea wall. Over that area was also a covenant in favour of the City of Vancouver to permit pedestrians and cyclists access to the sea wall.

The cyclist was riding through the driveway and onto the walkway when he hit the unpainted curb separating the driveway from the walkway and crashed, causing significant injuries. The cyclist sued under the Occupier's Liability Act for the unreasonably safe condition wherein the unpainted curb was an unreasonable hazard. Sometime after the accident, the Strata Corporation painted the curb area yellow to make it plainly visible.

The Court determined that both the Strata Corporation and the strata manager had possession of the area in question: the Strata Corporation had physical possession of the common property while the strata manager had care and control of the common property. Because they were both occupiers, both the Strata Corporation and the strata manager had a duty of care to ensure the pathway was reasonably safe. Leaving the curb unpainted created an unsafe condition and the Court found both the Strata Corporation and the strata manager jointly liable for the Plaintiff's nearly \$200,000 in damages.



## Legal Update

### New Guide Dog and Service Act

Taeya C. Fitzpatrick

Bill 17 – *Guide Dog and Service Dog Act* came into effect January 18, 2016. Click [here](#) to view the full version. This new Act amends the Strata Property Act, clarifying that a Strata Corporation cannot prohibit certified guide dogs or service dogs from the property. However, this Act does not replace the ability of the BC Human Rights Tribunal to require Strata Corporations to accommodate animals which benefit residents with mental or physical disabilities beyond the scope of the new *Guide Dog and Service Dog Act*. For more information or if you have a specific issue, please [contact us](#).

### Case in Focus

#### ***Strata Corporations are Not Insurers***

Taeya C. Fitzpatrick and Matthew D. Fischer

In ***John Campbell Law Corp. v. Strata Plan 1350*** [2001] B.C.J. No. 2037 the owner's strata lot was flooded by sewage when a tree root on a neighbor's property caused a blockage of the sewer pipes. The pipe was common property of the Strata Corporation. This was the first sewer back up for this Strata Corporation.

The owner wanted the Strata Corporation to repair the significant damage caused by the sewer backup under the Strata Corporation's general obligation to repair and maintain common property.

However, the Judge agreed with the Strata Corporation in this case because there were no indications prior to the sewer backup that there were any issues with the sewer lines and it was not an industry standard to routinely inspect the sewer lines: there is no strict liability or duty to inspect and maintain common facilities in order to detect and repair unknown faults. The Judge also concluded that there was no negligence in failing to inspect and repair undetected faults, and that the Strata Corporation should not be put in the position of acting as "an insurer by default".

This case is part of a long line of cases which defines the obligations of owners and strata corporations to repair, maintain, and insure property. We will discuss other cases which refine these issues in future newsletters.

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### **Fischer & Company**

Fischer & Company, located in the heart of the Okanagan, Kelowna, has provided a wide range of legal services to individuals, strata corporations and management companies in Kelowna, the Okanagan, and throughout the entire Province of British Columbia, since 2004. Fischer and Company is comprised of two lawyers, Matthew Fischer and Taeya Fitzpatrick, and a dedicated support team.

For more information on our Services Offered, to review our online Strata Basic Tips or New updates, or to see how we can assist you with your issue, please visit our website at [www.fischerandcompany.ca](http://www.fischerandcompany.ca)

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