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# BC STRATA AND CONDOMINIUM LAW NEWSLETTER

April 2016

### Legal Pitfalls

#### The Importance of Listening to Owners

Taeya C. Fitzpatrick and Matthew D. Fischer

In the case of **Mitchell v The Owners, Strata Plan KAS 1202, 2015 BCSC 2153**, the Owner directed Fischer and Company to bring the Strata Corporation to Court for various aspects of non-compliance with the Strata Property Act including but not limited to:

1. Approving special levies that did not comply with section 108 of the Act;
2. Making unapproved expenditures without justifying or informing the ownership of the over expenditures;
3. Improperly filing bylaws by making a false certification on the Form I;
4. Failing to disclose documents requested by an owner; and
5. Refusing to consider a dissenting Owner's concerns, or respond.

The Court agreed that the Strata Corporation had been non-compliant; stated that the Strata Corporation should not have refused to respond to the Owner's concerns; and found that the Strata Corporation only brought itself into compliance after the Owner sued the Strata Corporation.

The Court made an unusual order by ordering the Strata Corporation to prepare a letter to be sent to all owners, after Court approval, outlining the errors the Strata Council made

and informing owners of the requirements under the Strata Property Act.

This case highlights the need for Strata Councils to be sensitive to the concerns of its owners and not to be dismissive of those concerns, even if Council perceives an owner to be demanding. Strata Councils need to be aware that the requirements of the Act cannot be ignored even if they are perceived by Council to be overly burdensome: Council cannot disregard requirements of the Strata Property Act simply because it is perceived to be expedient to do so.

This case should serve as a cautionary tale to every Strata Council on the need to properly consider and respond to owner complaints and/or concerns.

## **Strata Basics and Tips**

### **The Complications of Non-Stratified Condominiums**

Matthew D. Fischer

In British Columbia, most, but not all condominiums are "Strata Corporations". You cannot tell by looking at a building, and the distinction may not seem important when looking at a show-suite, but beware: legally, nearly everything is different for owners, managers and members of the governing executive in a non-strata.

A Strata Corporation is a development which is formally created pursuant to the provisions of the Strata Property Act. When dealing with a Strata Corporation, you can safely assume certain obligations and standards exist because they are mandated by the Strata Property Act.

Non-strata condominiums are not set up or governed under the provisions Strata Property Act. Whether a non-strata was created prior to the enactment of the Strata Titles Act in 1969 (which has been repealed and replaced by the Condominium Act and then the Strata Property Act), whether it exists on First Nations Land outside the jurisdiction of the Strata Property Act, or whether the developer simply chose a non-standard configuration, there are more than a few non-stratas in British Columbia. A few examples we've seen include:

- A property owned and managed by a specially created society with a unique constitution and bylaws.
- A property owned and managed by a specially created business corporation with specifically configured shareholder agreements.
- Adjacent duplex or similar units with party-wall agreements.
- Mega-developments with multiple member developments (usually themselves strata corporations), sharing common facilities governed by a separate legal entity.

Whatever the configuration, each non-strata is created by unique legal arrangements. To determine anything about the legal obligations, governance structure or any other aspect, it is essential to carefully review and understand all of the specific originating documents which created it, which documents contemplate governance, payment of shared expenses, decision making and resident obligations along with every other issue which would normally be addressed by the Strata Property Act.

Even if a non-strata condominium includes a regulation that the "Strata Property Act shall apply", the impact of that language isn't usually clear where the Strata Property Act specifies that a "Strata Corporation" or "Strata Council" has a particular power or duty.

Whether you are currently residing in or helping to manage a non-strata condominium or are considering purchasing a unit in one; don't assume that the Strata Property Act applies, and be aware that there will be an increased need for legal advice in nearly every respect of governance.

## Legal Update

### Societies Act

Taeya C. Fitzpatrick

**Bill 24** has been approved and will come into effect on November 28, 2016 which will update and replace the Society Act with a new version. The basic framework from the current legislation is maintained in the new version, but the new Act introduces rules and procedures from the Business Corporations Act and other corporate legislation. The new Act is intended to enhance the flexibility of societies while also provide them with more internal governance options and remove restrictions on the exercise of directors' authority. Societies will now be permitted to dictate their structure and governance through bylaws to suit the particular society's needs.

The new Act establishes a difference between member funded societies (such as professional societies) from charitable societies. Member funded societies will be subjected to fewer accountability measures than charitable societies to increase their efficiency. Charitable societies (which includes societies that receive significant public funding) will continue to be subject to the current Act's accountability requirements regarding directors, financial statements and distributions on dissolution. Charitable societies will also be subject to other requirements that will improve societies' accountability and protect the public's interest.

The new Act will also streamline the incorporation process, provide for online filing systems for society bylaws, and provide a system to alter a society's bylaws, among other changes.

Current societies will be required to transition to the new system under the Societies Act by updating and filing their constitution and bylaws into an electronic database, which will create a permanently updated and online searchable set of bylaws for all societies. The transition provision provides current societies until November 28, 2018 to file a transition application in accordance with the new Act.

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## **Interpretation of Section 118 Strata Property Act**

Taeya C. Fitzpatrick and Matthew D. Fischer

The Court in the recent case of **The Owners, Strata Plan KAS 2428 v Baettig, 2015 BCSC 2125**, has expressed a new interpretation of section 118(a) of the Strata Property Act, which section reads, in part, as follows:

Costs added to amount owing

118 The following costs of registering a lien against an owner's strata lot under section 116 or enforcing a lien under section 117 may be added to the amount owing to the strata corporation under a Certificate of Lien:

(a) reasonable legal costs; ...

The Court determined that the phrase 'reasonable legal costs' means Court costs at Scale B, rather than a Strata Corporation's actual reasonable legal costs. Court Costs at Scale B is an arbitrary system of "units" for legal expense recovery of a successful party which doesn't relate to the party's actual legal expenses. Previously, section 118 of the Act was understood to provide an alternative for full recovery of legal expenses from an owner, and the case law to date was unclear. What this means for Strata Corporations now is that a Strata Corporation may only recover a portion of its legal fees in enforcing a lien and will likely be liable to pay the remainder of the legal fees incurred in the process, if this decision stands.

While this case may make it more difficult for a Strata Corporation to decide to recover arrears of strata fees and special levies from an owner, there is no clear authority for a Strata Corporation to opt not to collect arrears from one owner and to write them off as bad debts. The Limitation Act has been amended to reduce the limitation period to two years; therefore, a Strata Corporation must have a lien on a strata lot and commence a Court Action before the two years expire or a Strata Corporation may lose out on strata fees and special levies.

This case is currently on appeal to the British Columbia Court of Appeal. Check back later this year for an update on the outcome of the appeal.

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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 2007. 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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