

# voice from the... **strata- SPHERE**®

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ASSOCIATION OF BC



## **BREAKING NEWS!**

### **The Civil Resolution Tribunal – Will It Become A Reality?**

*Cora D. Wilson, J.D.*  
C.D. WILSON LAW CORPORATION

The major criticisms of the current dispute resolution options relate to complexity, lengthy delays and affordability. There is no doubt that the playing field needs to be leveled for strata owners and others facing bylaw contravention allegations, arrears of payments and other strata issues.

While the *Strata Property Act* is touted as consumer legislation, in practice many of the owner's voices are either muffled or silenced by complex and expensive legal machinery. Only the rare owner is financially and emotionally capable of withstanding a legal onslaught by a well financed and tenacious strata corporation. Isn't it true that access to justice for the strata corporation is fueled by the collective, while the owner stands alone?

Not necessarily. There are many small, ill equipped or underfunded strata corporations that find it difficult to impossible to effectively address a recalcitrant and aggressive owner who opposes collective rule.

The announcement of Bill 44, Civil Resolution Tribunal Act (the "Act"), approved by the 2011/12 legislative session, is welcome and long overdue. It has not yet been declared into force. The legislation supports a 24/7 online civil dispute Tribunal for small claims and strata disputes that provides an alternative to the adversarial court process.

Sharon Kelly, an experienced dispute resolution practitioner, has seen first-hand

**Cora D. Wilson**, Lawyer. Over 25 years experience and President of C.D. WILSON LAW CORPORATION. Ms. Wilson is a strata lawyer, educator and author. She currently represents numerous strata corporations wherever they are located in British Columbia. She is the co-author of the "Strata Property Act – A Practical Guide to Bylaws. She is the owner and editor of Strata-sphere Condominium Services Inc.

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### Breaking News!... *continued from page 1*

where arbitrations become bogged down and turn into lengthy and expensive procedural nightmares. She views the Tribunal in a positive way.

However, a close review of the legislation is required to determine whether the proposed legal machinery is up to the enormity of the task. Will the proposed dispute resolution process be successful? Is the exclusion of lawyers absent limited circumstances appropriate? Who will be at the helm of this game changing Tribunal? What issues can the Tribunal address and what are the limitations on its jurisdiction? Will the requirement for consent of the parties to a binding decision limit the effectiveness of the Tribunal? When will the Tribunal become operational – if at all? Is further consultation with the legal, professional and strata community required before this legislation is adopted into force? Will the long term benefits of the Tribunal, once operational, outweigh its limitations and costs?

These are all questions that need to be addressed before it is too late.

Many highly qualified, experienced and renowned leaders in the strata industry in British Columbia contributed their invaluable time and expertise by writing articles for this important Edition of 'Voice from the Strata-sphere.' With their customary eloquence, they have addressed many of the issues raised above.

Jamie Bleay, president of the Canadian Condominium Institute and strata lawyer, reviewed the legislation. He notes that the Act received Royal Assent on May 31, 2012 in neck breaking speed. He reviewed the objective of the Tribunal, which is to resolve disputes in a manner that is "accessible, speedy, economical, informal and flexible."

The intent is to remove many of the dusty cases desirous of adjudication from the traditional adversarial system (courts) and into the arena of experts trained in collaboration (the Tribunal). This is the *new* way. But how is it new and who are these collaborative experts?

It is new in part because it allows online dispute resolution. The internet is heralded as the ground breaking new tool. Electronic communication will facilitate resolution of the dispute. It is acknowledged that a well drafted email cannot act as a complete substitute for the traditional system where, for example, credibility of the witnesses is in issue. However, this novel process means that exceptions could and will be made to streamline the process.

In order for parties to achieve maximum benefit from the Tribunal, they must first agree that any decision will be binding upon them. If they don't agree, then will their efforts turn out to be futile and ineffective? Time will tell. The statistics will speak for themselves once the Tribunal becomes operational.

The Tribunal offers a very real and substantive alternative to the Court system and the voluntary dispute resolution process set out in section 29 of the Standard Bylaws to the *Strata Property Act*. The latter process, although well intentioned, is rarely used in practice.

*continued on page 3...*

A review of the provisions of the Act makes it clear that the Tribunal is a legal vehicle designed to resolve disputes and as such, is governed by procedural and substantive due process requirements. This includes receipt and review of briefs, documents, submissions and evidence. Further, the Tribunal will be required to address jurisdictional issues, determine whether a case is frivolous or vexatious or an abuse of process and grant appropriate orders.

Strata lawyers, Geoffrey Dabbs and Carol Dash, point out that the Tribunal has broad, but not unlimited jurisdiction. It can address a “wide variety of matters including non-payment of monthly strata fees or fines; unfair actions by the strata corporation or by people owning more than half of the strata lots in a complex; uneven, arbitrary or non-enforcement of strata bylaws (such as noise, pets, parking, rentals); issues of financial responsibility for repairs and the choice of bids for services; irregularities in the conduct of meetings, voting, minutes or other matters;

interpretation of the legislation, regulations or bylaws; and issues regarding the common property.” It cannot address matters that affect land or the determination of an owner’s percent share in the strata complex. There are other jurisdiction exclusions, such as constitutional and *Human Rights* matters.

The structure is now sounding a lot like, for example, the residential tenancy tribunal or any other tribunal. Although there are similarities there are numerous differences, some of which are major.

Lawyers may be prohibited from participating in the Tribunal. In my view, this turns our legal system upside down. The denial of the right to be represented by counsel becomes a front and center issue.

The Tribunal process will undoubtedly be complex, daunting and intimidating. Such is the nature of strata law. Yet, the

*continued on page 4...*



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## Breaking News!... *continued from page 3*

general rule of the Tribunal is that parties will represent themselves (s. 20, Act). The Tribunal will determine whether a lawyer can participate. This is unacceptable. I am not aware of any other piece of legislation in Canada that grants the Tribunal power to determine whether a party should have representation by counsel.

The legislation gets around legal representation issues by seeking the consent of the parties to the process. This back door approach is unacceptable.

Our legal system is based on the foundation of "equal access to justice." The determination of the legal rights of a person will be addressed and resolved by the Tribunal. Many believe that quality packaging and presentation of a legal case greatly enhances the probability of success at the end of the day. The restrictions on legal services will benefit those who are familiar with the process and likely prejudice those who are not. Everyone should have a right to access legal services if they so wish at any stage of the process. The legislature has gone too far by providing shackles on the very foundation upon which our current legal system is based.

The argument from a lawyer that lawyers should be allowed in the Tribunal process sounds self-serving. However, I am not alone.

Tony Gioventu, Executive Director of CHOA, a non-lawyer and one of the most credible and influential non-profit voices in BC for the Strata community, weighed in on this issue. In his thought provoking Article, he acknowledges that tribunal commissioners will undergo "extensive education and training." However, he pointed out some of the risks associated with limiting access to legal counsel, summarized as follows: owners and strata corporations may not be able to articulate the complications; the playing field would not be level for claims addressed by experienced insurance providers in an E & O claim against a council member; and, some council members may be unwilling or ill-equipped to act as the advocate for the strata corporation.

Gerry Fanaken, author and former strata manager, was at the helm of Vancouver Condominium Services Ltd. for over 20 years. He knows from first-hand experience on the front

lines how Strata living, which comprises as much of 50% of all current housing in BC, can turn from harmonious bliss to ugly cat fights over pooper/scooper issues, noise and other day to day living issues. He is of the view that, "there has been a long run up to this event (the Tribunal) and there is huge merit in the scheme."

We all agree with these wise words. However, we must always be vigilant when reviewing draft legislation to ensure that sufficient thought, as well as public and professional input is provided to avoid long term constraints that may later lead to cracks in the foundation of the Tribunal system. The issue of limiting access to legal counsel during the Tribunal process is one of those design flaws.

There will always be alternative dispute resolution options, as strata lawyer, arbitrator and mediator, Elaine McCormack, points out. The Tribunal is not a one size fits all alternative. She cautions against the use of certain forums, including the Tribunal, for certain disputes such as a nuisance case, for example, where the process could further deteriorate the relationship between the parties. Elaine will undoubtedly be a major resource for alternative dispute resolution well into the future, whether the Tribunal comes to fruition or not.

Will the Tribunal become a reality? Strata lawyers, Geoffrey Dabbs and Carol Cash, are concerned that the "recent gloomy budget announcements" could have an impact on whether the Act will ultimately be brought into force in late 2013 or 2014. We will have to wait and see.

In the meantime, we must pay close attention to this important piece of legislation and ensure that the legislature hears our concerned voices and acts accordingly.



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## Bill 44 – Civil Resolution Tribunal Act

Jamie Bleay, B.A., LL.B.  
ACCESS LAW GROUP

Having been introduced into the B.C. Legislature on May 7, 2012 Bill 44, also known as the Civil Resolution Tribunal Act of British Columbia (the “Act”), received Royal Assent on May 31, 2012. In a short period of time the Honourable Shirley Bond, the Minister of Justice and the Attorney General for British Columbia was able to put in place legislation which has, as one of its mandates, to “provide dispute resolution services in relation to matters within its authority in a manner that (a) is accessible, speedy, economical, informal and flexible.”

This mandate mirrors some of the statements made by Ms. Bond in the Legislature while the Act moved from the first to its final reading. On May 7, 2012 during debate on first reading Ms. Bond said:

*“This bill will allow strata cases and, on a voluntary basis, civil matters to be moved out of traditional adversarial litigation and into the hands of experts who are trained to resolve cases early and collaboratively. This is particularly important for strata disputes, where early resolution is critical to preserving and possibly rebuilding the relationships of people who live in strata communities.”*

*This bill will assist in moving forward our justice reform initiative by taking more cases out of the courts and freeing up judge and court time. This builds capacity into our court system and will allow our system to work more efficiently.”*

**Jamie Bleay, B.A., LL.B.**, was called to the bar in 1987, Jamie has practiced extensively in the area of condominium/strata law. He has worked with and acted for several hundred strata corporations in that time. He has worked closely with strata councils in dealing with a range of services from corporate governance matter, financial matters, property management matters and litigation matters. He has also worked for countless strata lot owners who have required his expertise in dealing with their duties and obligations, as owners, and their ongoing relationship with their strata councils.

Jamie has the legal knowledge and expertise to assist strata corporations and strata lot owners with a wide variety of issues including the resolution of disputes through mediation, arbitration, or legal proceedings, bylaw drafting and bylaw enforcement, strata council governance and management, collection of maintenance assessments and special levies, water penetration problems and advice regarding the application and interpretation of the *Strata Property Act* and its regulations.

On May 8, 2012 while moving second reading of Bill 44 Ms. Bond went on to say:

*“The bill before us today does set out the authority to establish a new civil resolution tribunal. The tribunal’s job will be to resolve strata property disputes and small claims, but more than that, the tribunal represents a new way for British Columbians to gain access to justice.”*

On Wednesday May 30, 2012 when questioned about the use of online technology to facilitate the resolution of disputes she had this to say:

*“Yes, it does involve on line potentially. It means that you could engage in this process from your home, using technology. It is a mix of in person and on line. Again, people who are not comfortable with looking at this model still have the option to use the court process if that is more appropriate for their particular perspective.”*

In these three statements Ms. Bond nicely encapsulated what she expected the dispute resolution services available under the Act would look like. Section 2(2)(a) of the Act states:

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*(2) The mandate of the tribunal is to provide dispute resolution services in relation to matters that are within its authority, in a manner that*

*(a) is accessible, speedy, economical, informal and flexible,*

The use of online services, such as online forms, educational tools, dispute resolution resources and online dispute resolution or ODR, is also one of the mandates of the Act. Section 2(2)(c) of the Act states the dispute resolution services will be provided in a manner that:

*(c) uses electronic communication tools to facilitate resolution of disputes brought to the tribunal.*

It is the aim of the B.C. Government, once the Tribunal Chair is appointed and the rules are put in place to formalize the administrative processes needed to make the Act work efficiently and effectively, to offer online dispute resolution services as an alternative to the court system. There will be several stages or phases available to those who have consented to the Tribunal's dispute resolution services, including:

1. A website that will assist a person to identify and manage potential disputes before they reach the critical stage where dispute resolution is required;
2. Use of an online dispute resolution (ODR) service which, for a nominal fee, will be available to guide, with the Tribunal's assistance, the parties through an online negotiated settlement process; and
3. If all else fails, the use of the formal dispute resolution online services which is broken down into two phases, being:
  - a. The case management phase; and
  - b. The tribunal (formal) hearing phase.

It is proposed that all disputes will be adjudicated by a Tribunal member with evidence and arguments presented using the Tribunal's online services. At this stage it might be necessary to conduct a telephone hearing or, in certain circumstances, a face-to-face hearing might be required. The Tribunal member adjudicating the dispute will have the discretion to decide if something that the Tribunal's online services will be required.

The general rule (section 20 of the Act) is that the parties to a dispute are to represent themselves. The Tribunal's rules will likely dictate the extent to which lawyers may represent a party in a tribunal proceeding failing which it will be up to the Tribunal member who can allow a party to be represented by a lawyer in certain circumstances including if it is "in the interests of justice and fairness."

Generally speaking the types of disputes that the Tribunal will be asked to resolve will fall into two categories. The first category will involve "small claims matters" that will likely include:

- a. debt or damages;
- b. recovery of personal property;
- c. specific performance of an agreement relating to personal property or services;
- d. relief from opposing claims to personal property.

The second category will include strata property matters with certain exceptions including:

- a. removal of liens and other charges on title;
- b. matters involving court orders to rebuild damaged property;
- c. appointment of an administrator; and
- d. issues with phased developments and winding up of strata corporations.

Approximately 18,000 cases are dealt with each year through the Provincial Small Claims court system. It is difficult to say how many of those matters are "strata property" matters but for those of us who listen and nod when our clients complain about the expense of going to court and the time it takes to have a dispute adjudicated before a Judge, it is likely that we will see a good many cases that would otherwise go to court be "diverted" into the dispute resolution process provided for by the Act. It is anticipated that the Tribunal will be operational by 2014 so until then we will have to wait and see!



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## Where Do We Go From Here? Alternative Dispute Resolution (ADR) in Strata

Sharon Kelly, MA

SHARON KELLY CONSULTING SERVICES INC.

As a dispute resolution practitioner it was interesting to see the final outcome to discussions the Provincial Government had with various stakeholders regarding strata disputes. The result is Bill 44, the Civil Resolution Tribunal Act ("Tribunal Act") that provides for a Tribunal triage approach to resolving disputes for strata corporations and matters such as contract disputes in Small Claims Court. In support of this new process the Provincial Government states that the Tribunal Act represents justice transformation and that it will provide affordable, timely and early resolution to disputes.

**Sharon Kelly** has been active in Alternative Dispute Resolution (ADR) since 1993. She is on the civil roster for Mediate BC, mediates regularly in Small Claims Court and does private mediations. As a Chartered Arbitrator, Sharon has arbitrated many strata corporation disputes. Sharon holds a Masters Degree in Conflict Analysis and Management, with a specialization in community conflict. She is past Vice-President of B.C. Arbitration & Mediation Institute and was Regional Chair for the ADR Institute of Canada Conference Planning Committee.

The first step in the establishment of the Tribunal is the appointment of a Tribunal Chair. While a posting for this position was thought to occur in July, at the time of writing it has not yet been made public. Once the Chair has been selected, s/he will have a key say in the development of the rules for the Tribunal. Depending upon those rules it will impact dispute resolution practitioners who work in the strata or Small Claims Court field today.

As a professional who has been involved in strata disputes since the 1980's there are some positive features to this new Tribunal process. I have seen first hand where arbitrations that have been bogged down in procedural nightmares and become lengthy and expensive. The Strata Property Act Regulations do not include any rules of procedure for arbitration. As a mediator I chaired a sub-committee of B.C. Arbitration & Mediation Institute to develop a quick and cost effective mediation process for stratas. Despite the simple model and the support of the Condominium Home Owners' Association, the program was not utilized by owners or strata corporations. The lesson I learned from this is that if we want to include mediation as an option for resolving disputes in strata communities, there needs to be a mandatory process so that the parties will come to the table. Whether it is an arbitration or mediation process getting the parties to the table is challenging. With the Tribunal Act if an owner or tenant initiates a Tribunal resolution process, the strata corporation must participate. Interestingly the Tribunal Act



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does not provide the same mandatory participation if the strata corporation initiates the dispute. While the Tribunal is an option, people can still choose the arbitration process under the *Strata Property Act*.

Assuming the Tribunal is created we will eventually see a process that is separate from Provincial Court and that applies various models and methods for resolving disputes. The case management process will include online dispute resolution, telephone facilitations (utilizing both mediation and arbitration) and if not resolved the matter will go to a Tribunal hearing. These hearings may incorporate telephone, teleconferencing and only in rare occasions an in person Tribunal. As part of ongoing justice reform the Provincial Government has piloted long distance dispute resolution programs including the Consumer Protection BC with the online dispute resolution (ODR) and the Distance Family Mediation Project that was operated through Mediate BC. With an online slant to dispute resolution service providers such as Justice Access Centres will offer assistance to parties who do not have computers at home. It appears that face to face dispute resolution will be reduced drastically in the future. That concerns me as one of the benefits of dispute resolution in strata corporations is to build understanding, as the parties to the dispute have to continue living in that community after the matter has been resolved. So the importance of an ongoing relationship is essential and I think that is missed in the online process.

There is a question mark right now on whether this Tribunal Act will see the light of day given the recent announcement that there will be no Legislature fall session. I am also concerned whether experienced strata dispute resolution practitioners will fit into the Tribunal model. If not, what types of outcomes might we see? Stay tuned.



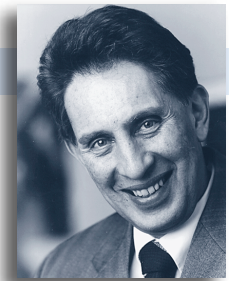
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## From Bliss to This...

Gerry Fanaken, former CEO  
VANCOUVER CONDOMINIUM SERVICES LTD.

You must admit that those artists' conceptions of new condo developments are wonderful. The attractive and magnetic sketches in advertisements show condo owners in various forms of very acceptable human conduct. There is a slim well-dressed lady walking her little dog on a leash. There is a young gentleman in a top down convertible sports car driving ever so prudently out of the parkade. There is a handsome couple chatting amiably on their patio. The portrait of living in this new condo is one of absolute and total bliss. And so it should be and it is no criticism of the developers who advertise their new condo projects in such elegant fashion. Unfortunately, however, the reality is quite different. From bliss, we go to this: disputes, arguments, disharmony and unneighbourliness.

The lady walking her dog actually does not have it on a leash, contrary to the bylaws of the strata corporation. The

**Gerry Fanaken** is a 35 year condo owner and former CEO of Vancouver Condominium Services.

little dog has actually "done its business" on the lawn and the lady has not actually "scooped." The fellow in the neat little sports car is, in reality, driving an old smoky clunker and he is speeding in the parkade and does not bother to wait for the gate to close. More likely, that nice couple on their patio with a glass of sophisticated bubbly are, in fact, the neighbours from hell. They fight and argue loudly with each other, play their stereo at all hours at the highest level without any respect for others. Bliss? Certainly not.

The *Strata Property Act* is an excellent piece of legislation and it contains certain remedies for the kinds of behaviour referred to above. Unfortunately, the reality is that a single act of legislation cannot provide simple answers and



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remedies for every aspect of human conduct or misconduct in the strata corporation. Aggrieved owners can, and should, turn first to their strata councils to find solutions. There are provisions in the Act to go to court or arbitration. Such avenues have been used extensively over the recent decades (the first statute being legislated in BC in 1966) but going to court is not as easy as it sounds. First, it is costly. Second, it can often take considerable time to get a hearing date. Third, it is a forum that laypersons do not fully understand and that can lead to misunderstandings and frustration.

I recall, way back in the '70s and '80s, general public discussion about having some sort of government body to adjudicate on strata disputes. Something similar to the

Rentalsman that was introduced in the 1970s to deal with rental issues. For various reasons, a similar "strataman" office never emerged, probably because government found it to be cost prohibitive. To counter that argument, there was discussion about levying every condo owner a dollar amount to help fund an office to deal with strata corporation disputes. That was back in the '70s and '80s and the idea never found legs.

It is fair to say that strata housing in British Columbia has exploded in the past two decades. By some accounts, over 50 percent of all housing is now strata title. Even if not, it certainly is close to that level and there is no evidence to suggest strata title housing will diminish in the coming

years. In reality, it will continue to dominate housing growth and development. Unquestionably, there will be many more disputes. The provincial government has recognized this fact and also recognizes that disputes between owners or disputes between owners and their strata councils (or vice versa) are a reality, despite those artists' nice sketches. Many of these disputes are now consuming great chunks of time in the provincial court system and that translates into cost. The solution? The new Civil Resolution Tribunal Act has been enacted. This legislation is designed to relieve pressure on the court system by transferring disputes from Small Claims Court to the new Tribunal Office. Of greater impact, however, is that virtually all conventional strata corporation disputes will be heard by the Tribunal. To be clear, some strata disputes will still have to be heard in the Supreme Court of British Columbia and not by the Tribunal.

This article does not delve into the details of the new Tribunal since other articles in this edition of the Stratasphere cover the topic extensively. It is important to note here, however, that there has been a long run up to this event and there is huge merit in the new scheme. No doubt there will be "breaking in" problems as the new Tribunal gets on its feet, but once the initial wrinkles have been ironed out, BC will enjoy a very effective and meaningful scheme to assist strata councils and strata title owners resolve their disputes.



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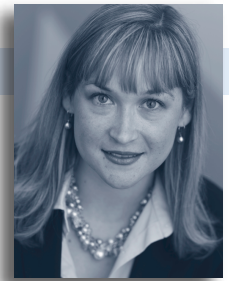
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# Strata Property Disputes and The Civil Resolution Tribunal

Geoffrey Dabbs and Carol Cash  
GEHLAN DABBS



Strata lot owners and strata corporations in British Columbia may soon have a new alternative to the formal court process to settle their disputes. The recent introduction by the BC Legislature of the Civil Resolution Tribunal Act provides for the establishment of a new tribunal that will focus on certain small claims matters and certain strata property matters. The tribunal will encourage a collaborative, solution oriented approach to resolving issues as opposed to the adversarial approach generally applied in the courts. It is anticipated that the Act will come into force by regulation in late 2013 or early 2014. Hopefully the recent gloomy budget announcements of the British Columbia government will not have any impact on whether the Act is indeed brought into force and whether the tribunal is established.

## Jurisdiction

Under the Act an owner, tenant or a strata corporation may request a tribunal resolution of a strata property dispute that falls within the jurisdiction of the tribunal. The tribunal's jurisdiction will include a wide variety of matters including non-payment of monthly strata fees or fines; unfair actions by the strata corporation or by people owning more than half of the strata lots in a complex; uneven, arbitrary or non-enforcement of strata bylaws (such as noise, pets, parking, rentals); issues of financial responsibility for repairs and the choice of bids for services; irregularities in the

**Geoffrey Dabbs** and **Carol Cash** are with the Vancouver law firm Gehlen Dabbs. Their practice focuses on commercial restructuring and insolvency law, including bankruptcy and receivership, commercial tenancy disputes, security recovery and related matters. They also act for strata corporations and court-appointed administrators in disputed matters concerning all aspects of strata governance.

conduct of meetings, voting, minutes or other matters; interpretation of the legislation, regulations or bylaws; and issues regarding the common property. The tribunal's jurisdiction will specifically not include matters that affect the land such as ordering the sale of a strata lot; court orders respecting rebuilding damaged real property; dealing with developers and phased strata plans; or determining each owner's per cent share in the strata complex.

## How It Works

In order to encourage the parties to a dispute to find their own solution to their problem the first step will be an independent resolution process in which the tribunal will simply provide guidance and support to the parties as they negotiate. If this doesn't work, the second option will be a guided, structured negotiation using online resources that will be monitored and assisted by the tribunal at the parties' convenience. If the parties remain unable to find a solution the next option through the tribunal will be a facilitated settlement using mediation or some other dispute resolution processes. It will be possible for an individual to compel a strata corporation to participate but individuals must consent before this stage can be undertaken. If a dispute resolution process is unsuccessful then the final option can be employed in which a hearing will be held before an adjudicator who will hear each side to the matter and will make binding decisions. The adjudicator will be permitted to award costs to the successful party but these costs will not generally include any of the legal costs that a party may have incurred.



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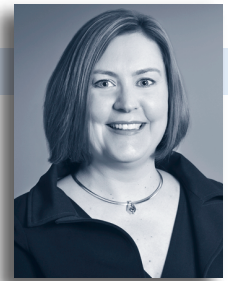
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# The Use of Mediation to Resolve Nuisance Disputes in Strata Complexes

Elaine McCormack

ALEXANDER HOLBURN BEAUDIN & LANG LLP

As a council member or a strata manager are you asked to solve disputes between neighbours? Some of these disputes are legally termed “nuisances,” which makes them sound like they are minor annoyances, when they actually can seriously impact an individual’s enjoyment of his or her home. If you are a council member or strata manager being asked to solve a nuisance issue, you may decide to recommend mediation to the parties involved.

The term “nuisance” used in the legal sense means the unreasonable interference of someone else’s use of land. In a strata complex, this takes many forms. Here are some examples:

- An owner enjoys smoking a cigar on her patio, and the smoke from the cigar wafts up into a unit located on the second floor. The person living in the second floor unit has health concerns that are exacerbated by smoke and complains to council, demanding that all smoking on patios be prohibited.
- An owner’s late night hobby of playing a Fender Stratocaster guitar results in the person in the unit below being unable to fall sleep at night and unable to wake up for her early morning nursing shift and she demands that the neighbour sell his guitar.

The variety of possible nuisance scenarios in strata complexes is endless. Councils are often asked to enforce the nuisance bylaws, which generally read:

**Elaine McCormack** is a lawyer, chartered arbitrator and mediator with Alexander Holburn Beaudin + Lang LLP. Her primary area of practice is in assisting strata corporations, individual owners and management companies in the governance and dispute resolution processes of strata life. She enjoys teaching through the British Columbia Real Estate Association, the Condominium Homeowners’ Association, the Professional Association of Managing Agents and other organizations.

## Use of property

- 3 (1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that
- (a) causes a nuisance or hazard to another person,
  - (b) causes unreasonable noise,
  - (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,
  - (d) is illegal, or
  - (e) is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan.

Although councils have a legal obligation to reasonably enforce bylaws, council members are often reluctant to do so in nuisance matters. One concern is that the council must have proof that a resident is causing the nuisance and each of the residents may have very different stories about what is actually occurring. In order to prove his or her case, the claimant may call council members at all hours of the day and night to investigate the matter. Also, many council members may realize that it will take more than following the bylaw enforcement procedure set out in section 135 of the *Strata Property Act* and rendering a fine on an owner or tenant to change his or her behaviour.

There are many different venues that can be used to resolve nuisance disputes. Resolution of strata nuisance disputes is commonly sought in the Supreme Court of British Columbia

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and at the BC Human Rights Tribunal and by way of arbitration under the *Strata Property Act*.

All of these venues involve an adversarial system whereby the parties, or lawyers on their behalf, provide an unbiased adjudicator or panel of adjudicators with the facts of the dispute and with their understanding of the law and the adjudicator(s) is asked to impose a binding decision on the parties. Even though the dispute can start solely between the neighbours, the strata corporation may be named in the proceeding for various reasons, including for the alleged failure to reasonably enforce its bylaws.

There are some risks involved in the process of using a judge, tribunal or arbitrator(s) to decide nuisance disputes in strata complexes. One of the risks is that by going through the dispute process, the relationships between the individuals involved may deteriorate further and it may become even more difficult for them to work together effectively. Another difficulty is that for some strata disputes, such as an owner complaining about smoke wafting into her unit from a patio below through an open window, it is generally difficult and expensive to prove what has happened in Court and the effectiveness of a Court Order in changing whether individuals are being considerate and reasonable towards one another is limited.

Given that Small Claims Court does not have the jurisdiction to grant injunctive relief (in other words, order someone to stop doing something like smoking cigars on their patio), the strata corporation can only seek relief in the Supreme Court of British Columbia for an order that the smoking resident comply with the bylaws of the strata corporation, or consider what relief may be available through arbitration. The court action as well as the associated expenditure on legal fees must be approved by a  $\frac{3}{4}$  vote resolution of all owners. Many of the owners may be hesitant in this economic climate to commit to spending what can easily be legal fees in the five figures to resolve these disputes.

One option that a council can consider is for the strata corporation to suggest to the individuals involved that they participate in a voluntary mediation. Mediation is a process whereby a mediator, who is a trained and unbiased third party, assists the parties in communicating in a manner that clearly explains to the other party what is important to them, as opposed to just communicating their demands to the other

party. By doing this, the parties may come up with a creative solution to the problem. In some circumstances only the feuding neighbours participate in the mediation, while in others council members participate as well. For instance, maybe the lady that enjoys smoking cigars on her patio can do so on Sunday afternoons when her neighbour is out visiting her daughter. The person who could do without hearing "Stairway to Heaven" one more time might be able to sleep better if the guitarist is allowed by the council to use the common meeting room located in the basement of the complex as a studio from time to time. Mediations often result in the parties signing a written agreement setting out the terms that all parties are willing to live by.

Mediators generally charge by the hour and often book sessions that last from approximately two hours to a day or two. Generally, each party shares half the cost. If council has the financial flexibility to do so, it may be good value for the strata corporation to cover the cost of the mediation, in order to get the disputing neighbours to the table and avoid a more costly way of addressing the conflict.

If you or your strata corporation are interested in using mediation to resolve a dispute, and are wondering if it is appropriate in the circumstances, please contact a lawyer familiar with mediation. Mediation is not appropriate in all circumstances, particularly if there is physical or verbal intimidation being used by a party towards another party. Also, pursuant to the Personal Information Protection Act, the council needs to seek the permission of the person making the complaint before revealing his or her identity and other personal information to the person complained of.

There is a wealth of information regarding mediation on the web, and there are several organizations that provide information and lists of potential mediators.

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# New Program Helps Seniors and People with Disabilities, Modify Homes

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Would a new ramp, handrails or walk-in shower help you maintain your independence at home?

BC Housing's new Home Adaptations for Independence (HAFI) program helps low-income B.C. seniors and people with disabilities make home modifications that will allow them to continue living at home.

Through HAFI, homeowners and landlords with eligible tenants can apply for financial assistance of up to \$20,000 for improvements that make their home more accessible and safe.

The goal of the program is to enable people who have physical limitations to live at home longer. People's physical needs change over time – sometimes, a small improvement to a home can make the difference between being able to live independently or not.

Types of eligible projects include:

- Handrails in hallways or stairways,
- Ramps for ease of access,
- Easy-to-reach work or storage areas in the kitchen,
- Lever handles on doors,
- Walk-in showers with grab bars, and
- Bathtub grab-bars and seats.

The projects must be permanent and fixed to the home, although exceptions can be made for equipment that gives access to an existing part of the home (e.g. a bath lift). The program will not cover supportive care, portable aids such as walkers, household appliances, emergency repairs to roofs and furnaces, or maintenance work.

Launched in January 2012, HAFI is funded by the Government of Canada and the B.C. government through



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Are you a low-income senior or a person with a disability who wants to live safely and independently in the comfort of your home?

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Does your home need to be adapted to meet your changing needs?

If so, you may be eligible for financial assistance under the **Home Adaptations for Independence (HAFI)** program.

**Find out today if you are eligible** and if you meet all of the requirements as a low-income homeowner or as a landlord applying on behalf of an eligible tenant.

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the Canada-B.C. Affordable Housing Initiative. Through the HAFI program, \$15 million in grants or forgivable loans will be distributed to qualifying B.C. residents over the next three years.



To qualify for assistance from HAFI, recipients must be a low-income senior or person with a disability, a Canadian citizen or landed immigrant, and a B.C. resident. Someone in the household must have a permanent disability or loss of ability that makes it difficult to perform day-to-day activities. As well, the total household income and assets must be below a certain limit. BC Housing can tell you the income and house value limits for your area when you apply.

The program is open to both homeowners and those living in market rental accommodation where rents are at the low end of market levels; landlords must apply for improvements on behalf of eligible tenants.

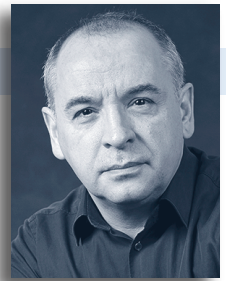
Eligibility requirements, an application guide and application forms are available at [www.bchousing.org/HAFI](http://www.bchousing.org/HAFI), by calling BC Housing at 604-646-7055, by emailing [hafi@bchousing.org](mailto:hafi@bchousing.org), or visiting any BC Housing office. For those outside the Lower Mainland, you can also call BC Housing toll free at 1-800-407-7757 extension 7055.

For more information about the program, visit [www.bchousing.org/HAFI](http://www.bchousing.org/HAFI).



*The new Home Adaptations for Independence (HAFI) program helps low-income B.C. seniors and people with disabilities make home modifications for safe, accessible and independent living.*





# Tribunals: A Solution for Strata Corporation Disputes

Tony Gioventu, Executive Director

CONDOMINIUM HOME OWNERS ASSOCIATION OF BC

The Province of BC introduced the Civil Resolution Tribunal Act this year in hopes of adopting a new format for civil disputes that frequently find their way into Provincial Court (small claims), The Supreme Court of British Columbia or arbitration proceedings under the *Strata Property Act*. The objective of a tribunal system for strata corporations is to provide fair access to administrative justice for strata owners, residents, and tenants in a strata corporation and to the strata corporation. Essentially with a successful tribunal system an owner would be able to make an application to start a hearing process that ensures minimal cost, minimal procedures and an objective to minimize the time period for resolution. Characteristically, a tribunal process will have a screening phase that provides directions to an applicant that instructs them how to first find resources

**Antonio (Tony) Gioventu**, is the Executive Director and Strata Property Advisor for the Condominium Home Owners' Association of B.C. (CHOA). He brings 25 years' experience in management, real estate development, construction, building operations, and strata property legislation to this position.

and solutions to resolve their complaint. If they are unsuccessful, the next phase is often a pre hearing consultation that may include a mediation attempt to resolve the dispute and ultimately a hearing where a decision may be imposed.

There are several models in other countries where tribunals or administrative justice applications are routinely engaged to resolve disputes for multi residential communities, with a



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significant reduction in costs for the participants, minimal disruption to the communities, simplified procedures for easy access and understanding, and expedited time periods. Tribunal commissioners undergo extensive education and training, there is continuous peer review over decisions and hearings, and decisions are posted on a public web site. Applicants may use legal counsel for representation at any stage; however, decisions or awards are not permitted to include costs for legal representation of either of the parties which ensures parties may have legal representation while at

the same time restraining the argument of abuse by process. The commissioners are encouraged to find consensus between the parties, but are still vested with the authority to prevent abuses to the proceedings and to make decisions that include orders, penalties or damages to the parties.

For many strata corporation disputes, the interpretations and concepts of the Strata Property Act & Regulations, bylaws of the strata corporation, bylaws of sections, joint use covenants, air space parcel agreements, or anomalies in the filed strata plans, schedule of unit entitlement or voting

entitlements are extremely complicated. Without legal representation, many owners and strata corporations would not be able to articulate the complications. In addition, we may also find claims being defended by a strata corporation insurance provider for general liability or errors and omissions claims. Preliminary indications of our tribunal system indicate that lawyers may not be permitted in the proceedings. Hopefully there will be an opportunity to find a compromise that ensures applicants and respondents have reasonable representation, while at the same time ensuring that the proceedings are not over run by process. As a strata council member and volunteer, will you be prepared to respond to and represent your strata corporation when an owner files a complaint? Considering most council members are volunteers with minimal experience and knowledge of the legislation, it is likely most council members will not be willing to act as the respondents, or take the time to respond without some level of representation. A tribunal system

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from an owner's perspective will result in a strata corporation being finally forced to comply with the legislation and to cease acting oppressively or unfairly against individual owners and strata corporations will have better enforcement options for bylaws against owners, and disputes should no longer potentially bankrupt the strata corporation.

Disputes in multi-family residences, especially strata corporations, may evolve for years, and may take many more years to be resolved under our current dispute options. Ongoing conflicts result in significant damages to communities, and frequently hinder their ability to function

and focus on the real obligation of a strata corporation to maintain, repair and protect the investments of the owners. Our strata communities are often crippled by unresolved disputes or the ability to resolve disputes economically, quickly and fairly. The resolution or removal of a conflict in a strata community has an overwhelming effect on the health and value of the communities, and the quality of life of investors and residents. I would encourage all readers to send an email or letter to their MLA or the Premier demanding the development of the tribunal system to streamline a strata dispute resolution process.

## STRATA PROPERTY ACT A Practical Guide to Bylaws

*"Every Strata should have a Copy!"*

Written by Cora D. Wilson,  
Strata Lawyer  
and Tony Gioventu

This comprehensive guide provides a Step-by-step, do-it-yourself format for the preparation of bylaws. The guide includes a description of what should be done at every stage of the bylaw process, including:

- how to deal with unit owners
- how to undertake the bylaw review process
- how to amend bylaws
- how to repeal bylaws
- how to draft bylaws
- how to deal with the presentation of bylaws at a general meeting
- how to register bylaws

The Guide provides a review of every provision of the Standard Bylaws to the Strata Property Act, including a recommendation on what to do with the bylaw. Also, the wording of typical proposed amendments is included.

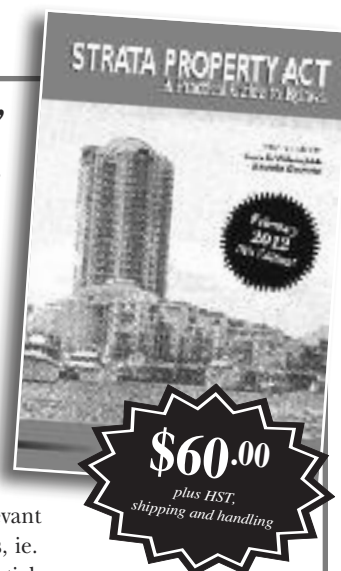
For example, you may wish to provide for a bylaw that permits a non-owning spouse to sit on the strata council. The sample wording is provided for your convenience.

The Guide provides a review of the provisions of the "Strata Property Act" that permits additional bylaws, such as rental bylaws, interest bylaws, remuneration bylaws for strata council members etc. The proposed wording for these types of bylaws is also provided.

Further, a review of some of the relevant provisions for different types of strata lots, ie. sections, commercial strata lots and residential strata lots, is available.

Finally, Land Title Office registration forms are attached with instructions for completion.

The bylaw review, drafting, approval and registration process is an art. It is a complex, difficult and time consuming process which should not be taken lightly. It is hoped that this Bylaw Guide will minimize the pitfalls.



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Cora D. Wilson has more than 25 years of experience as a Strata Lawyer. She is a co-author with Tony Gioventu of "Strata Property Act – A Practical Guide to Bylaws." She is also president and editor of Strata-sphere Condominium Services Inc.



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Kelly Bradshaw has been providing legal services for more than 17 years, focusing on criminal and civil litigation. She is also co-editor of the book "Strata Property Act – A Practical Guide to Bylaws."