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Inside This Edition

THE CIVIL RESOLUTION TRIBUNAL

- NOW A REALITY! pg1

Cora D. Wilson, J.D.

Strata Lawyer

WILSON MCCORMACK LAW GROUP

EDITORIAL pg3

Cora D. Wilson, J.D.

Strata Lawyer

WILSON MCCORMACK LAW GROUP

SUPREME COURT IDEAL FOR CERTAIN COLLECTIONS GIVEN COST RECOVERY

BREAKTHROUGH pg5

Elaine T. McCormack, J.D.

Strata Lawyer

WILSON MCCORMACK LAW GROUP

CRT & ALTERATION APPROVAL

- ONUS IS ON THE STRATA! ... pg6

Elaine T. McCormack, J.D.

Strata Lawyer

WILSON MCCORMACK LAW GROUP

INSURANCE DEDUCTIBLES AND THE CIVIL RESOLUTIONS TRIBUNAL pg7

Andrea Fammartino, J.D.

Strata Lawyer

WILSON MCCORMACK LAW GROUP

CHOOSING THE CIVIL RESOLUTION TRIBUNAL (CRT) AS THE BEST OPTION TO RESOLVE STRATA DISPUTES..... pg8

Antonio (Tony) Gioventu

Executive Director

CONDOMINIUM HOME OWNERS
ASSOCIATION OF BC

THE CIVIL RESOLUTION TRIBUNAL - NOW A REALITY! JURISDICTION REVIEWED

Cora D. Wilson, J.D.

The *Civil Resolution Tribunal Act* (the "CRTA") was declared in force on July 5, 2016. Thereafter, the Civil Resolution Tribunal ("CRT") - Canada's first online tribunal, became operational for the purpose of resolving certain strata claims. Numerous decisions were released in 2017 clarifying certain jurisdictional and procedural aspects of the CRT.

The CRT's mandate is to provide strata dispute resolution services accessibly, quickly, economically, informally and flexibly. In resolving disputes, the CRT must apply principles of law and fairness. Also, it must recognize relationships between the parties to a dispute that will likely continue after the dispute process has ended.

This article reviews some of the decisions.

CRT Jurisdiction:

Section 3.6 of the CRTA outlines the strata claims that can be heard by the CRT, including:

- (a) the interpretation or application of the *Strata Property Act* (the "Act") or a regulation, bylaw or rule under that Act;
- (b) the common property or common assets of the strata corporation;
- (c) the use or enjoyment of a strata lot;
- (d) money owing, including money owing as a fine, under the Act or a regulation, bylaw or rule;
- (e) an action or threatened action by the strata corporation, including the council, in relation to an owner or tenant;
- (f) a decision of the strata corporation, including the council, in relation to an owner or tenant; and,
- (g) the exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.

The CRT does not have jurisdiction in relation to a claim that may be dealt with by the Supreme Court, under any of the following provisions of the *Strata Property Act*: accountability issues, unanimous votes, court appointed voters, lien and property claims, forced sale proceedings to collect money owing, rebuilding damaged property, court order when a special levy resolution receives more than 1/2 but less than 3/4 of votes, appointment of an administrator, orders relating to land and phased developments, orders amending the schedule of unit entitlement, termination of the strata plan and claims involving the *Residential Tenancy Act* or the *Arbitration Act*.

... continued on page 4



Cora D. Wilson, J.D., Strata Lawyer, **Wilson McCormack Law Group**. Cora has 30 years of legal experience with a focus on strata law. She deals with development and construction matters, corporate law, remediation, strata & corporate governance, contracts, bylaws, collections, litigation and other strata related matters. She has appeared in all BC Courts and many tribunals. cora@wmlg.ca



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EDITORIAL

20 Years in Review

Cora D. Wilson, J.D.



Cora D. Wilson, C.D.
Wilson Law Corp 2012



Danny Hatfield,
Husband of Cora Wilson



Elaine McCormack, Lawyer,
McCormack & Company 2014



Brian Chatwin, Chatwin
Engineering LTD. 1998



Allan Tryon Lawyer
Crease Harman LLP 1998

It is hard to believe that Strata-sphere Condominium Services Inc. has been publishing for 20 years. I was delighted to review the last two decades of strata history and take a wonderful trip down memory lane. It is hard to believe that the strata industry has changed so much in such a short period of time.

After practicing law in Ontario for several years, including condo law, I moved to BC in 1992. I was surprised to discover that education for the strata community was almost non-existent. Also, there was only a hand full of Supreme Court decisions. No-one contemplated a strata tribunal at that time.

I started up my law practice in Nanaimo. Vancouver Island University (as it is now known) approved my application to teach strata classes. I taught at VIU from 1995 until 2002. It soon became clear that classes were not enough to meet the demand. I incorporated Strata-sphere Condominium Services Inc. in 1997 and began the arduous task of publishing an industry magazine, conducting full day strata themed seminars with multiple high profile speakers and publishing industry related books. I published the Vancouver Island Directory in 1997 listing all Vancouver Island strata corporations. At that time there were approximately 2000 strata corporations on the Island. This number has since swelled to an unbelievable number.

I wish to sincerely thank all of the people that provided constant and consistent support and inspiration for Strata-sphere over the years including my husband, Danny Hatfield, Tony Gioventu, Gerry Fanaken, Elaine McCormack, Kat Suna, Lesley Thompson, Collette Semple and many others. Without you, this publication would not have become a reality and continue to be an educational force in the industry.

Tony Gioventu and I first published A Practical Guide to Bylaws in 2002. We completed our 8th edition in 2016. Elaine T. McCormack provided invaluable editing work for the 2016 edition. This publication continues to sell province wide. Every strata manager and strata corporation should have a copy.

We lived through the Barrett Commission in the late 1990's, the multi-billion dollar leaky condo crisis (1996 – current), new strata legislation with the adoption of the *Strata Property Act* on July 1, 2000, major bylaw changes, multiple complex legislative updates, governance issues, administrator appointments, disclosure issues, privacy legislation, a rash of expensive Supreme Court cases, legislation authorizing termination of the strata plan with an 80% vote and the Civil Resolution Tribunal. The strata community will continue to evolve and change leading into the future. I can hardly wait to write about the next two decades.

I wish to thank all of contributors for their generous and invaluable contribution to the strata community over the years. I would like to make special mention of our cover story contributors to our theme publications over the last two decades, as follows:

1. Announcing Strata-sphere and its editor, Cora D. Wilson (1997);
2. Announcing the Vancouver Island Directory published by Cora D. Wilson (1998);
3. Bryan S. Shapiro, Shapiro, lawyer, Hankinson & Knutson, lawyer, Leaky Condo and the Design Professional (1999);
4. Brian M. Chatwin, president & engineer, Chatwin Engineering Ltd., Special Great Truths (1999);
5. Allan R. Tryon, litigator, Crease, Harmon & Company, litigator, Leaky Condo and proving Responsibility (1999);
6. Gerry Fanaken, strata manager & president, Vancouver Condominium Services Ltd., The New Strata Property Act (2000);
7. Ian Stuart, strata manager, Newport Realty Property Management, Form B, Information Certificates, A Consumer Challenge (2000);

... continued on page 13



Cora Wilson, Lawyer, C.D.
Wilson Law Corp 2015



Tony Gioventu,
Exec. Director CHOA 2012



Gerry Fanaken, Vancouver
Condominium Services LTD. 2007



Kelly Bradshaw, Lawyer
King & Bradshaw 2013



Sharon Kelly, Mediator,
Chartered Arbitrator



The Civil Resolution Tribunal ... continued from page 1

The list of exclusions is lengthy. If the CRT does not have jurisdiction over a matter, then it does not have a mandate to adjudicate the claim. The claim must be dismissed. The decisions indicate that the CRT is prepared to address jurisdictional issues on a preliminary or a summary basis. This is a good approach and will likely save the parties significant time and effort during the adjudication process.

Moreover, a review of the CRT decisions over the past year indicate that there are several other considerations governing whether a claim should be summarily dismissed or restricted. Does the CRT have jurisdiction? Should the CRT exercise its discretion to refuse to adjudicate a claim on grounds, for example, that it is too complex? Is the party an owner as defined in the Act? Did the owner or tenant request a hearing before bringing a CRT application? Is the claim statute barred due to the expiry of a limitation period? Has the proposed dispute been addressed in another proceeding so as to bar the claim on grounds of *res judicata*? The following decisions address some of these complex issues.

Standing – Is the party an owner as defined in the Strata Property Act?

The CRT must refuse to resolve a claim that it considers is not within the jurisdiction of the tribunal pursuant to section 10 of the CRTA. The CRT will refuse to hear a case if the owner is not registered as the person at the land title office as an owner of a freehold estate in a strata lot whether entitled to it in the person's own right or in a representative capacity. An owner includes leasehold interests, agreements for sale and life estates, but does not include a former owner. It should be noted that a former owner is no longer an owner as defined by the Act. See *Somers v. The Owners, Strata Plan VIS 1601*, 2017 BCCRT 28 (CanLII) and *Y.R.N. Holdings Ltd. v. The Owners, Strata Plan LMS 2241*, July 13, 2017, *ST-2017-00376*, 2017 BCCRT 41 (CanLII).

In *Somers* there was a question regarding whether the tribunal had jurisdiction to resolve the applicant's dispute as a former owner of a strata lot. In that case, the applicant paid the bylaw fine under protest to his lawyer to allow a sale of the strata lot. Once the strata lot was sold, the owner became a former owner. The Tribunal refused to resolve the dispute by a former owner. The applicant retained the right to bring their claim in the Small Claims Court, Provincial Court or in the Supreme Court.

These decisions make it clear that being an owner is fundamental to determining whether the CRT has jurisdiction to hear the case.

Is the Case too Complex:

The CRT may refuse to resolve a dispute under section 11 of the CRTA if the case is too complex and impractical for the tribunal. One of the factors considered is the addition of parties to the proceedings who are not owners. Such persons cannot be added for jurisdictional reasons. See *Turenne v. The Owners, Strata Plan NW1370*, BCCRT 44 (CanLII). In this case the strata corporation sought orders to require the owner to bring alterations to a common property deck into compliance with the applicable building code. The Strata Corporation wished to add former owners of the strata lot and inspectors as parties to the proceedings. The Tribunal's jurisdiction does not extend to the strata's contractual claims against former owners or potential tort claims against third parties such as the inspector. The Tribunal concluded that a divided tribunal process would be impractical and refused to hear the matter pursuant to section 11 of the CRTA.

Since June 1, 2017, the Tribunal can address small claims with a monetary jurisdictional limit of \$5,000. This permits a party to advance a debt or damage claim against a non-owner. However, such claims require a separate dispute and a separate decision from the strata claim.

Limitation Act

The *Limitation Act* applies to a CRT dispute: see *Michael (Bruce) Woytuik v. The Owners, Strata Plan VIS 5970*, 2017 BCCRT 3 (CanLII). A limitation period is a specific time period within which a person may pursue a claim. If the time expires, the right to bring the claim disappears. The *Limitation Act* allows two years for a person to bring a claim for all strata claims made after June 1, 2013. As a general rule, the two-year limitation period starts to run on the first day that a person discovers a claim or the first day that a person had knowledge of the claim or reasonably ought to have known about the claim. If the matter arose before June 11, 2013, then a limitation period of six years applies to the claim. Legal advice should be sought to determine when a limitation period begins and whether it has expired. If a claim is not started prior to the expiry date of the limitation period, then the CRT will find that the claim is out of time.

... continued on page 9



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Supreme Court Ideal for Certain Collections Given Cost Recovery Breakthrough

Elaine T. McCormack, J.D. Strata Lawyer
WILSON MCCORMACK LAW GROUP

Based on a recent decision of the Court of Appeal of British Columbia, the venue of choice for strata corporations wanting to collect monies from owners for unpaid strata fees and special levies is the Supreme Court of British Columbia and not the Civil Resolution Tribunal (“CRT”).

In the case of *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA (“Baettig”) the Court of Appeal of British Columbia decided that strata corporations are entitled to an order against delinquent owners for all of the strata corporation’s reasonable legal costs incurred for filing a lien and for legal costs incurred in Supreme Court of British Columbia collection proceedings for amounts collectable under a lien. The amounts collectable under a lien are typically strata fees, special levies, interest, legal fees and costs.

The case of *Baettig* interpreted the provisions of section 118 of the *Strata Property Act*, which provides 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;
- (b) land title and court registry fees;
- (c) other reasonable disbursements.

In *Baettig*, the Court of Appeal provided detailed reasoning, comparing past provisions of the *Condominium Act* to the provisions of the *Strata Property Act*, including updated wording describing what legal fees incurred by the strata corporation should be reimbursed by the owner.

The Court of Appeal of British Columbia has decided that the financial burden for legal fees incurred by a strata corporation for collection proceedings should be paid by the delinquent owner. As long as legal fees for the lien and the collection proceedings are reasonable, the legal fees may be added to the amount owing under the lien.

In comparing the process and results of CRT proceedings and Supreme Court of British Columbia proceedings for collecting strata fees and special levies, the vast majority of councils are likely to prefer the Supreme Court of British Columbia because of the cost, timeliness and results.

CRT proceedings are inexpensive to commence, but can take a lot of a strata corporation’s resources, as the general rule is that a council member must be the contact person with the CRT. Some council members have found this to be an intensive experience, requiring a great deal of their time, including multiple communications with the facilitator appointed by the CRT. At the CRT there is generally no

ability to claim legal fees for the proceedings. While CRT proceedings may result in an order being granted by the CRT that the individual owner owes money to the Strata Corporation, the CRT has no ability to enforce the order. To enforce the CRT order, the strata corporation must go to Small Claims Court for amounts up to \$35,000.00, and the Supreme Court of British Columbia for higher amounts. The CRT is also unable to order that the strata lot be sold if the amount remains unpaid.

A Petition in the Supreme Court of British Columbia for order for sale proceedings costs more to commence than a CRT proceeding and reasonably involves retaining a lawyer to do the paperwork and to be the contact person with the Supreme Court of British Columbia and the delinquent owner. This frees up council members to conduct other council business. The petition and supporting affidavits follow a standard form and generally, after service on the owner and any mortgagees, results in the owner or mortgagee fully paying the debt owing to the strata corporation even before the court hearing. If a court hearing is necessary, it takes place before a Master of the Supreme Court of British Columbia, who usually grants the order for judgment in less than five minutes. This Court hearing often takes place within three to five months of filing the petition in court. The Supreme Court of British Columbia Master generally orders a redemption period, which allows the owner a certain period of time to pay the judgment amount to the strata corporation, failing which the strata corporation can retain a realtor and sell the property, subject to the terms of the sale being approved by a Master in a further court application. An application to approve the sale often results in a bidding war in the court room and can result in a very good sale price being obtained. The realtors and charge-holders are paid from the proceeds of sale, and the balance of the proceeds of sale are paid to the owner. The strata corporation’s priority amounts, including strata fees, special levies interest, legal fees and costs are paid in priority to all mortgages.

In comparing the court process with the process of the CRT, there will be certain times when the court process is timelier and more cost effective. Certainly for collection of strata fees and special levies, councils are likely to find that the court process is more appropriate.



Elaine T. McCormack, J.D.,
Strata Lawyer,
Mediator &
Arbitrator; **Wilson McCormack Law Group.** Elaine has over 20 years of strata experience. She deals with strata governance, contracts, bylaws, human rights claims, collections, litigation and other strata related matters. She has appeared in all BC Courts.
elaine@wmlg.ca



CRT & Alteration Approval - Onus is on the Strata!

by Elaine T. McCormack, J.D.



Elaine T. McCormack, J.D., Strata Lawyer, Mediator & Arbitrator, **Wilson McCormack Law Group**. Elaine has over 20 years of strata experience. She deals with strata governance, contracts, bylaws, human rights claims, collections, litigation and other strata related matters. She has appeared in all BC Courts. elaine@wmlg.ca

In the case of *The Owners, Strata Plan KAS 510 v. Nicholson*, 2017 BCCRT 48 (“*Nicholson*”) the Civil Resolution Tribunal (“CRT”) decided whether Nicholson (“Owner”) had to restore her limited common property deck to the original depth and length, at her own cost.

Although CRT tribunal members are not bound to follow the same reasoning that other tribunal members used in previous cases, the reasoning in CRT decisions will likely be persuasive to other tribunal members. In this article, I have summarized the *Nicholson* decision. Where applicable, I have provided a “Take Away” paragraph that can be used by councils and strata managers to refine their governance practices in light of the *Nicholson* decision, and also in light of provisions in the Schedule of Standard Bylaws, which were not considered in the decision.

In the *Nicholson* case, the Strata Corporation owner commenced CRT proceedings. The issues that were determined by the CRT were as follows:

- (a) Should the Owner be required at her expense, to restore her deck to its original depth and length, either on the basis that she acted in a conflict of interest, or had not obtained the appropriate council permission to extend her deck?
- (b) Is the Strata Corporation’s case barred by the limitation period of two years?

The findings of the tribunal member regarding whether permission for the deck alteration had been granted and the limitation period are of general interest to strata corporations. Also of importance is that strata corporations looking for general practice tips on governance should look beyond CRT decisions and read the *Strata Property Act*, regulations, the bylaws and other documents, as the CRT may make comments that do not take into account all of these factors.

A. Background

In *Nicholson*, the Owner, “sometime during the fall of 2014” extended her limited common property deck to increase the size. The increase in size was referred to in the decision as an “extension”. The Owner paid for the extension and the Strata Corporation received three written complaints about it in 2016. The Strata Corporation submitted that at least some of these complaints were made in 2015, but formalized in writing in 2016. The deck extends past a privacy wall and is visible by other areas of the complex.

The Strata Corporation had filed a consolidated set of bylaws, including a bylaw that that a strata lot owner wishing to make any structural or apparent alterations or additions to the building exterior, common property, or limited common property must “First secure written approval from Council”.

The Owner was a Council member from at least May 2013 to March 2015. She was involved in the repair and maintenance of rotten decks. The Minutes in May 2014 provided that the Owner “requested permission to extend deck out by 2 feet while repairs are being done”. The Owner further reiterated her request in an email dated May 22, 2014.

There were emails exchanged between the Owner and another Council member and the other Council member supported the deck extension. Also, a Council member recalled that the deck extension was approved, but could not remember the details of the approval.


The decision of Council to approve the deck extension, if there was one, was not evidenced in the Minutes of a Council meeting. There does not appear to be specific evidence that the Council members actually had a vote to allow the deck extension either at either a formal or informal meeting.

B. Alteration

The Tribunal put the onus on the Strata Corporation to prove that the deck extension was not approved, rather than putting the onus on the Owner to prove that the deck extension was approved.

The Tribunal found it would be significantly unfair to require the owner to reduce the size of her deck to its original state, given that she had made requests and she relied on positive email correspondence.

... continued on page 11



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Insurance Deductibles and the Civil Resolutions Tribunal

Andrea E. Fammartino, J.D. Strata Lawyer
WILSON MCCORMACK LAW GROUP

When is an Owner responsible to pay the Strata Corporation's insurance deductible? The answer to this question is of importance to both Strata Corporations and individual Owners. Since it began operating in 2016, the Civil Resolution Tribunal ("CRT") has decided at least eleven cases about insurance deductibles. The decisions in all eleven of these cases makes it clear that the answer to the above-noted question involves a review of the bylaws and the *Strata Property Act* ("SPA").

Section 149 of the *SPA* requires that the Strata Corporation obtain and maintain property insurance on the common property, common assets, buildings shown on the Strata plan and fixtures built or installed on a Strata lot. Accordingly, the Strata Corporation's insurance often covers damage that occurs within a unit, including damage caused by flooding or bursting pipes.

The decisions by the CRT regarding insurance deductibles have been relatively consistent. The following case is representative of these cases. In the case of *Zhang v. The Owners, Strata Plan BCS 1039*, 2017 BCCRT 56 ("*Zhang*"), the CRT was tasked with deciding whether Zhang (the "Owner") was responsible for a \$5,000.00 insurance deductible on the Strata Corporation's insurance policy that resulted from a common property plumbing leak.

In the *Zhang* case, the Owner commenced CRT proceedings. The issues that were determined by the CRT were as follows:

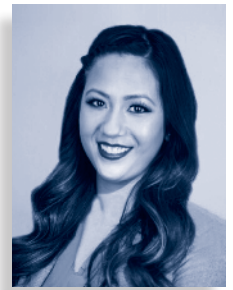
- a) Is the Strata permitted to charge the Owner's unit with the Strata's \$5,000 insurance deductible?
- b) Does the tribunal have the authority to order an Owner to pay the amount of the insurance deductible?
- c) Should the \$5,000 charge be removed from the Owner's unit?
- d) Should the Strata reimburse the Owner or Owner's insurer the amount it received towards payment of the Strata's \$5,000 insurance deductible?
- e) Should the Owner be reimbursed for expenses of \$10.71 paid to Canada Post for providing a copy of the dispute notice to the respondent by registered mail?

A. Background

The Owner's unit (unit 3) was located in a four-level building. Unit 1 was located on the ground level. Units 2 and 3 were next to each other and located above unit 1. Units 2 and 3 were each 3 levels. In unit 3, there was a bathroom located above the kitchen.

On February 19, 2016, the Owner observed a watermark on the kitchen ceiling bulkhead located on the second floor of unit 3 which the Owner reported to the Strata. The Strata retained Northwest B.C. Mechanical 2015 Ltd. ("Northwest") to determine the source of the leak. It was

Andrea E. Fammartino, J.D., Strata Lawyer, **Wilson McCormack Law Group**. Andrea is an associate with Wilson McCormack Law Group. She deals with strata governance, construction matters, bylaws, collections, litigation, CRT matters and other strata related matters. andrea@wmlg.ca



determined that the leak was coming from a plumbing supply line to the upstairs bathroom of unit 3.

The March 4, 2016 report contained the following statement:

As this unit [unit 3] has its own hot water tank, the supply line does not feed any other unit. This damaged pipe was inside unit#3 ceiling and no part of this pipe was in a wall that borders another unit and therefore is the responsibility of the unit owner.

The Strata relied on the Northwest report, which indicated the location of the leaking pipe to be within unit 3.

B. Bylaws

When determining the obligation to repair resultant damage, the Strata's bylaws, section 158 of the *SPA*, factors relating to negligence and whether the Strata's insurance policy responds to the claim were taken into consideration.

In this case, the relevant Strata bylaws were:

- a) Bylaw 8 (1) (b): The Strata must repair and maintain common property that has not been designated as limited common property.
- b) Bylaw 30 (2): If loss or damage to a unit, common property including limited common property results in a valid claim under the Strata's insurance policy, the Owner of the unit "where the damage originated is responsible" for the Strata's insurance deductible relating to the loss or damage.

In the case at bar, the relevant bylaws did not contain a negligence standard and simply held the Owner "responsible" for the Strata's deductible if the damage originated from their unit. The CRT went on to reference *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 0519, in which the relevant bylaw contained an indemnity clause that referred to carelessness or negligence, which the court found imported a

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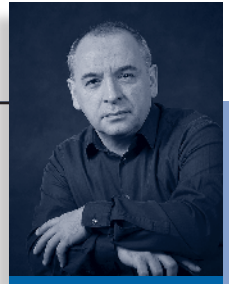
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"On the 20th Anniversary Edition of our Strata-sphere Magazine we would like to give an honorary mention to one of Strata-sphere's biggest contributors Tony Gioventu. May we express our sincerest heartfelt gratitude for all the years of support."

Antonio (Tony) Gioventu, is the Executive Director and Strata Property Advisor for the Condominium Home Owners Association of B.C. (CHOA). He brings 27 years of experience in management, real estate development, construction, building operations, and strata property legislation to this position.



Choosing the Civil Resolution Tribunal (CRT) as the best option to resolve Strata Disputes

by Tony Gioventu

Without exception, the greatest barrier that has existed for strata corporations in BC since 1965 were the barriers to economically and procedurally resolve disputes. When the CRT came into effect in 2016, strata corporations, owners and tenants suddenly had an economical, accessible and level playing field to deal with the many common law issues that arose in their strata corporations.

In a nutshell the CRT has the ability to order a strata corporation, owner

or tenant and their occupants to do something, stop doing something or to pay for something. One of the most common barriers for strata councils that existed before the CRT was the 3 / 4 vote barrier to commencing law suits. Provincial/small claims court could deal with monetary disputes, but could not order compliance or enforcement with bylaws or the Strata Property Act and Regulations. If an owner decided to ignore the bylaws of the strata corporation, and only 1 or 2 other units were affected, it was impossible to get the remaining 55 owners to approve a 3 / 4 vote to proceed to arbitration or the Supreme Court to obtain an enforcement order. It was extremely rare that a large majority would support a small group of owners adversely affected by an owner as they were unwilling to be exposed to the costs of legal fees, the courts and the time delays. Within a year, the landscape for strata disputes has changed entirely.


The CRT does not have the jurisdiction to deal with matters involving land. Those include changes to the strata plan, schedule of voting rights, unit entitlement, easements and covenants on titles or registered with the strata corporation, the sale of strata lots, wind up and liquidation of strata corporations or the appointment of an administrator. However, we all know these types of disputes have been extremely well served by the courts, and the recent decision from the Appeals Court in BC, KAS 2428 v. Baettig, has clarified that the costs to be recovered for court ordered sales will secure a greater scale of the financial risk to the strata of the legal and court costs. I would place those disputes in the 5% of strata legal matters. The balance of issues arise from strata corporations, owners and tenants not complying with the Act or Bylaws of each strata corporation, and monetary disputes over who pays what.

Many strata disputes appear trivial to the public, but they are not trivial to each community. They have the potential to fuel great conflict for long periods of time, destroy communities and strata communities become absorbed with the disputes and forget their real obligations

... continued on page 10






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The Civil Resolution Tribunal... continued from page 4

Res Judicata

The CRT may refuse to resolve a dispute under section 11 of the CRTA if *res judicata* applies. It may apply in two ways including action estoppel (where the matter was or should have been the subject of a previous process or claim) or issue estoppel (which stops a person from raising an issue that has already been decided in another process): *Erschbamer v. Wallster*, 2013 BCCA 76 (CanLII) at para 12).

The CRT decision of *East Barriere Resort Limited et al v. The Owners, Strata Plan KAS1819*, 2017 BCCRT 22 (CanLII) canvassed this issue in detail. In that case, a group of owners brought a Petition in the Supreme Court. The day after the Supreme Court decision, an owner brought a CRT dispute to determine whether certain bylaws of the Strata Corporation were invalid. There was a question regarding whether the Supreme Court had already considered this issue or cause of action. The CRT refused to resolve the owner's dispute on grounds that this issue had already been considered

by another court. Therefore, the owners could not bring substantially the same issue or cause of action to the tribunal for a fresh decision.

The Tribunal noted that section 11(1)(a) of the CRTA is discretionary and the decision maker may refuse to apply the doctrine of *res judicata* in special circumstances. Special circumstances includes fraud, misconduct, new evidence or fairness concerns. The Tribunal did not find that special circumstances existed in *East Barriere Resort* and refused to hear the claim.

Conclusion

There are many jurisdiction issues that should be carefully considered by a strata corporation upon receipt of a dispute. The council should not hesitate to seek legal assistance with the CRT process starting with the preparation of a response to a dispute. Access to legal advice is available even though the CRT may refuse to permit the appointment of legal counsel as the representative for the strata corporation, owner or tenant.

Hearing a precondition to a claim in the CRT

The *Act* requires an owner or tenant to request a council hearing as a precondition to bringing a dispute before the CRT. The CRT may waive this requirement upon request by the strata corporation, owner or tenant (s. 189.1

(1) and (2), and 34.1, *Act*). This issue should be raised by a strata corporation disputing a claim brought by an owner or tenant.

Legal Representation

The object of the CRT is to make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate.

As a general rule parties must represent themselves before the CRT (s. 20, CRTA). The Tribunal may exercise its discretion and permit representation by a lawyer if it considers that it is in the interests of justice and fairness.

In *Booth et al v. The Owners, Strata Plan NW2575*, August 18, 2017, ST-2017-002675, the CRT denied a strata corporation legal representation by an insurance lawyer in the following circumstances:

1. The owners did not agree to the representation since it would tip the scales against them. This would be unfair.
2. The owners could not afford legal representation.
3. There was nothing unusual or complex about the subject matter of the dispute. It was a common within the CRT's jurisdiction.

We recommend that the request for legal representation be made by the council representative for the strata corporation. Thereafter, the Tribunal will determine whether the request will be granted. A decision to prohibit lawyers does not prevent a person from obtaining legal advice, helping with document preparation, organizing evidence and preparing submissions. ■



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Choosing the CRT... *continued from page 8*

to maintain and repair common property and assets and administer the business of their strata corporation. The quick, economic and fair resolution to many of the trivial disputes has definitely already helped many communities. While the CRT is a great solution it is not the magic bullet for all disputes. Remember that CRT decisions are very case specific. While common law decisions do influence tribunal decisions, the tribunal was intentionally created to consider and accommodate the unique sets of evidence and history of each strata dispute. While a dispute may seem unusual, it is specific to that strata corporation and each owner, tenant and occupant and most important, tribunal decisions do not form case law that is binding on other tribunal hearings or court proceedings.

If you are a strata corporation using the CRT to seek an order for someone to do or stop doing something or to pay for something such as fines, insurance deductibles or damages, there are a number of steps you have to take before you proceed.

Bylaw enforcement scenario: An owner is not complying with bylaws as they have significantly altered common property without permission. The strata council has sent out notices of complaint as required by section 135 of the Act, the owner has not responded or has requested a hearing and the strata has continued to determine the owner is not in compliance with the bylaws. The strata corporation has been imposing fines at a rate of \$200 per week for the violation

... continued on page 11



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Onus is on the Strata.. continued from page 6

Section 18(1) of the *Schedule of Standard Bylaws* provides that “At Council meetings, decisions must be made by a majority of council members present in person at the meeting.” Section 18(3) of the *Schedule of Standard Bylaws* under the *Strata Property Act* requires “The results of all votes at a council meeting must be recorded in the council meeting minutes”. I do not know whether these bylaws were not included in the filed bylaws for the Strata Corporation in the *Nicholson* case. In my experience, these bylaws are generally included in bylaws that Strata Corporations pass when they repeal the *Schedule of Standard Bylaws*.

The CRT found that the Owner did not need to prove that the decision supporting her alterations was made by majority vote at a Council Meeting or evidenced in the Council Minutes.

Take Away

Councils and strata managers should be careful to ensure that any correspondence regarding alterations does not suggest support for an alteration unless an approval of Council has been decided by a majority vote at a Council meeting and evidenced in the Minutes. If the owner proceeds with an alteration with tacit approval of a Council member by email, the CRT may find that approval for the alteration was granted.

C. Limitation Period

The CRT considered that the Strata Corporation’s claim was statute barred based on the two-year limitation period set out in the *Limitation Act*. The deck extension was completed in mid-August 2014 and was visible from elsewhere in the complex. The Tribunal found that by November 4, 2014 the Strata Corporation knew the deck extension was completed and should have reviewed its records to see if the proper approval had been given. The Dispute Notice was not filed until November 18, 2016.

Take Away

The obligation to comply with the bylaws regarding alterations may be treated as subject to a two-year limitation period by the CRT, instead of as an ongoing obligation to comply with the bylaws. This puts an obligation on the Council to act on issues regarding alterations very quickly if they want to preserve the Strata Corporation’s right to do so. Perhaps an annual alterations inspection is in order.

The concept of a duty to comply with the bylaws for an alteration being statute barred is an interesting one. If the Strata Corporation has a duty under the bylaws that it does not fulfill, will the CRT be as likely to find a claim of an owner to be statute barred, or will it be considered an ongoing obligation of the Strata Corporation?

Conclusion

Councils can review the decisions of the CRT to help refine their governance practices. The decisions are available at <http://decisions.civilresolutionbc.ca/crt/en/nav.do>.

This article is for educational purposes only. For specific legal concerns, please consult a lawyer. ■

Choosing the CRT... continued from page 10

and ordered the owner to pay for the cost of the restoration to the common property. After 2 months of fines and no changes the strata council should consider using the CRT to resolve the issue. The strata council convenes a meeting, discuss and vote on the action they are going to take against the owner to commence a CRT complaint. By majority vote the council decides on the action, sends the owner a written notice that if they don’t resolve the matter within 14 days the strata will file the CRT complaint. The council appoint a council member to file the CRT complaint and act on behalf of the strata. While the strata is not permitted to retain legal counsel to act on their behalf, this is an excellent opportunity for the strata to consult with their lawyer about the scope of evidence, information and the process they will engage as they engage the CRT process. If your CRT application is well planned, contains accurate and detailed information, the case management process will have a higher likelihood of success and the adjudicators will have much better information to rely upon during a decision process. Your lawyer can coach you through the process and help you with responses during the process. Just remember to set aside an allocation each year in your budget to fund some basic legal fees and services for CRT actions.

The same basic conditions apply to an owner or tenant. Before

... continued on page 12



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Choosing the CRT... *continued from page 11*

you start your complaint you will be required to attempt to have a hearing with your strata council to resolve the matter. If not, the core of your complaint, the evidence and information associated with the complaint will all be key factors in your success. If your strata council is not complying with the Act because they are refusing to hold the annual general meeting no later than 2 months after the fiscal year end, you will need documents such as last year's minutes of the general meeting, financial information showing the fiscal year end, and an attempt by the owners requesting to hold the AGM. While an owner or tenant is not required to give 14 days notice of commencing a claim with the CRT, they do have to request a hearing first.

CRT decisions and consent agreements may be registered on the Supreme Court registry and if the decision is against an owner and their tenants, the decision may then be registered on the title of the strata lot. This is another key benefit for strata corporations. When a Form F Payment Certificate is requested the strata corporation must provide the certificate within 7 days and it is valid for 60 days. The strata may identify and withhold the certificate until amounts owing are paid, or an arrangement satisfactory to council has been made. Here's the sticky part, a strata corporation is not permitted to

include claims for insurance deductibles or damages on the Form F unless the strata corporation has a decision from the courts, an arbitrator's decision or the CRT. This is another excellent use of the CRT to ensure the strata can collect an insurance deductible or damages caused by an owner, their tenants or occupants. My view on damages and insurance deductibles though is don't wait. If you have a collections issue send a demand payment within weeks of the claim or damages and start the collection process and CRT complaint. The sooner the claim is filed and decided the better chance the strata corporation has to collect the outstanding amounts.

Like all disputes, using the Civil Resolution Tribunal requires clear evidence, communication between the parties, proper notice of actions and disputes, and a proactive business manner to simplify your strata corporation's collection worries, bylaw enforcement, and to help resolve disputes early to reduce conflict in your community. ■



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Thank you everyone for making the last two decades so challenging and interesting. We look forward to providing ongoing educational materials and information to the strata industry in the future!

Warm regards,

■ Cora D. Wilson, editor of Strata-sphere

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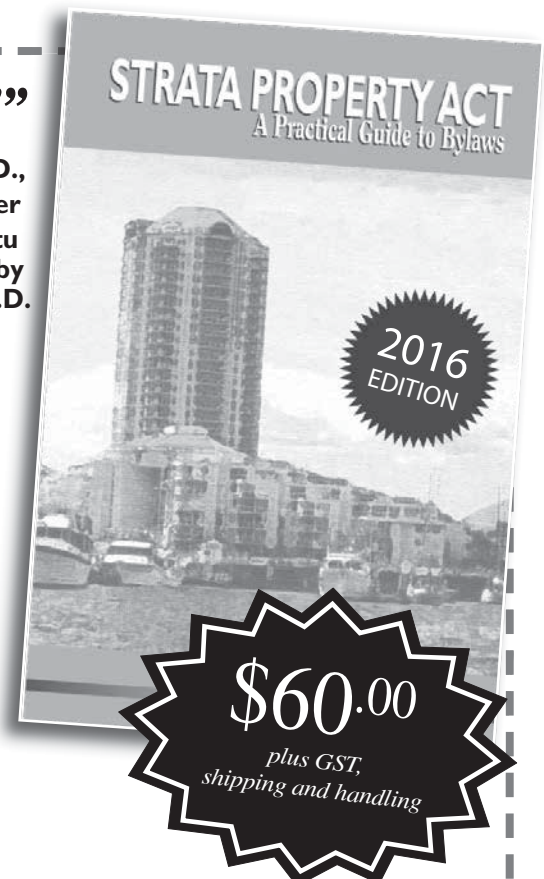
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Tel: 1.888.298.7999

250.753.0353

Fax: 250.741.1441

Email: info@stratasphere.online

Website: www.stratasphere.online

Editor: Cora D. Wilson



**Assistant Editor:
Lesley Richmond**

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Insurance Deductibles ... continued from page 7

negligence standard that was narrower than simply finding the Owner was 'responsible'. Under the narrower bylaw at issue in *Morrison*, the court found that the Strata must prove an Owner was negligent in order to hold them responsible to pay the Strata's insurance deductible. The CRT found that this was not the case here and the Strata was permitted to charge the Owner's unit with the Strata's \$5,000 insurance deductible.

Take Away

Councils should ensure that bylaws regarding responsibility for damage occurring in a unit are drafted in a manner that is as broad as possible so that the Strata may recover such costs from an Owner.

C. Insurance Deductible

Section 158 of the *SPA* addresses insurance deductibles and reads in part:

- (1) Subject to the regulations, the payment of an insurance deductible in respect of a claim on the Strata Corporation's insurance is a common expense to be contributed to by means of Strata fees calculated in accordance with section 99 (2) or 100 (1).
- (2) Subsection (1) does not limit the capacity of the Strata Corporation to sue an Owner in order to recover the deductible portion of insurance claim if the Owner is responsible for the loss or damage that gave rise to the claim.

Section 158(2) of the *SPA* says section 158(1) does not limit the Strata's ability to sue to recover an insurance deductible. Although "sue" is defined under the *SPA* to include a court proceeding, there is nothing under the *SPA* that restricts the tribunal from ordering an Owner to pay an insurance deductible. As a result, the CRT found that it had the authority to order the Owner to pay the insurance deductible and the \$5,000.00 charge was not to be removed from the Owner's account. Furthermore, having found the Owner responsible to pay the \$5,000, the CRT found that any money paid to the Strata as a result of the insurance deductible chargeback, either indirectly by the Owner's insurer or directly by the Owner, must not be reimbursed.

Take Away

The cost of an insurance deductible can be added as a valid charge to an Owner's account. Enforcement procedures may include a court proceeding or may involve bringing a claim before the CRT, who have the authority to order an Owner to pay said insurance deductible.

D. Reimbursement of Expenses

The tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. In the case at bar, the Strata Corporation was the successful party, however it did not claim any tribunal fees or expenses. As the Owner was unsuccessful, the Owner's claim for dispute-related expenses was dismissed.

E. Conclusion

The leak was found to be exclusively within the Owner's unit, therefore the Owner was responsible for the insurance deductible in accordance with the Strata's bylaws. ■

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