

voice from the... strata- SPHERE®

21st Anniversary

www.stratasphere.online

Fall 2018

Inside This Edition

UP IN SMOKE..... 1

Cora D. Wilson, J.D.

Strata Lawyer

WILSON MCCORMACK LAW GROUP

LEGALIZATION OF NON-MEDICAL CANNABIS 3

Cora D. Wilson, J.D.

Strata Lawyer

WILSON MCCORMACK LAW GROUP

INSTALLING ELECTRICAL VEHICLE SUPPLY EQUIPMENT AND CHARGING USER FEES..... 5

Compliments of

Antonio (Tony) Gioventu

Executive Director

CONDOMINIUM HOME OWNERS
ASSOCIATION OF BC

DOGS, DOGS, DOGS 6

Cora D. Wilson, J.D.

Strata Lawyer

WILSON MCCORMACK LAW GROUP

SHORT TERM & LONG TERM RENTAL BYLAWS FINES UP TO \$1,000.00..... 7

Cora D. Wilson, J.D.

Strata Lawyer

WILSON MCCORMACK LAW GROUP

THE COST OF COMPLIANCE 8

Leah McKenzie-Brown, J.D.

Strata Lawyer

WILSON MCCORMACK LAW GROUP

Up In Smoke

by Cora D. Wilson, J.D.

British Columbia's strata community is "Up in Smoke" over sweeping legislative changes gripping the industry. We are facing three major changes including legalization of non-medical cannabis, fine increases of up to \$1,000.00 per day for violating a transient accommodation bylaw and new user rate guidelines for electric vehicle charging stations.

Many strata corporation feel vaporized by these changes. What does the new legislation mean? How will it affect us? What do we need to do to get ready? When should we make changes? How much will it cost? There are other questions.

We recommend that every strata review and amend their bylaws and rules and prepare appropriate amendments and resolutions to ensure readiness.

The following is a list of potential amendments to the bylaws or rules:

1. smoking restriction bylaw with appropriate exemptions;
2. prohibition against planting, keeping or growing non-medical cannabis;
3. rental restriction bylaw for long term rentals by tenants;
4. occupancy restriction bylaw governing vacation, travel or temporary accommodation;
5. fines of up to \$1,000.00 per day for violation of a temporary accommodation bylaw; and,
6. user fees to pay operational costs of electric vehicle charging stations.

Funding resolutions will be required for electric vehicle charging stations installed at the strata corporation's expense or to authorize legal expenditures to ensure compliance with the *Strata Property Act* ("Act"). Alteration Agreements will be required for electric vehicle charging stations installed by the owner.

Regulation 6.9(2) was amended to provide flexibility when addressing and charging user rates. A user fee imposed by a strata corporation for an electric vehicle charging station may now be a fixed amount or an amount determined on a reasonable basis including, but not limited to, the user's rate of consumption, recovery of operating or maintenance costs by the strata corporation, number of users and duration of use.



Cora D. Wilson, J.D., Strata Lawyer, **Wilson McCormack Law Group.** Cora has over 31 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

... continued on page 4



**WILSON
McCORMACK**
AN ASSOCIATION OF LAW CORPORATIONS

**C.D. Wilson Law Corporation would like to
congratulate Leah McKenzie-Brown and Dominic
Meslin on joining Wilson McCormack Law Group**



Leah McKenzie-Brown, J.D.

Leah McKenzie-Brown was called to the BC Bar in 2012 and works in the areas of strata law, civil litigation and advocacy before administrative tribunals. She also has experience in real estate, business law and wills and estates.



Cassandra Cooper, Legal Assistant
Cora D. Wilson, J.D. Lawyer
Lesley Richmond, Conveyancer
Mary Milner, Nanaimo Office Manager



Dominic M. Meslin, LL.B.

Dominic M. Meslin was called to the BC Bar in 2002. Dominic has over 16 years of legal experience in the areas of real estate, corporate, commercial, strata, litigation and wills and estates.

**Bylaws
Collections
Development**

**Construction Litigation
Mediation/Arbitration
Court Applications**

**Privacy/Human Rights
Termination of Sections
& Strata Corporations**

Nanaimo Office

630 Terminal Avenue N
Nanaimo, BC V9S 4K2
Tel 250-714-1400 Email info@wmlg.ca

www.wmlg.ca

New Westminister Office

Suite 350 - 500 Sixth Avenue
New Westminister, BC V3L 1V3
Tel 604-545-0095 Email info@wmlg.ca

Order Your Updated Editions Today!

☐ Strata Property Act

Written by Cora D. Wilson, J.D., Strata Lawyer & Tony Gioventu

"Every Strata should have a copy!"

Name: _____

Address: _____ City: _____

Postal Code: _____

Tel: _____ Fax: _____

Email: _____

☐ VISA ☐ Mastercard ☐ Cheque enclosed

*Cheques made payable to
Strata-sphere Condominium Services Inc.

VISA/Mastercard Number _____ Expiry _____

Amount _____ Signature _____

Fax orders to: 250-741-1441 • Tel: 250-753-0353 • Toll Free: 1-888-298-7999

☐ Understanding Governance

Written by Tony Gioventu, Edited by Cora D. Wilson, J.D.



Legalization of Non-medical Cannabis

by Cora D. Wilson, J.D.

Cora D. Wilson, J.D.
cora@wmlg.ca



Cannabis will be legal as of October 17, 2018. The practice and procedure for adopting and enforcing bylaws governing non-medical cannabis will not change substantially as compared with smoking restriction bylaws. Such bylaws are already in wide use throughout BC with appropriate exemptions for medical and ceremonial use.

Legislation governing use of medicinal marijuana, growing a limited quantity of medical marijuana for medical purposes or designating someone to produce it on their behalf has been in force since 2016. Bylaws that fail to consider this legislation could attract a human rights complaint. Stratas should exercise caution when drafting or enforcing such bylaws.

The *Cannabis Control and Licensing Act* in British Columbia will govern non-medical cannabis. Adults aged 19 years and older can possess up to 30 grams of non-medical cannabis in a public place. This is consistent with the federal government's proposed possession limit for adults. Minors cannot possess non-medical cannabis. Generally, adults may use non-medical cannabis in public spaces where smoking and vaping are permitted. However, use of cannabis is banned in vehicles and community places frequented by children such as parks. Additional restrictions may be imposed by stratas, as well as by municipalities and landlords. We recommend that stratas take advantage of the power of the pen by adopting an appropriate cannabis restriction bylaw.

Adults may grow up to 4 cannabis plants per household as long as plants are not visible from public spaces off the property. Stratas can restrict home cultivation with a properly worded bylaw. However, caution should be the rule of the day when addressing use of cannabis and growing cannabis for medicinal purposes. We recommend that a qualified strata lawyer be hired to draft this bylaw to ensure that the strata corporation is standing on solid legal ground.

Can a Strata Corporation legally adopt a cannabis smoking prohibition bylaw?

Generally speaking a Strata may adopt such a bylaw with appropriate provisions addressing grandfathering subject to appropriate exemptions and the requirement to provide reasonable accommodation to persons smoking medicinal marijuana, growing medicinal marijuana and ceremonial use of marijuana.

The enforceability of a smoking prohibition bylaw was addressed in *The Owners, Strata Plan NW1815 v. Aradi*, 2016 BCSC 105. Mr. Aradi, a life time smoker, purchased his strata lot in 2002 prior to the adoption of a smoking prohibition bylaw. The standard nuisance bylaw was in place. Over a decade later, the owners adopted a smoking prohibition bylaw without a grandfathering clause.

Long standing smoking complaints both before and after the bylaw went unanswered by the owner resulting in fines of \$2,300.00 over some 20 months. The owner alleged that the smoking prohibition bylaw was discriminatory since it created two classes of citizens - smokers and non-smokers. Further, he claimed that he was addicted to nicotine and had limited mobility. He alleged that the strata discriminated against him by not accommodating his disability. The Supreme Court concluded

that Mr. Aradi had contravened the bylaws of the strata corporation by smoking in his unit. Mr. Aradi had functional limitations based on the testimony of his occupational therapist. However, he could drive his car. Therefore, he could smoke off-site. The court ordered Mr. Aradi to stop smoking in his unit.

Although this case addressed cigarette smoking, we are of the view that it equally applies to smoking non-medical marijuana. The Supreme Court confirmed that a smoking prohibition bylaw without a grandfathering clause is enforceable. However, we recommend a grandfathering clause as well as a clause requiring accommodation for a person with a disability to mitigate against legal proceedings and human rights complaints.

Smoking may be prohibited in a strata lot, on the interior common property, on balconies and patios, and on common property subject to the 6 metre rule from an exterior door, open window or air intake. This means that smoking can be prohibited in elevators, hallways, parking garages, common rooms, storage locker areas and other interior common areas.

As of 2016, persons requiring cannabis for medicinal purposes may grow a limited amount or designate someone to produce it for them. This does not equate to the grant of permission for a grow-op! Properly drafted alteration, nuisance, and smoking bylaws can be an effective tool to govern smoking, growing and using medicinal marijuana in a strata corporation.

A bylaw is not enforceable to the extent that it contravenes the *Human Rights Code* or any other enactment or law. In our view, human rights are red light matters. The Strata facing such issues should seek timely advice regarding how to proceed from a qualified strata lawyer.

A strata can prohibit smoking in strata lots only by amending the bylaws of the strata corporation. Section 119 of the *Strata Property Act* (the "Act") states that the strata corporation must have bylaws and the bylaws may provide for "the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation."

Regardless of the bylaw's scope, the bylaw must comply with all legislation including the *Act*, tenancy legislation, *Human Rights Code*, *Tobacco and Vapour Products Control Act* and applicable cannabis legislation and regulations. These enactments govern the ability of strata corporations to enact and enforce a Smoking Prohibition Bylaw.

These bylaws are complex for reasons other than the scope and the extent of applicable law. We recommend that Stratas should consult with a qualified strata lawyer before adopting a smoking restriction bylaw.



Up In Smoke... *continued from page 1*

It is not unusual today to see a large number of electric vehicles on the road. The number is only expected to increase. Therefore, charging stations are becoming a necessity. Tony Gioventu, CEO of CHOA, generously provides the industry with a comprehensive and straightforward checklist for addressing the approval process to install, operate and pay for electric vehicle charging stations. This is a must read.

Legalization of Non-medical Cannabis:

Cannabis will be legal as of October 17, 2018. The practice and procedure for adopting and enforcing bylaws governing non-medical cannabis is comparable to smoking restriction bylaws already in wide use throughout BC. Appropriate exemptions and the requirement to provide reasonable accommodation for medicinal marijuana, growing medicinal marijuana and for ceremonial use of marijuana should be properly addressed in the bylaws.

Adults may grow up to 4 cannabis plants per household as long as plants are not visible from public spaces off the property. Strata corporations can restrict home cultivation with a properly worded bylaw. We recommend that a qualified strata lawyer be retained to draft this bylaw to ensure that the strata corporation is standing on solid legal ground.

Fines up to \$1,000 per day for violation of Temporary Accommodation Bylaw

Strata Regulation 7.1 will come into force on November 30, 2018. This important regulation permits a fine of up to \$1,000.00 per day for an owner or tenant violating a bylaw that prohibits or limits the rental of a residential strata lot for remuneration as vacation, travel or temporary accommodation. This is a major amendment since such fines would have been considered punitive historically. This amendment reflects public intolerance for temporary accommodation such as Airbnb.

A maximum fine of up to \$500.00 every 7 days continues to apply to other rental restriction bylaws. We recommend that two bylaws be drafted including one bylaw for restrictions on rentals governed by tenancy agreements and a second bylaw governing temporary accommodation pursuant to an occupancy agreement. Different rights, duties and obligations attach to each type of residential strata lot rental.

We believe that a flood of strata corporations will race to adopt temporary accommodation bylaws to take advantage of the increased fines.

Actual Reasonable Legal Costs:

Once the owners have spoken by approving bylaws, they should be properly enforced. Enforcement should not be limited to fining. Enforcement means compelling an owner to comply with the bylaws within a reasonable period of time. This may mean seeking appropriate orders from the Civil Resolution Tribunal. Strata lawyer, Leah McKenzie-Brown, emphasizes that strata corporations should consider seeking recovery of actual reasonable legal costs incurred to compel owners and tenants to comply with the bylaws.

The Court of Appeal decision of *The Owners, Strata Plan KAS2428 v. Baettig* 2017 BCCA 377 (B.C.C.A.) stands for the proposition that sections 133 and 118 of the Act entitle a strata to recover the actual reasonable legal costs incurred in bylaw enforcement and collection proceedings. The legislative intent is that strata owners who comply with bylaws of the strata corporation should not have to shoulder the financial burden of remedying infractions committed by non-compliant owners. This is a substantial and welcome change to historical legal cost recovery efforts.

We recommend that strata corporations take advantage of this earthshaking new case law by addressing bylaw enforcement and collection proceedings using a qualified strata lawyer. They should take appropriate steps throughout this process to comply with due process and ensure that legal costs are recoverable as part of the process or at the end of the day.

Conclusion:

Strata lawyers have a significant role to play in providing legal advice to the strata community. The legislature and the courts have recognized the importance of this role by permitting recovery of actual reasonable legal costs in appropriate circumstances. Now is the time to take advantage of these beneficial changes.

RESIDENTIAL RENTAL &
STRATA PROPERTY SPECIALISTS

www.completeresidential.com



COMPLETE
RESIDENTIAL PROPERTY MANAGEMENT LTD.

(250)370-7093 fax (250)370-1127

3267B Tennyson Avenue, Victoria, BC V8Z 3P4



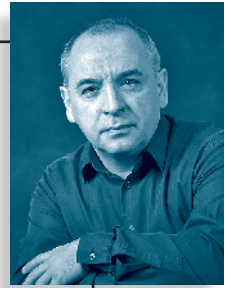
WIDSTEN
PROPERTY MANAGEMENT INC.

Specializing in local, personalized strata management
Contact Chris Widsten at:
chris@islandrent.com 250-753-8200 www.islandrent.com

What you need to know about:

- **Installing Electric Vehicle Supply Equipment (EVSE)**
- **Charging users fees for the electrical consumption & operating costs**

Antonio (Tony) Gioventu, is the Executive Director and Strata Property Advisor for the Condominium Home Owners Association of B.C. (CHOA). He brings 28 years of experience in management, real estate development, construction, building operations, and strata property legislation to this position.



by Tony Gioventu

Before installing an EVSE, a strata corporation will need to determine how parking is allocated and if any EV sites are available, what electrical requirements are necessary, who will be responsible for costs and grants, and how the operational costs will be recovered.

Step 1: Parking & electrical service availability

- Identify the designation of the property and parking space(s) that may be utilized for EVSE installation
- Identify if sufficient electrical service is available at the location or whether it requires an installation of electrical services to the location or upgrades to the electrical capacity of the building.

Step 2: Identify / establish who is installing the EVSE:

- Strata corporation as a common facility, or
- Strata corporation for a strata lot owner where an alteration to common/limited common property requires the approval of the strata corporation under the bylaws and an alteration agreement for the responsibility of costs associated with the installation.
- Strata lot owner for installation in a strata lot.

Step 3: Approvals and Funding

- Seek the approvals and funding necessary for
 - the installation of the EVSE,
 - modifications required for the electrical service and monitoring,
 - charging user fees,
 - user agreements, and
 - alteration agreements to establish obligations for maintenance, repair, insurance, liability and renewal of the EVSE.
- Contact www.pluginbc.ca for funding and rebate options

Step 4: Rules, bylaws and user fees

- Establish rules, bylaws and user fees if necessary to offset the cost of electricity and operations provided to the EVSE users.

Checklist for Determining Parking/ Site Availability

Before a strata corporation or an owner installs a charging station it must determine how parking is designated or if there is additional parking available for common use of charging stations.

Why does parking designation matter? Unless the strata corporation knows how parking is designated it cannot determine who is responsible for the installation and costs associated with the EVSE, the strata corporation or a strata lot owner.

Types of Parking: There are different strata corporations in BC, all with variations of use and allocation of parking. Each strata property may administer the use of their parking in a different manner based upon the bylaws or rules of the strata corporation, and the assignments of parking created by the owner developer when marketing strata properties. Generally, parking is designated as common property, limited common property, part of a strata lot or as a separate strata lot. The chart on the next page shows the common variations of parking allocations found in BC.

For more information on installing an EVSE visit www.choa.bc.ca to review the full report -“Installation of Electric Vehicle Charging Stations on Strata Property”.



An update - Dogs, Dogs, Dogs Visiting Dogs from outside BC & the Guide Dog & Service Dog Act revisited

by Cora D. Wilson, J.D.

The *Guide Dog and Service Dog Act* (the “Act”) became law on January 18, 2016 making British Columbia the most progressive Province in Canada for persons with disabilities. This legislation modernized guide dog and service dog guidelines by raising training standards, improving public accessibility, including strata corporations, and strengthening public safety. Regrettably, the legislation does not apply to visiting dogs from jurisdictions outside BC resulting in two different standards for dogs in a strata.

The *Act* gives certified dog handlers and their dogs (the “team”) access rights equal to those enjoyed by the public without dogs. Discrimination is not acceptable. Only dogs can be certified; however, this does not prevent a person with a disability from requesting a living assistance pet in appropriate circumstances pursuant to the *Human Rights Code*.

The *Act* addresses certification for service and guide dogs and the rights of the team, certified retired dogs to reside with their handlers, public access rights for certified dogs in training, the training standard, the certification process, compliance and enforcement.

Cora D. Wilson, J.D.
cora@wmlg.ca



BC Certification

Both the dog and handler must be certified since they are a team. There are two ways to become certified. The team must be trained at a school accredited by Assistance Dogs International or the International Guide Dog Federation. Alternatively, they must pass a certification test offered by the Justice Institute of BC (“JIBC”). In this case, support documentation from a BC veterinarian and a BC medical practitioner or nurse practitioner must be provided with the application. The legislation assumes that international accreditation meets the same standards as the JIBC. This remains to be seen.

The Registrar is authorized to issue and renew the certificates for the guide dog team (blind person and trained guide dog), service dog team (disabled person with trained service dog), dog trainer, dog-in-training and the retired guide or service dog team.

The *Act* raised the certification bar. Only dogs who behave appropriately with all kinds of people in different environments and who are trained to the highest standards will be granted unlimited access to public areas and permitted to maintain public safety.

What is a certification test with the JIBC?

This test examines the temperament and disposition of the dog in a public setting, such as a shopping mall or a restaurant. It generally assesses the dog’s temperament and reliability in public, whether the dog is safe to be in public and whether the handler’s control over the dog at all times.

In order to pass the assessment, the validator must be satisfied that the dog is steady, sound, well-mannered and responsive to the handler.

In order to be certified, the dog/handler team must meet the minimum standard on 40 different tasks. The rigorous testing standards are designed to enhance public confidence in successful certified teams.

How does a person obtain a certificate for a guide dog or service dog?

A person seeking certification must submit an application and supporting documentation including evidence of accreditation from an accredited school and a picture to the Security Programs Division, Ministry of Public Safety and Solicitor General.

If the dog has not been trained by a school that is accredited by Assistance Dogs International or the International Guide Dog Federation, then an application must be submitted to the Security Programs Division together with a medical form, evidence that the dog has been spayed or neutered and a passport style photograph of the dog.

Local Knowledge Global Expertise

- Depreciation Reports
- Building Envelope Condition Assessment
- Remediation and Design
- Maintenance Manuals
- Legal Support
- Roof Assessments and Replacement
- Fenestration Consulting
- Energy Efficiency Consulting
- LEED Coordination and Compliance
- Hazardous Materials Survey and Abatement
- Mould Assessment and Indoor Air Quality
- Environmental Site Assessment and Remediation
- Geotechnical Assessment



wsp.com

Victoria: 250-475-1000 / Nanaimo: 250-753-1077
Vancouver: 604-685-9381 / Fraser Valley: 604-533-2992

... continued on page 11

Short Term & Long Term Rental Bylaws Fines of Up to \$1,000 Per Day For Violation of Temporary Accommodation Bylaw Such as Airbnb

Cora D. Wilson, J.D.
cora@wmlg.ca



by Cora D. Wilson, J.D.

Strata Regulation 7.1 was amended on July 18, 2018 effective November 30, 2018 to allow for a fine of up to \$1,000.00 per day for an owner or tenant violating a bylaw that prohibits or limits the rental of a residential strata lot for remuneration as vacation, travel or temporary accommodation. A maximum fine of up to \$500.00 every 7 days continues to apply to other rental bylaws governing a residential strata lot. A properly worded bylaw must be adopted to take advantage of the increased fine. These amendments do not apply to commercial strata lots.

Many strata corporations enjoy zoning that permits residential strata lots to be used as vacation, travel or temporary accommodation as well long term dwelling units. There is a major difference between a short-term rental by an occupant pursuant to a licence arrangement and a long term rental by a tenant pursuant to a tenancy agreement.

RTA Policy Guideline #9, Tenancy Agreements and Licenses to Occupy dated January, 2004 outlines several factors used to distinguish between the two types of usage including zoning, taxation, duration, substance, governing legislation, rights, duties, obligations and remedies. Licenses are not governed by a tenancy agreement. Such occupancy falls outside the *Residential Tenancy Act* ("RTA").

We recommend that two bylaws be adopted to govern each type of rental, including one bylaw governing temporary occupancy and a second bylaw governing tenancy agreements.

The *Strata Property Act* ("Act") defines an "occupant" and a "tenant". An "occupant means a person, other than an owner or tenant, who occupies a strata lot". A strata lot may be used as a temporary rental such as AirBnB, vacation rental or bed and breakfast. A strata lot for temporary accommodation is occupied by an occupant.

Conversely, a "tenant means a person who rents all or part of a strata lot, and includes a subtenant but does not include a leasehold tenant in a leasehold strata plan as defined in section 199 or a tenant for life under a registered life estate". The definition of "tenant" includes both residential and non-residential rentals.

Section 141 of the *Act* addresses the only restrictions that may be placed on the rental of a residential strata lot. A "residential strata lot means a strata lot designed or intended to be used *primarily* as a residence". The amendments to the Regulations govern temporary accommodation as a permitted use for a residential strata lot.

Arguably section 141, which reads as follows, only governs tenancy agreements:

141 (1) The strata corporation must not screen tenants, establish screening criteria, require the approval of *tenants*, require the insertion

of terms in *tenancy agreements* or otherwise restrict the rental of a strata lot except as provided in subsection (2).

(2) The strata corporation may only restrict the rental of a strata lot by a bylaw that

(a) prohibits the rental of *residential strata lots*, or

(b) limits one or more of the following:

(i) the number or percentage of residential strata lots that may be rented;

(ii) the period of time for which residential strata lots may be rented.

(3) A bylaw under subsection (2) (b) (i) must set out the procedure to be followed by the strata corporation in administering the limit.

Further, section 141(1) only applies to "tenants". It does not refer to "occupants". Moreover, it refers to "tenancy agreements" which excludes licence or occupancy arrangements. These are two different types of agreements that could attract different tax treatment, rights, duties, obligations and remedies.

A tenancy agreement for a residential rental is governed by the *Residential Tenancy Act* ("RTA") or the *Manufactured Home Park Tenancy Act* ("MHPTA"). Conversely, temporary accommodation, including AirBnB, is not governed by this legislation. Although not cast in stone, a short-term rental may be defined as the rental of a strata lot for 30 days or less. Commercial, retail and hotel rentals are clearly excluded from section 141 since they are not residential rentals.

Section 141 of the *Act* likely does not apply to temporary rentals for the reasons that follow. This important distinction leads us to recommend two bylaws including one governing long term rentals and a second governing temporary rentals.

A residential rental bylaw must strictly comply with section 141 to meet the test for enforceability set out in section 121 of the *Act* which states:

121 (1) A bylaw is not enforceable to the extent that it

(a) contravenes this *Act*, the regulations, the *Human Rights Code* or any other enactment or law,

(b) destroys or modifies an easement created under section 69, or

(c) prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata lot.

(2) Subsection (1) (c) does not apply to

(a) a bylaw under section 141 that prohibits or limits rentals,

... continued on page 9



The Cost of Compliance - Actual Reasonable Legal Costs Now Recoverable!

by Leah McKenzie-Brown



Leah McKenzie-Brown, J.D.,

Leah McKenzie-Brown was called to the BC Bar in 2012 and works in the areas of strata law, civil litigation and advocacy before administrative tribunals. She also has experience in real estate, business law and wills and estates.

A recent Court of Appeal decision made sweeping changes to legal cost recovery principles. Strata corporations may now recover the actual reasonable legal costs not only for collection proceedings, but also for enforcement proceedings to remedy a contravention of bylaws or rules.

Bylaws may deal with many things including smoking cigarettes and cannabis, nuisance, restrictions on rentals or licensing arrangements, surveillance and privacy, pets, user fees for electrical consumption for electric vehicles, alterations, repair and maintenance and a host of other important issues.

Unfortunately, bylaw contraventions are common and the strata's response may be critical to the chances and amount of any recovery. If council follows the required due process steps under the *SPA*, then council may not only remedy the contravention but could, in appropriate circumstances, also recover the actual reasonable legal costs incurred to enforce the bylaw pursuant to s. 133 of the *SPA* which provides:

133 (1) The strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including

(a) doing work on or to a strata lot, the common property or common assets, and,

(b) removing objects from the common property or common assets.

(2) The strata corporation may require that the reasonable costs of remedying the contravention be paid by the person who may be fined for the contravention under section 130.

The 2017 Court of Appeal decision of *The Owner, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377 ("Baettig") suggests that actual reasonable legal costs under both ss. 133 (remedy a contravention) and 118 (costs added to amount owing on a lien) of the *SPA* are recoverable by the Strata. In making its decision, the Court of Appeal looked at the intent of the legislature in drafting those sections:

[68] In [the Court's] view, the same legislative intent underlies both s. 133 and 118 [reasonable legal costs, registry fees and reasonable disbursements to register and enforce a lien] of the *SPA*—that strata owners who comply with the bylaws and rules of the strata corporation should not shoulder the financial burden of remedying infractions committed by non-compliant owners.

[69] These two provisions should be given a consistent meaning in light of the common legislative goal that underlies both. It would make no sense to award actual reasonable legal costs to a strata corporation that takes action to remedy the contravention of a bylaw or rule, but limit the strata corporation to party to party costs where the strata corporation is compelled to take action under ss. 116 and 117 to recover strata fees from delinquent owners.


The Baettig case suggests that actual reasonable legal costs may be recoverable in appropriate circumstances for both the cost to remedy and enforce bylaw contraventions. This takes much of the financial risk away from the Strata. These costs may be distinguishable from discretionary costs. There is an arguable issue that a claim for recovery of actual reasonable legal costs incurred to remedy a contravention could be made by the Strata at the CRT.

This may be great news for stratas, but strict compliance with the *SPA* is critical for recovery. There are hard and fast rules within the legislation with respect to giving notice, providing an opportunity to respond and making a council decision with respect to fines and recovery of legal costs.

Getting legal advice early from a qualified strata lawyer is important to address due process, the chances and quantum of recovery, governance decisions and appropriate notices.






STRATA MANAGEMENT SOFTWARE

For Strata Councils & Strata Managers



DO YOU WANT TO
PREPARE "FORM B"
EASILY AND MORE
EFFICIENTLY?

- ✓ COMPREHENSIVE
- ✓ EASY TO USE
- ✓ SECURE
- ✓ DESIGNED FOR BC
- ✓ AFFORDABLE



T 604.971.5435
1 877.971.5435
F 604.971.5436

POWERSTRATA.COM

Rental Bylaws... continued from page 7

(b) a bylaw under section 122 relating to the sale of a strata lot, or
(c) a bylaw restricting the age of persons who may reside in a strata lot.

Section 121(2)(a) expressly permits restrictions on residential tenancies pursuant to section 141 (subject to statutory exemptions). The question

is whether licence arrangements are similarly restricted by s. 121. In our view, they are not. Unlike short-term use of common property governed by section 76 of the *Act*, licence arrangements for usage of a strata lot are not expressly referred to in the *Act*.

However, section 121 (1)(a) states that a bylaw must not contravene any other “enactment or law”. This likely includes zoning bylaws. If zoning prohibits single family dwellings or temporary accommodation, then a bylaw that permits this usage is unenforceable. There is a question regarding whether the Strata Corporation may adopt a bylaw that is more restrictive than the zoning bylaw. Such bylaws are routinely adopted; however, this could be an arguable issue.

The next question is whether a licence (Airbnb) constitutes “an interest in the strata lot”. In our view it does not. A licence to an occupant is contractual in nature. Conversely, a residential tenancy agreement creates an interest in land in favour of the tenant including a right to exclusive possession of the strata lot. A licence does not create this interest. An owner may enter and regain possession of a strata lot governed by a licence without first complying with the *RTA* or the *MHPTA*.

An occupant usually pays tax on temporary rentals such as GST. A long term tenant is exempt from paying such tax. In addition, the rights, duties, obligations and remedies of an owner against an occupant as compared to a tenant are also very different. A tenant is protected by the *RTA* and *MHPTA*. Conversely, an occupant governed by a licence has few rights and little protection. An owner could revoke the licence and demand that the occupant leave the strata lot. This makes sense in a hotel or temporary rental context. It does not make sense for long term residential rentals.

On December 8th, 2017, amendments to the *RTA* and *MHPTA* and Regulations came into force that removed the fixed term, must vacate provision commonly found in tenancy agreements. Further the *Residential Tenancy Regulation* was amended to provide only one situation where a must vacate clause is legal. Section 13.1 states, in part, that a fixed term, must vacate tenancy agreement is allowed if:

...the landlord is an individual, and that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

“Close family member” is defined as parents or children of the landlord or the landlord’s spouse.

A fixed term, must vacate clause that is in an existing tenancy agreement for any other reason is void and cannot be enforced even if the tenancy agreement was entered into several months or years ago.

There will be a question regarding whether the amendments to the tenancy legislation will operate to prevent the Strata Corporation

from imposing restrictions on “the period of time” for the rental of a residential strata lot pursuant to section 141 (1)(b)(ii). In our view, subject to an amendment to the *Act* or a decision of the tribunal or Court, the enforceability of this restriction is now cast into doubt with respect to tenancy agreements under the *RTA*. However, occupancy agreements are excluded from this legislation. Therefore, restrictions on “the period of time” will continue to apply to occupancy arrangements.

The fine for breach of bylaw adopted pursuant to section 141 of the *Act* is up to \$500.00 for every 7 days that the strata lot is rented in contravention of the bylaw. Conversely, the maximum fine for breach of a licence bylaw is up to \$200.00 for every 7 days that the strata lot is rented in contravention of the bylaw. As of November 30, 2018, this fine may be increased to \$1,000.00 per day. An appropriately worded bylaw will be required to take advantage of this amendment.

There will be a question regarding whether the rental of a residential strata lot pursuant to an occupancy agreement is subject to the same exemptions as a rental agreement. This issue is beyond the scope of this article. However, it is an important issue since there are several statutory exemptions to a residential rental bylaws including the one year grace period, the family member exemption, the developer exemption and the hardship exemption (See sections 142, 143(2)-(4) and 144 of the *Act*). These exemptions do not apply to non-residential

... continued on page 10



MORRISON HERSHFIELD

MULTI-DISCIPLINARY ENGINEERING RESOURCE
for **STRATA**
(Building Science, Structural, Mechanical, Electrical)

- Building Condition Assessments
- Warranty Reviews
- Maintenance Plans
- Legislated Depreciation Studies
- Architecture & Engineering for Building Envelope Renewals & Replacement
- Plumbing Systems Assessment & Replacement

Vancouver 310 – 4321 Still Creek Dr. Burnaby, BC V5C 6S7 Tel: (604) 454 0402 Fax: (604) 454 0403	Victoria Second Floor 536 Broughton Street Victoria, BC V8W 1C6 Tel: (250) 361 1215	Nanaimo 630 Terminal Avenue N Nanaimo, BC V9S 4K2 Tel: (250) 755 4025 Fax: (250) 714 1441
---	--	--

morrisonhershfield.com



Rental Bylaws... *continued from page 9*

or commercial rentals such as hotel usage and other similar licence arrangements.

This underscores the importance of creating two bylaws for the rental of a residential strata lot including one bylaw that governs licence arrangements and a second bylaw that governs tenancy agreements. The *RTA* or the *MHPTA* forms to end a tenancy or increase rent, for example, do not apply to licences and should not be used for this purpose. If an owner uses a tenancy agreement to govern a licence arrangement, then the Residential Tenancy Tribunal could view this as a factor weighing in favour of a tenancy agreement. However, it is not determinative.

In conclusion, there is a significant difference between the rental of a residential strata lot pursuant to a licence to an occupant and the rental to a tenant pursuant to a tenancy agreement. Given these differences, we recommend that two different bylaws be adopted to address each type of rental. The occupancy bylaw would, for example, prohibit AirBnB, short-term vacation rentals, house swaps, time shares and bed and breakfasts.

These are very complex bylaws. The case law on these issues is evolving. A Strata Corporation should consult with a strata lawyer for assistance in drafting these bylaws to maximize the probability that the bylaws are enforceable.



IslandSavings

A DIVISION OF FIRST WEST CREDIT UNION

Make Strata Management Simple with Island Savings

Strata management requires quick access to funds, emergency savings accounts and the best possible insurance solutions. From our no fee Strata Chequing Account to our capital improvement financing options, we have the right products for both strata management companies and single stratas.

Bank. Borrow. Insure. Invest.

Call our team today at 250-802-4199 or visit islandsavings.ca/business

Keeping it Simple®

Dogs, Dogs, Dogs... *continued from page 6*

How does a person obtain a certificate for a dog?

A dog trainer must obtain a dog trainer certificate and the dog in training must obtain a dog in training certificate from the Security Programs Division. An application with the proper documentation in support is required.

A person may now apply for a retired guide dog or service dog certificate from the Security Programs Division. The application must include evidence of previous certification. A retirement certificate enables a retired certified dog to continue to reside with its handler regardless of any strata bylaws or rental provisions to the contrary.

There are limitations on a retired dog certificate. Retired dogs do not have access to restaurants, buses, hotels or other public places granted to working guide dogs and service dogs under the Act.

Does certification have to be updated and can it be revoked?

The certified dog and handler team must be reassessed every two years upon renewal of the certification. Dog and handler teams will go through a reassessment at JIBC, excluding grandfathered teams and teams that graduated from accredited training schools. The dog and handler teams that graduated from accredited training schools will follow their own monitoring and evaluation process. However, the Registrar can at any time ask that a team be reassessed upon receipt of a complaint. This creates a safety valve to weed out dogs that should not have been accredited.

Moreover, the handler of a certified team has ongoing obligations. He or she must inform the Registrar in writing within 30 days of significant changes which will result in the failure to meet ongoing conditions, qualification and requirements including the passing of the dog or its services are no longer required.

The Registrar also has authority to cancel or refuse to renew a certificate if the conditions, qualifications or requirements are no longer being met or if other prescribed circumstances.

Examples of prescribed circumstances include where the dog threatened the safety of a person or other animal while exercising a public access right, training or accreditation impediments or constraints and false or misleading information in an application.

What effect does certification have on a person with a disability?

A certified team has the same rights and responsibilities as a person without a dog. As long as the dog is well behaved, the dog cannot be denied access to restaurants, buses, hotels or any other public area. Further, strata bylaws and rental provisions that prohibit or restrict pets do not apply to dogs certified under the Act. The *Human Rights Code* provides additional protection from discrimination for persons with disabilities.

A dog in training certificate grants a certified dog and trainer team access rights to public places for training purposes. However, strata bylaws and rental provisions that prohibit or restrict pets will continue to apply to certified dogs in training. In other words, dogs in training are not exempted from the application of a pet bylaw.

What are the offences, penalties and remedies available under the Act?

The penalties for a violation may include a fine of up to \$3,000.00 and the issuance of a violation ticket if a person makes a false claim regarding certification.

If a certified guide or service dog is wrongfully denied access to a public place, then the incident may be reported to the Security Programs Division. It will review complaints and if an investigation determines that access was wrongfully denied, then progressive enforcement powers are available ranging from providing information, education, a formal warning, a violation ticket, and/or a fine upon prosecution. Remedies may also be available under the *Human Rights Code*.

What bylaws should a strata corporation consider?

The Act could either trump or significantly impact pet restriction or pet prohibitions bylaws in a strata corporation. The strata corporation should consider a review of its pet bylaws to ensure compliance. It may consider bylaw amendments to:

1. exempt certified teams which comply with the Act;
2. allow a retired certified dog with a retirement certificate to reside with its handler;
3. require certified training dogs to comply with the bylaws of the strata corporation;
4. require residents to notify the strata corporation of any changes to a certificate under the Act;
5. provide reasonable accommodation by permitting a living assistance pet or companion pet to a person suffering from

... continued on page 12



Lorne Gait
Morgan Fisher
1.250.618.0680

410 A - 1st Ave
PO Box 1300,
Ladysmith, BC
V9G 1A9

Your Vancouver Island
Strata Specialists

Lorne & Morgan

www.lornegait.com





Dogs, Dogs, Dogs... continued from page 11

a disability under the *Human Rights Code* with or without conditions;

6. address offenses and enforcement provisions consistent with the *Act*; and,
7. address other pet provisions to meet the requirements of a strata corporation.

Does this legislation apply to visiting dogs from outside BC[CW1]?

The *Act* is a monumental step forward. However, one constraint is that it exempts visiting pets from outside BC. Regulation 3(a) of the *Act* governs the training program and the BC assessment. However these provisions do not apply if the individual and the dog do not reside in BC (Regulation 4(4)). Therefore, a non-qualifying visiting team from outside BC could visit a strata lot in BC for a protracted period of time without any remedy or recourse under the *Act*. This exception results in two potentially different certification standards for teams outside of BC as compared to teams in BC creating a two tier system. This will come as a surprise to many strata corporations.

How should a strata corporation address companion pets?

The strata corporation must provide reasonable accommodation to a person suffering from a disability pursuant to the *Human Rights Code*. This accommodation could include the approval of an otherwise prohibited living assistance pet. The approval of a living assistance pet is not restricted to a dog. Does this mean that the pet

could be a pig, rooster, cat or some other pet? Is the Strata required to approve multiple pets to provide reasonable accommodation? The accommodation must be *reasonable*.

The onus is on the applicant to show that she has a disability and that she will suffer an adverse affect if the application for a companion pet is not granted.

The following should be considered when addressing approval of a pet for living assistance purposes:

1. Is there satisfactory medical evidence to establish that a disability exists?
2. What is the nature and extent of the disability? Is it chronic or temporary? Is it mild or severe? Is it long standing or short lived? What is the prognosis? For example, a "chronic medical condition" may not qualify as a disability. More medical evidence is required.
3. Is the requirement for a pet therapy causally linked to the disability. For example, a reformed heroin addict meets this test if it can be shown that there is a significant risk of relapse if he or she does not have a pet.
4. Will there be an adverse impact if the application is not approved?
5. Is the pet required as a life style choice? In this case, the pet does not qualify for an exemption.
6. Are there any other available options to provide reasonable accommodation? For example, a farm animal may not be an appropriate option for the strata corporation. Is there another pet that could meet the requirements?
7. What is the nature of the exemption being requested and is this request reasonable? For example, the pet bylaw permits one dog that does not exceed 12" at the shoulders when fully grown or one cat. If an applicant requests an exemption for a 16" dog and a cat (2 pets), then one should question why one pet is not enough or why a 12" dog is not sufficient. The requirement for two pets may suggest that the exemption is not for a disability, but is to accommodate the resident's life style choice.
8. If the companion pet is approved to provide reasonable accommodation to a person with a disability and to satisfy the *Human Rights Code*, then does the pet have to comply with other bylaws such as, for example, noise and nuisance. The answer is clearly "yes".

**PEMBERTON
HOLMES**
· ESTABLISHED 1887 ·

#101-891 Attree Ave.
Victoria, B.C.
V9B 0A6

» Full service professional Strata Management

» Locally owned and operated since 1887

» Proudly managing Stratas in:

Victoria
Westshore
Sidney
Sooke
Cowichan Valley



» Offering Strata Management for:

Condominiums
Townhomes
Bareland
Multi-type Section Stratas



strata@thepropertymanagers.ca | (250) 478-9141
www.stratamanagers.ca

Conclusion

Every strata corporation should review the *Guide Dog and Service Dog Act*, regulations and policy guidelines. It should seek the assistance of a strata lawyer to assist with any related bylaw amendments, enforcement issues or human rights concerns.

For further information, you may visit the following website:
<http://www2.gov.bc.ca/gov/content/justice/human-rights/guide-and-service-dog>.

Electric Vehicles... continued from page 5

To determine parking and site availability review the following documents:

- ☐ The **Disclosure Statement** and any amendments filed by the owner developer with the Superintendent of Real Estate, with a specific focus on the contracts between the strata corporation and the owner developer/ third party for the allocation of exclusive use of parking spaces
- ☐ The **registered strata plan**, and any amendments filed with the BC Land Title Registry (BCLTR)
- ☐ Any common index filing in the BCLTR that indicate a designation of limited common property filed by the owner developer or the strata corporation after the registration of the strata plan
- ☐ All registered bylaws filed by the owner developer, or amended and filed subsequently by the strata corporation in the BCLTR
- ☐ Any rules of the strata corporations, where applicable, which indicate a parking assignment, or a parking plan or inventory as utilized by the strata corporation for the allocation and use of parking spaces
- ☐ Easements filed that grant multiple strata corporations access and use of allocated parking assignments to parking facilities which are not part of the registered strata plan
- ☐ Air space parcel agreements, with a focus on easements or access to parking facilities and control of parking areas
- ☐ identify parking that will be designated by the strata corporation for the purpose of charge stations
- ☐ if a parking re-allocation is required, coordinate a special general meeting to approve the re-allocation by $\frac{3}{4}$ vote resolution or unanimous resolution, or the negotiation for re-assignment of parking as set out in the bylaws, strata plan, and parking agreements
- ☐ identify the technical requirements and costs to install the station and establish the conditions for electrical-mechanical engineering or other services as may be required (i.e. structural engineering for coring to permit conduit installations)
- ☐ identify any changes to the electrical-mechanical services to determine if upgrades or permits are required for the provision of the service
- ☐ seek legal advice and develop an alteration agreement if an owner has agreed as a condition of installation to be responsible for the maintenance, repair or replacement of the station
- ☐ If required, seek approval of a $\frac{3}{4}$ vote resolution to approve any expenses borne by the strata corporation for the EVSE installation or in the event the installation requires a significant change in the use or appearance of common property or a common asset
- ☐ Proceed with funding applications for grants
- ☐ Establish a bylaw or rule to offset additional electricity costs that are exclusive to the EVSE or other related costs

Why review ALL these documents? Only after reviewing these documents will the strata corporation have a better understanding if parking is available, if specific allocations are required, and if changes to the parking allocations are necessary either for technical, mechanical or access requirements.

What's an alteration agreement? An agreement between the strata corporation and strata lot owner that would identify the responsibilities of the strata corporation and the strata lot owner for the purchase of the EVSE, installation and alterations to mechanical systems, who is liable for the maintenance, repair, renewal requirements, the insurance requirements of the EVSE and who is responsible for the costs of the EVSE, cost of electricity consumption, cost of the installations, and any future costs associate with maintenance and renewal of the EVSE.

Seek legal advice: Given the complexity and diversity of strata corporations, strata councils are recommended to seek legal advice on

- Installation procedures;
- resolutions to approve parking re-allocation or significant changes to use or appearance of common property or a common asset;
- bylaws or rules; and alteration agreements

Checklist for Installing an EVSE

Before the installation of an EVSE

- ☐ review the bylaws applying to alterations
- ☐ determine whether a suitable location/parking space is available
- ☐ determine what type of charging stations and whether any alterations are required to the electrical-mechanical to permit the installation
- ☐ obtain all documents relating to parking allocations and property designation

... continued on page 14



Voice from the Strata-sphere

Voice from the Strata-sphere is published annually by

Strata-sphere Condominium Services Inc.

630 Terminal Avenue North,
Nanaimo, BC V9S 4K2

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**

The editorial content of this publication is protected by copyright and may not be reproduced, reprinted or published without the prior written consent of Strata-sphere Condominium Services Inc.

The opinion and views expressed in this Newsletter are not represented or warranted as representing the views of Strata-sphere or the views of the Civil Resolution Tribunal. The content in the Articles is provided for information purposes and is not to be construed or relied upon as legal or other professional advice.

Publishing the names of an individual or a company in 'Voice from the Strata-sphere' is not to be construed either directly or indirectly as an endorsement of such person or company or its products. Advertisements reflect the products and services provided by the advertiser.

ADVERTISING RATES

Please contact our office for current advertising rates.

Note: Artwork & Setup extra per quote. Prices subject to change if distribution increases. 3,000 copies currently printed.

© Copyright 2018

Electric Vehicles... *continued from page 13*

Bylaws or Rules for User Fees for the Collection of Electrical Services and Recovery of Maintenance and Operating Costs

Legislative Update: Strata Property Regulation

On March 7, 2018 section 6.9 of the Strata Property Regulation was amended to allow a strata corporation, by bylaw or rule, to create a variable user fee for the use of strata common property. For example, a strata corporation may now adopt a bylaw or rule to charge users a consumption-based rate for electricity usage for those charging their electric vehicles.

User fees for the use of common property or common assets Strata Property Regulations 6.9

(1) For the purposes of section 110 of the Act, a strata corporation may impose user fees for the use of common

property or common assets only if all of the following requirements are met:

(a) the amount of the fee is reasonable;

(b) the fee is set out

(i) in a bylaw, or

(ii) in a rule and the rule has been ratified under section 125 (6) of the Act.

(2) A user fee imposed by a strata corporation may be a fixed amount or an amount determined on a reasonable basis, including, but not limited to the following:

(a) the user's rate of consumption;

(b) the recovery of operating or maintenance costs by the strata corporation;

(c) the number of users;

(d) the duration of use.

If the EVSE or Charging station meters the capacity of use of electrical service, the bylaw or rule may set a rate within the rule or bylaw to recover the operating cost of the electricity.

If the maintenance and operating costs of the stations can be determined, the cost of the user fee associated with the stations may be incorporated into the user fee rate.

It is important to understand the fees for the rate of electrical consumption, and any fees associated with the recovery of operating and maintenance costs must be fixed in the rule or bylaw.

A Rule for user fees is a flexible option for a strata corporation. Rules are not filed in the Land Title Registry and may be amended at a general meeting by majority vote to easily accommodate rising electrical costs or user costs.

WE ARE ALL **LEADERS** • OUR CREATIVITY COMES FROM THINKING
DIFFERENTLY • WE SERVE OUR **COMMUNITY** WITH
HONESTY AND **INTEGRITY** • NEVER STOP **IMPROVING** •
ACHIEVING OUR VISION REQUIRES **AUDACITY** AND **TENACITY** •
WE ARE **ACTIVELY ENGAGED** AT ALL TIMES • OUR SUCCESS
AND CHALLENGES BELONG TO **ALL** OF US • A CRAZY **IDEA** MIGHT
ACTUALLY BE **BRILLIANT** • **LISTENING** CREATES CLARITY •
CHANGE CAN BE UNCOMFORTABLE BUT **TRANSFORMATION** IS
INSPIRATIONAL • A BETTER YOU BEGINS **OUTSIDE**
YOUR COMFORT ZONE • BE **OPEN** AND HONEST •
WE ARE **HAPPY** TO BE **HERE**

HEAD OFFICE:

250.475.6440

201-20 Burnside Rd. W
Victoria, BC

NANAIMO OFFICE:

250.754.6440

108-5070 Uplands Dr.
Nanaimo, BC

WESTSHORE OFFICE:

250.915.8888

888 Attree Ave.
Langford, BC

www.prolinemanagement.com



PROLINE MANAGEMENT LTD.



PROLINE
PROPERTY MANAGEMENT

Enjoy more. Worry less.



Pacific Rim Appraisals Ltd.

Pacific Rim Appraisals Ltd. has been servicing all of British Columbia with over 40 years of experience with offices in Victoria, Nanaimo and Richmond.

Order an insurance appraisal and depreciation report (reserve study) at the same time and receive a 20% to 30% discount on the cost of the insurance appraisal.

2-57 Skinner Street
Nanaimo, B.C. V9R 5G9

Phone: (250) 754-3710
Fax: (250) 754-3701

550-2950 Douglas Street
Victoria, B.C. V8T 4N5

Phone: (250) 477-7090

305-5811 Cooney Road
Richmond, B.C. V6X 3M1

Phone: (604) 248-2450

Toll Free Phone: 1-866-612-2600

Toll Free Fax: 1-866-612-2800

E-mail: info@pacificrimappraisals.com Website: www.pacificrimappraisals.com

**One Stop Shop for Depreciation Reports and Insurance Appraisals
Serving All of British Columbia with Certified Reserve Planners**