Vancouver Island Strata Owners Association

November 19, 2017

CHANGING BYLAWS FOR CHANGING TIMES

Presented by: Shawn M. Smith

CLEVELAND DOAN
Barristers & Solicitors

1321 Johnston Road
White Rock, BC V4B 3Z4
604-536-5002
www.clevelanddoan.com

Introduction

Despite its ancient roots, the law is something which is always changing. Strata corporation bylaws are really no different. As the world in which we live and the way in which we live our lives evolves, strata corporation bylaws need to change with that. The purpose of this paper is to explore some of these new issues and ways in which strata corporations can address them. In doing so, we will also review the basics of enacting bylaws and the steps to enforce them.

Bylaws-The Basics

The starting point for any discussion about the bylaws of a strata corporation is s.119 of the *Strata Property Act* (SPA). That section establishes the matters to which bylaws can apply. It provides as follows:

> Nature of bylaws
>
> 119 (1) The strata corporation must have bylaws.
>
> (2) 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 and for the administration of the strata corporation.

As one can see, the scope of what bylaws can cover is in fact quite broad. They apply not only to the use of the common property but also what one can do in, on and to one's strata lot.

There are, however, certain constraints placed on the types of bylaws that a strata corporation can pass. Those constraints are primarily found in s.121 of the SPA which provides as follows:

> Unenforceable bylaws
>
> 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 S. 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,
> (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.

The Standard Bylaws under the SPA apply to every strata corporation "except to the extent the different bylaws are filed in the land title office."- s.120(1) SPA. As such, most strata corporation's use the Standard Bylaws as a base from which they build. However, the Standard

Bylaws sometimes need significant amendments or additions. They are designed with a 20 or 30 unit apartment style building in mind. They are not necessarily well suited for other types of strata corporations and certainly do not address a number of things that bylaws should. Some strata corporations create and pass whole new sets. Others pass only certain bylaws to supplement the Standard Bylaws.

For strata corporations created under the *Condominium Act* determining what bylaws apply can be difficult if they have filed bylaws and have not updated them (hopefully those cases are few and far between). Bylaws filed under the *Condominium Act* survived the transition unless they conflict with a provision of the SPA – Regulation 17.11(5) SPA.

To be enforceable bylaws must be properly passed and registered in the Land Title Office. S. 128 of the SPA governs the passage of bylaws. It provides as follows:

> Bylaw amendment procedures
>
> 128 (1) Subject to s.197, amendments to bylaws must be approved at an annual or special general meeting,
>
> (a) in the case of a strata plan composed entirely of residential strata lots, by a resolution passed by a 3/4 vote,
>
> (b) in the case of a strata plan composed entirely of nonresidential strata lots, by a resolution passed by a 3/4 vote or as otherwise provided in the bylaws, or
>
> (c) in the case of a strata plan composed of both residential and nonresidential strata lots, by both a resolution passed by a 3/4 vote of the residential strata lots and a resolution passed by a 3/4 vote of the nonresidential strata lots, or as otherwise provided in the bylaws for the nonresidential strata lots.
>
> (2) If an amendment to a bylaw is approved, an Amendment to Bylaws that sets out that amendment and is in the prescribed form must be filed in the land title office and, until that filing, the amendment has no effect.
>
> (3) [Repealed 2009-17-21.]
>
> (4) The strata corporation must inform owners and tenants of any amendment to the bylaws as soon as feasible after the amendment is approved.

The most important thing to note from s.128 is the special provisions with respect to “mixed-use” strata corporations - meaning strata corporations which have both residential and nonresidential (i.e. commercial) strata lots. In such a strata corporation there must be separate votes taken for the residential strata lots and for the nonresidential strata lots. A failure to take or record separate votes will render the bylaws invalid - see *Omnicare Pharmacy Ltd.* v. *The Owners, Strata Plan LMS 2854* 2017 BCSC 256. (What is not clear from that decision is what happens if one group does not attend the general meeting.)

It should also be noted that pursuant to s.128(2), a bylaw has no effect until it is registered in the Land Title Office. Thus it is important that bylaws are registered promptly so that they may be enforced. Bylaws are registered using a Form I. If bylaws are being repealed the Form I should indicate that and which ones. The Form I should only include the text of the bylaw amendments. It need not attach a copy of the minutes of the meeting. By signing the Form I, the council members doing so have certified that a general meeting was held at which the bylaws were duly passed.

Newly formed strata corporations have certain constraints placed on them by s.127 when it comes to amending the bylaws. Amendments must wait until the second annual general meeting unless approved by a unanimous vote. In a strata corporation being constructed in phases, Regulation 13.3(2) restricts the passage of bylaws pertaining to the following until the annual general meeting following deposit of the final phase:

(a) the keeping or securing of pets;

(b) the restriction of rentals;

(c) the age of occupants;

(d) the marketing activities of the owner developer

Careful thought and consideration needs to go into the drafting of the bylaws. Not only does a strata corporation need to ensure that they do not run afoul of s.121 of the SPA, it also needs to make sure that the bylaws are clear and not open to various interpretations. Do they actually address or prohibit what they're supposed to? Do they allow what they're supposed to? Are the right terms and words being used? Unless a word is defined in the bylaws or the SPA it would be given its ordinary dictionary meaning.

Bylaws for Our Times

Each strata corporation will have issues and matters which are of unique concern to it. However, there are several topics as of late which are likely of interest to all strata corporations.

Short Term Rental Accommodation

Many strata corporations are concerned about owners using strata lots for the purpose of providing short-term accommodation; i.e. stays of 30 days or less. While there may be differing reasons behind those concerns, strata corporations generally view it as a practice they do not want to allow. Many of the same strata corporations have bylaws which prohibit or restrict the rental of strata lots. In many cases they attempt to rely on those bylaws to prohibit the practice. Unfortunately, those bylaws will not help.

The law makes a distinction between tenancies and licenses. Not every person paying an owner for the right to stay in a strata lot is considered a tenant. That distinction was first noted in *Strata Plan VR2213* v. *Duncan* 2010 BCPC 123.

In *Duncan*, the strata lots were furnished and occupied by various people for short periods of time (i.e. a couple of weeks at a time). The strata corporation had no rental restriction bylaw, thus the activity itself was not the issue. What was in issue was whether the owner of the strata lot was required to submit a Form K and pay a move in fee every time someone came to stay in the unit. In other words, did each new occupancy result in a new tenancy? The owner argued that the people staying in the unit were there under a license agreement and not tenants. The court reviewed a number of cases from various jurisdictions and concluded in the end that there was no tenancy because "…the strata corporation has not proven that Unit 604 has been rented to an occupant pursuant to a lease agreement". It held that the nature of the arrangement was not one of landlord and tenant. It was a license. In support of that position the court noted that "the *Act* and the bylaws both contemplate occupiers who are not tenants". Non-owners are not automatically tenants. As a result, a Form K and move-in fee was not required to be submitted each time a new person occupied the strata lot.

That same issue was more recently dealt with in *HighStreet Accommodations Ltd* v. *The Owners, Strata Plan BCS 2478* 2017 BCSC 1039. In that case the issue was whether or not s. 143(1)(a) of the SPA applied to protect HighStreet's short-term accommodation arrangements. (S. 143(1)(a) provides for a one year delay in the application of any rental restriction or prohibition bylaw where there is a tenant in place at the time the bylaw was passed). In this case, HighStreet was the tenant. In turn it granted individuals the right to use the strata lot for short periods (i.e. 1 or 2 weeks).

HighStreet attempted to argue that it's arrangements with its customers were a sub-tenancy and therefore protected by s.143(1)(a). The court disagreed, holding that HighStreet's relationship with its clients was that of a licensor and a licensee. The basis for that conclusion was that the agreement entered into between HighStreet and its clients did not convey a legal interest in the strata lot. In other words, it didn't give to its clients the same rights that a tenant would have in relation to the property.

In addition to a bylaw restricting rentals the strata corporation also had a bylaw which provided:

> An owner, tenant or occupant shall not permit a residential lot (as such term is defined in the bylaws) to be occupied under a lease, sublease, contract, license or any other commercial arrangement for periods of less than 180 days.

Since the arrangement was not a sub-tenancy, that bylaw applied and Highstreet's activities were contrary to the bylaw.

Interestingly, neither case discussed the provisions of the *Residential Tenancy Act* ("RTA") which includes license arrangements in the definition of "tenancy agreement". Perhaps that is because s.4(e) of the RTA excludes living accommodations used as vacation or travel accommodation.

What can be taken from both *Duncan* and *HighStreet* is that in order for a strata corporation to effectively control short-term rental accommodation it must have a bylaw that specifically addresses such arrangements. A rental prohibition or limitation bylaw will not suffice. (If the municipality in which the strata corporation is located has a bylaw which prohibits the use of strata lots for short-term rental accommodation then Standard Bylaw 3(1)(d) could be relied on. It prohibits using a strata lot in a way that is "illegal". However, it would not be obvious to someone reviewing the bylaws that such an activity is prohibited. In that respect it is better to have a specific bylaw in place).

When preparing such a bylaw, a strata corporation will need to consider what activities it wishes to prohibit.

- Are home exchange programs okay?
- What about having an exchange student live with an owner?
- What if the owner is present in the strata lot and simply rents out a room?
- Will it apply only to activities for which consideration is exchanged or will it apply to any occupancy wherein the owner is not present?
- Will an owner be allowed a certain number of days each year that they can have a third party stay in their strata lot?

The broader the list of the prohibited activities, the better the ability to enforce the bylaw. However, the wider the net is cast, the more things it captures. It may end up prohibiting activities which the owners would otherwise want to allow (ie. house sitters). A careful balancing may be required.

An alternative to bylaws referring to licenses and short term accommodation arrangements is a bylaw which restricts the use of a strata lot to a single family dwelling. In *Ottawa-Carleton Standard Condominium Corp. No. 961* v. *Menzies* 2016 ONSC 7699 found the use of a strata lot for short term accommodation breached a single family use bylaw saying*:*

> "Single family use" cannot be interpreted to include one's operation of a hotel-like business, with units being offered to complete strangers on the internet, on a repeated basis, for durations as short as a single night. Single family use is

> incompatible with the concepts of "check in" and "check out" times, "cancellation policies", "security deposits", "cleaning fees", instructions on what to do with dirty towels/sheets and it does not operate on credit card payments.

A similar decision was reached in *The Owners, Strata Plan VR812* v. Yu 2017 BCCRT 82 where the use of a strata lot was restricted to use a “private dwelling”. The use of a term such as a private dwelling may be preferable to bylaws restricting a strata lot to single family use. The latter may have unintended consequences such as prohibiting roommates, more distant relatives or live-in caregivers.

Some strata corporations, particularly those in resort areas, may wish to allow short-term accommodation use. Should a strata corporation decide to allow such arrangements it will need to give thought to how to regulate that practice.

- Will only a certain number of strata lots be allowed to be used as short-term accommodation at any one time? How will that be controlled?
- What information will the strata corporation require about the individuals staying there?
- How will access to the building be dealt with?
- Will guests be permitted to use common facilities? Under what conditions?
- Will a fee be charged for the use of common facilities and how much? (While s.110 of the *SPA* permits the strata corporation to impose user fees for the use of the common property, Regulation 6.9 requires any such fee to be reasonable and to be set out in a bylaw or in a rule).
- How will visitor parking be regulated?

Once again, careful thought and drafting will be required.

Living arrangements

Strata corporations not only have concerns with respect to the use of strata lots, but they often have concerns about who is living in them. Those concerns sometimes apply to the number of people. Other times they apply to the classes of people.

With respect to the first, certain strata corporations take steps to limit the number of people residing in the strata lot. This often stems from concerns regarding overburdening the use of the common property. Those strata corporations often pass bylaws restricting the number of people who may reside in each type of strata lot. That number will differ depending on the size of the strata lot. Bylaws restricting the use a strata lot to that of a single family residence have been held to be valid – see *Nipissing Condominium Corp. No. 4* v. *Kilfoyl* [2009] O.J. No. 3718. Bylaws limiting the number of persons who can live in a strata lot are really no different.

If a bylaw imposing a “single family use” requirement is considered it may be helpful to define what constitutes a “single family” in order to bring clarity to that issue.

Certain strata corporations seek to restrict the age of who can reside in the strata lots. Such a bylaw is permissible pursuant to s. 123(1.1) of the SPA. It does not apply to a person living in the strata lot at the time the bylaws passed – see s. 123(2) SPA. The age selected in the bylaw can be any age; i.e. 19, 45 or 55. Such bylaws do not offend the *Human Rights Code* - *Hallonquist* v. *Strata Plan NW307* 2014 BCHRT 117. Where a covenant exists on title to the

strata lots establishing a certain age for occupants, a bylaw cannot set a different age. Doing so would breach s.121 of the SPA. (Such situations are rare, however).

However, when drafting age restriction bylaws thought needs to be given to such things as younger spouses and caregivers. A blanket prohibition against anyone under a certain age residing in the strata lot would prohibit such persons. As such, an age restriction bylaws could, if the owners wish, contain such exceptions. Be careful that those exceptions are not so broad as to make the bylaw ineffective. In other words, requiring at least one person to be over certain age does not prohibit other persons under that age from living in the strata lot (ie. a 55 year old could have children in their teens).

The sharing of strata lot with a "roommate" has been a grey area. Generally such arrangements were ignored because they do not constitute a tenancy under the *Residential Tenancy Act*. However, that may no longer be the case given the CRT's decision in *Wong* v. *Section 1 of The Owners Strata Plan NW 2320* 2017 BCCRT 25. In that case, the CRT held that where a formal contract is in place which requires a roommate to pay money to the owner, the roommate is to be considered a "tenant" under the SPA since the definition of "tenant" refers to renting part of a strata lot. On the one hand, this gives strata corporations a greater ability to control unauthorized rentals. On the other hand, it greatly restricts the ability of an owner to have someone (i.e. a close friend) stay with them to offset living costs. (Question whether a boyfriend or girlfriend who has moved in and does not yet meet the definition of "spouse" under the law, but shares expenses is caught by this decision). Strata corporations may wish to define what constitutes a "rental" and exclude roommate arrangements from that.

Marijuana Use

Medical marijuana use is legal in Canada and is currently governed by the *Access to Marijuana for Medical Purposes Regulations* ("ACMPR"). That regulation allows licensed individuals with a medical condition, and who have authorization from a health care practitioner, to possess and store dried marijuana or its equivalent forms in regulated amounts. They are free to alter the substance as desired. These individuals can access marijuana in three ways: through licensed producers, through growing it themselves, and through designating someone to grow it on their behalf. Commercial production cannot occur in a dwelling place. However, self production or production by a designated person may only take place in a dwelling (which would include a strata lot). The *ACMPR* also contains formulas to determine how many plants these personal grow operations can legally include. Ultimately, the *ACMPR* means that licensed individuals have the right to grow, alter, and use marijuana in their strata lot.

Passage of the *Cannabis Act* will result in the legalization of marijuana across Canada sometime in 2018. All persons over the age of 18 will be able to legally use, possess, and share dried marijuana or its equivalent forms in regulated amounts. Cultivation would also be legal and each household would be allowed to grow up to four plants. However, it appears that provinces, territories, and municipalities will be able to place further restrictions on those activities. Provided the province does not impose restrictions on them, strata corporations will be able to utilize bylaws to curb unwanted effects of legalized marijuana use and production (if they wish to).

Since the bylaws of a strata corporation are subject to the provisions of the *Human Rights Code*, the outright prohibition of marijuana is not possible where it is needed on medical grounds. S.8 of the *Code* provides that a person must not, without a bona fide and reasonable justification, discriminate against or deny to a person or class of persons any accommodation, service or facility customarily available to the public because of a physical or mental disability. Although the *Code* does not define what constitutes a physical or mental disability, for human rights purposes the concept generally contemplates a physiological state that is involuntary, has some degree of permanence, and impairs the person's ability to carry out the normal functions of life - see *Andruski v Strata Plan LMS3199,* 2017 BCHRT 62. Medical marijuana users generally fall under this category.

However, the need to use marijuana for medical purposes is not a “blank cheque” to do so in whatever manner one wishes. In The *Owners, Strata Plan LMS 2900* v. *Hardy* 2016 BCCRT 1 the *Civil Resolution Tribunal* (CRT) upheld a strata corporation’s no smoking bylaw against an owner who required the use of marijuana for medical purposes. In doing so it stated:

> “While the owner clearly prefers to smoke marijuana, I find there is no persuasive evidence before me that smoking marijuana, rather than ingesting it in another form, is necessary to accommodate his disability”.

As a result, a bylaw which restricts or prohibits smoking marijuana may be enforceable in a situation involving the use of marijuana for medical reasons. Such situations are best dealt with on a case by case basis to determine the extent of any accommodation required.

Where a strata corporation limits the ability of a resident to smoke marijuana for medical reasons (whether by a general bylaw or case by case), it must show that its decision to do so was bona fide and reasonably justified. This involves establishing:

> (a) the policy, action or decision was reasonably necessary to accomplish a legitimate purpose or goal;
>
> (b) the policy, action or decision was implemented in good faith, in the belief that it was necessary to accomplish that goal; and
>
> (c) the strata corporation would incur undue hardship accommodating the resident.

What constitutes undue hardship in such a case is not clear. The fact that surrounding residents are bothered may not constitute undue hardship if the interference is sporadic.

Currently, recourse exists in the form of Standard Bylaw 3(1)(d) for strata corporations when a strata lot is being used for illegal activity (i.e. growing marijuana without an exemption). Following passage and enactment of the *Cannabis Act* that bylaw will be of little use unless provincial or municipal laws impose restrictions. Standard Bylaws 3(1)(a)and(c) would still apply to a use that constitutes a nuisance, poses a hazard or unreasonably interferes with others; but these require proof of harm prior to a remedy being granted. The creation of marijuana-specific provisions is something a strata corporation wishing to control the cultivation and use of marijuana should consider.

Bylaws related to marijuana can take many forms and the appropriate restrictions will vary depending upon the needs and wants of each strata corporation. Where one strata corporation

may opt for more flexible restrictions focused on keeping common areas and balconies free from marijuana smoke, others may desire a complete prohibition of all things marijuana. Regardless of the individualized restrictions for which a strata corporation may opt, bylaws controlling or regulating marijuana should address such matters as:

- medical versus recreational marijuana use;
- use in strata lots versus on common property;
- smoking of marijuana versus other forms of consumption;
- cultivation of marijuana – where and what systems will be allowed;
- alteration of marijuana from one form to another – drying vs. oils;
- changes that may be required to the strata lot to allow for cultivation;
- inspection for compliance

Strata corporations that do not regulate non-medical marijuana use may face many issues, including complaints regarding exposure to second-hand smoke. There is an ever increasing trend toward holding strata corporations accountable in the accommodation of owners with disabilities, such as asthma, that are aggravated by second hand smoke - see *Perron v Strata Plan NW 164*, 2009 BCHRT 59 and *Leary v Strata Plan VR1001*, 2016 BCHRT 139. Without controls in place, those obligations cannot be met. A failure to later pass a bylaw prohibiting smoking may not exempt the strata corporation from its obligations in that regard.

Smoking marijuana is not the only source of odours. When the plants are being cultivated, this too can emit a strong smell. Processing may have a similar result and raise similar issues.

Other concerns pertinent to strata corporations include:

> (a) damage to the buildings by moisture from growing marijuana plants (which can create mould spores in walls, ceilings, and floors and which can damage window seals);
>
> (d) disproportionate use of utilities such as electricity and water (if not sub-metered) which are required in great quantities to grow marijuana plants;
>
> (c) increased fire hazards due to growing and processing methods;
>
> (d) whether the strata corporation's insurer will cover claims arising from marijuana related accidents;

A final issue to consider is commercial dispensaries. Under the new regime they will be regulated by the provincial and municipal governments. Where the zoning bylaws do not allow for such a business the strata corporation can rely on Standard Bylaw 3(1)(d). However, if the zoning allows for such businesses then strata corporations will need to consider whether or not they should allow such a business. (Given the requirement for ¾ of the commercial strata lots to vote in favour of any bylaw amendments, such a restriction may be difficult to enact).

It is arguably within the power of a strata corporation to regulate the use of strata lots given the language of s.119(2) of the SPA. In *Kok* v. *Strata Plan LMS 463* (1999), 23 RPR (3d) 296 the court upheld the ability of the strata corporation to regulate the uses of strata lots within a retail shopping centre. However, in *Winchester Resorts Inc.* v. *Strata Plan KAS 2188* (2002), 4 BCLR (4th) 390 the court ruled that the strata corporation's bylaws could not restrict uses which were

permitted in a registered building scheme; to do so would be significantly unfair under s.164 of the SPA. Which line of reasoning will ultimately prevail is not clear, but it will undoubtedly come to a head with regard to this issue.

Smoking

Smoking is no longer a generally accepted vice (at least not when done around others). An oft asked question is whether a strata corporation can restrict or prohibit smoking. The answer to that question is yes. The ability to pass bylaws banning smoking whether on the common property or in a strata lot itself falls within the scope of s.119(2) of the SPA. Certainly the banning of smoking in common areas and on balconies would appear to be consistent with other steps taken within society as a whole to restrict when and where one can smoke.

Even if a strata corporation does not have a bylaw that expressly prohibits smoking, restrictions already exist in the bylaws of most strata corporations that address the subject.

Standard Bylaw 3(1)(a) prohibits someone from using their strata lot or the common property in a way that causes a nuisance or a hazard to someone else. In *Raith* v. *Coles* [1984] B.C.J. 722 the court held that the continual smoking of a cigar created a nuisance. Given the known dangers of second hand smoke, allowing it to travel from a balcony or out of a unit and into another could well constitute creating a hazard.

Standard Bylaw 3(1)(c) prohibits someone from using their strata lot or the common property in a way that unreasonably interferes with another person's use and enjoyment of their strata lot or the common property. In *Bonavista Management Inc.* v. *Absolute Star Design Ltd.* 2015 BCSC 1002 the court held that cigar smoke escaping a rental unit was both an unreasonable interference with the use and enjoyment of the building by other tenants, as well as a nuisance. Depending on the severity and frequency of the smoke, the act of smoking could result in a breach of bylaw 3(1)(c).

It should be noted though that under the Standard Bylaws the mere act of smoking a cigarette does not constitute a breach of the bylaw (whereas it would if there were a blanket prohibition on smoking.) There must be evidence of interference with the ability of the owner to enjoy their strata lot and limited common property – *Andrushko* v. *The Owners Strata Plan KAS 1041* 2015 BCSC 2245. Whether an activity constitutes a nuisance depends on a number of factors (frequency, duration and severity of the incidents) and must be assessed from the standpoint of an ordinary reasonable person – *Popoff* v. *Krafczyk* [1990] B.C.J. No. 1935 (SC).

To a certain extent, strata corporations do not have a choice about regulating and even prohibiting smoking in certain locations. Section 2.3(1)(a)(iii) (in conjunction with Regulation 4.21) of the *Tobacco and Vapour Products Control Act* ("TVPCA") prohibits smoking and the use of e-cigarettes in the common areas of strata corporations. Unfortunately there is no definition of what constitutes a "common area" and that term is not used in the SPA, but presumably it was meant to include areas such as hallways, recreational rooms, parking garages and courtyards; any place where the owners have equal rights of access. (S.2.41 of the TVPCA exempts certain medical uses of vapourized products from that prohibition).

Under the TVPCA a person cannot smoke within 6 meters of a doorway, window or air intake leading to any common area. That prohibition would certainly apply where a deck or balcony

was within 6 metres of a door, window or air intake leading to the interior common property. It definitely prohibits smoking on the patios of clubhouses and common rooms.

Under the TVPCA the strata corporation, the strata council (and quite possibly the strata manager) become liable to see that these restrictions are observed. However, so long as they have exercised reasonable care and diligence to prevent the contravention, they will not be liable. To meet the test of having "exercised reasonable care and diligence" would require: (1) a bylaw prohibiting smoking in the common areas and within 6 metres of a doorway, window or air intake leading to any common area, (2) signage announcing the prohibition; and (3) rigid enforcement of the bylaw when there is a breach.

Strata corporations which contain commercial strata lots should also consider the provisions of the TVPCA and any applicable municipal bylaw in light of the restrictions placed on smoking in and around businesses and "customer service areas" (which include outdoor patios). Strata corporations can be as equally responsible for enforcement of the restrictions as the business operators, particularly if the customer service areas are on common property.

In addition to the provisions of the TVPCA, many municipalities have passed their own bylaws dealing with this subject. Some, such as the Capital Regional District, have bylaws which, while allowing smoking within a dwelling unit, prohibit smoking within a certain distance (usually 7 metres) "measured on the ground from a point directly below any point of any opening into any building, including any door or window that opens or any air intake". This effectively means smoking on a patio or balcony cannot be permitted.

Municipal smoking bylaws obligate strata corporations to take steps to see the bylaw is complied with since they are generally included in the definition of "responsible person". Those include enforcing the municipal bylaw, posting required signage and being subject to penalties if it does not do so. As such, strata councils should become familiar with such municipal bylaws and take steps (including passing a bylaw that incorporates its provisions) in order to comply with the same.

Strata corporations also have an obligation under the *Human Rights Code* to control smoking where a resident has a medical condition which is adversely affected by secondhand smoke. – See *Leary* v. *Strata Plan VR 1001* 2016 BCHRT 139 and *Kabatoff* v. *Strata Corp Plan NW2767* 2009 BCHRT 344. Having a bylaw which prohibits smoking, at least outdoors, assists with that.

Where smoking is permitted within a strata lot, a bylaw regarding smoke not escaping from the strata lot should be considered. Such a bylaw is permissible and is no different legally than a bylaw prohibiting other offensive activities such as noise from "escaping" a strata lot. Another alternative is to prohibit smoking but grandfather residents who do smoke - *Mundel et al v. Hastings-Evans et al*, 2017 BCCRT 108. However, that would not apply to areas where smoking is prohibited by the TVPCA or a municipal bylaw.

Electric Vehicles

The use of electric vehicles by residents within a strata corporation poses a new and interesting issue which most strata corporations have not yet faced. However, it is an issue that arises almost exclusively in apartment style strata corporations.

Electric vehicles can be charged by simply plugging them into a regular 120V outlet. This means that any owner, tenant or occupant with an electric vehicle can charge it by simply plugging it into an existing outlet in the parking garage. Absent any restriction in the bylaws or rule, they arguably have every right to do so. However, the electricity supplied to that socket would be electricity for which the strata corporation pays. Since it is a common expense, the cost of charging that vehicle is borne by all owners proportionate to the relative unit entitlement - see s. 99 of the SPA. To many owners, that arrangement is considered to be unfair.

The disproportionate consumption of common expenses is something which is not easily dealt with. Common expenses cannot be apportioned between owners on a formula other than relative unit entitlement unless there has been approval of that formula by way of a unanimous vote under s.100 of the SPA. In other words, the cost of electricity cannot simply be apportioned on a higher basis to those owners who (or whose tenants or occupants) have an electric vehicle.

However, that does not mean that the strata corporation cannot recover at least some of the costs of the electricity being consumed by those types of vehicles. S.110 of the SPA provides for user fees in relation to use of the common property. While the electricity being consumed is not common property, the outlet is. As such, the strata corporation can pass a bylaw prohibiting the use of electrical outlets to charge vehicles unless the owner tenant or occupant pays a fee in relation to the same. (Although S.110 refers to the fee being set out in the bylaw, if the bylaw makes reference to a rule, which in turn specifies a sum that should suffice. Setting out the fee in the Rules gives a greater degree of flexibility with respect to the amount).

There are some limitations on the amount to be charged. In both *The Owners, Strata Plan LMS383 v. DeVuyst,* 2011 BCSC 1252 and *Cody Watson v. The Owners, Strata Plan BCS1721,* BCCRT10, it was confirmed that such fees needed to be reasonable. Whether the fee was reasonable depended on prevailing market conditions and the actual costs the strata corporation incurred in allowing the particular use in question. In other words, fees for use of the common property are not to be “profit centers”.

Some owners with electric vehicles may wish to install a charging station which allows for the faster charging of the vehicle. For the most part, these stations must be hardwired. Not only are there the same issues with respect to the consumption of electricity, but now the owner is making a change to the common property. In order to control the installation of charging stations a strata corporation needs to ensure that its bylaws cover such scenario. Standard Bylaw 6 would not necessarily do that given that it refers only to “alteration”. (As will be discussed below, not every change is an “alteration”). Either the charging station bylaw or the general alteration bylaw should address that issue. (Even if installed in a garage of an individual strata lot there should still be approval required).

The strata corporation will also want the bylaw to require that an “assumption of liability agreement” is signed by the owner. That will ensure that any costs related to the repair and maintenance of the charging station are paid by that owner and any subsequent owners.

Strata corporations considering installing a bank of charging stations and designating an area of the common property for the charging of electric vehicles should keep in mind the provisions of s.71 of the SPA which requires a significant change in the use or appearance of the common

property to be approved by a ¾ vote. Depending on what is done, such a vote may be required. If a fee is to be charged (either directly or through a third party) the bylaws should provide for that.

Alterations

As times change, so do our tastes. This means that owners will want to modernize or upgrade their strata lots from time to time. Most strata corporations simply rely on the Standard Bylaws as the basis for requiring owners to obtain permission before making any change to the strata lot or the common property. However, those bylaws do not protect strata corporations to the extent they may think. That is because both bylaws use to the term "alteration". Most people, not surprisingly, presume that applies to any change to the strata lot and common property. However, that is not necessarily the case.

The term "alteration" was first given judicial consideration by the Ontario Superior Court of Justice in *Wentworth Condominium Corporation 198 v. McMahon* 2009 CarswellOnt. 1273. That particular case dealt with the installation of a hot tub in the backyard of a townhome. The hot tub was simply placed on the patio and connected to the building by way of an electrical cable. The issue before the court was whether the placement of the hot tub was an "addition, alteration or improvement" that would require approval of the condominium corporation's board pursuant to s. 98 of the Ontario *Condominium Act.* In making its decision the court considered what each of those three words meant, stating:

> 22. Therefore, I find that the word "addition" means something that is joined or connected to a structure, and the word "alteration" means something that changes the structure.
>
> 23. I find that the word "improvement" means the betterment of the property or enhancement of the value of the property. I also accept that an "improvement" refers to an improvement or betterment *of the property*. That is, to be an improvement there must be an increase in the value of the property. If the item increases the enjoyment of the property, but does not increase the value of the property, I find that the item is not an improvement.

In the end, the court concluded that placement of the hot tub on the common property did not constitute an addition, alteration or improvement since it did none of the things those words encompass. (A similar decision was reached by the British Columbia Supreme Court in *The Owners, Strata Plan LMS4255 v. Newell* 2012 BCSC 1542).

The decision in *Wentworth* was applied in British Columbia in *The Owners, Strata Plan NWS254 v. Hall* 2016 BCSC 2363. In that particular case, Mr. Hall proceeded to replace four windows and a patio door which the strata corporation had refused to repair. He then proceeded to sue the strata corporation for the cost of doing so. (As an aside, the court held that the windows and doors were in such poor condition that they needed to be replaced as opposed to repaired and awarded Mr. Hall the costs he expended in doing so). In its defence, the strata corporation argued that Mr. Hall should not be entitled to any compensation because he did not obtain the permission of the strata corporation to alter the common property as required by Standard Bylaws 5(1) and 6(1). In rejecting that argument the court applied the decision in *Wentworth* and concluded:

> [41] Here, the work involved the removal and replacement of four windows and the patio door. The replacement of the windows and door did not change the structure of the respondents unit, or the common property. I conclude that the replacement of the four windows and the patio door was not an "alteration" within the meaning of ss.5(1) or 6(1) of the Standard Bylaws requiring the prior approval in writing of the Strata Corporation.

What becomes evident from the decision in *Hall* is that Standard Bylaws 5 and 6 are not as far reaching as most strata corporations would think. Under the Standard Bylaws an owner can do virtually anything they want to a strata lot without permission of the strata corporation so long as it does not change the structure of the strata lot. Unfortunately, the court did not decide what constitutes the "structure" of a strata lot. The *Canadian Oxford Dictionary* defines it as:

> 4. A whole constructed unit, especially a building (i) the way in which a building etc. is constructed. A set of interconnected parts of any complex thing; a framework.

Common sense would interpret it to mean the framework underlying the strata lot. However, in *Allwest International Equipment Sales Co.* v. *The Owners, Strata Plan LMS4581* 2017 BCSC 1646 the court held that drilling a 2 inch hole for a pipe in an exterior wall was an alteration.

Under the Standard Bylaws it is not clear that an owner would require permission to install a new kitchen, renovate their bathroom or replace flooring. None of those, on the face of it, would necessarily alter the "structure" of the building.

Given the decision in *Hall*, strata corporations should consider revising their bylaws pertaining to alterations to strata lots and the common property. Even referring to such things as "additions" and "improvements" may not be sufficient to capture all aspects of work that may be done to either of these. Broader wording may be required. In *Zhang* v. *The Owners, Strata Plan BCS1115* 2017 BCCRT 79 a bylaw which referred to "making an alteration or addition or doing a renovation or other work" was broad enough to capture the construction of an arbour in a back yard.

Each strata corporation will need to consider the degree of control which it wishes to have with respect to changes to strata lots and to the common property. It may be that a much broader degree of control is desired over the latter. Bylaws may even need to be amended in order to address specific issues such as changes in flooring or the enclosing of balconies.

Access Control Systems and Video Surveillance

Most new strata corporations, and many older ones, have electronic access control systems; more commonly known as "fob systems". What many people may not realize is that those systems collect "personal information". They record who comes and goes from the building and when they do so. More sophisticated systems can track movements throughout the building (i.e. when someone entered the gym or used an elevator). There are, of course, many benefits to using such a system; most notably that lost fobs can be deactivated – as opposed to rekeying an entire building.

Where a strata corporation operates an access control system it is required under the *Personal Information Protection Act* (PIPA) to have both:

(a) a bylaw authorizing the use of such system;

(b) a policy which governs the collection use and disclosure of the information recorded by that system.

All but a few developers, and most strata corporations, inadvertently overlook this requirement; even when preparing bylaws.

A similar requirement exists for the operation of video surveillance systems. While PIPA does not prohibit video surveillance systems, such systems must be used only when other less intrusive security measures have failed. There must also be a demonstrated need for such a system (ie. a history of break-ins) not merely a perceived need for one.

In its decision in *Shoal Point Strata Council* [2009] B.C.I.P.C.D. No. 34 the Privacy Commissioner ruled that video surveillance systems cannot be used to monitor the activities of residents in order to catch them violating the bylaws. Nor were daily viewings of the tapes permissible. If an incident occurs then it is permissible to go back to view a particular portion of the tape.

The Guidelines published by OIPC suggest that a bylaw authorizing the use of such a system be passed and a policy regarding the use and operation of the system be in place. The bylaw should be specific and detailed as to the authorized uses of the surveillance system; i.e. that it will be used for the purposes of identifying individuals who commit a crime and for bylaw enforcement where a serious breach has occurred.

Sometimes owners wish to operate their own video surveillance system. Often those systems involve cameras which record events on the common property. Since an owner is an individual and not a “organization”, they are not subject to the requirements of PIPA. How then, does a strata corporation control the use of such a system? Standard Bylaw 3(1)(c) - unreasonable interference with use and enjoyment of the common property - is often used. However, a bylaw prohibiting such systems outright (or at least restricting their location) should be considered.

Home-based businesses

When, where and how people work is also changing. For many people they do not need to work at a desk in an office. Or they want to be able to serve their clients while being at home to assist their family. Others may wish to start a business but cannot afford to rent separate premises to so. For those people, home is an obvious choice as a base for work. However, it may not be a choice the strata corporation is happy with.

What constitutes a “home-based business” can be debated. Most strata corporations are not concerned with the “home office” scenario. In other words, if a lawyer or accountant worked from home a few days a week, but saw no clients, that would likely not be of concern. If someone ran a hair salon, massage spa, day care or a business involving product distribution, that would be. Businesses of that nature raise a number of concerns (the list of which is by no means exhaustive):

(a) increased traffic within the complex;

(b) potential for injury on the common property;

(c) strains on limited parking;

(d) dangers arising from the type of products used;

(e) the impact on the strata corporation's insurance.

Most municipal zoning bylaws have provisions with respect to home business use. The City of Nanaimo uses the following as a definition of what constitutes a home-based business:

> HOME BASED BUSINESS - means an occupation, business or professional practice which is carried on for remuneration or financial gain, and which is clearly ancillary to the residential use of the property and which generates little or no traffic, of which the proprietor is also a resident of the dwelling where the home occupation occurs and which does not employ more than one person who is not also a resident of the dwelling where the home occupation occurs.

The City of Victoria uses a slightly different definition:

> "Home Occupation" means making, servicing, or repairing goods, or providing services for hire or gain by any person, wholly within a dwelling unit occupied by that person, but does not include
> the following except as provided in Schedule D:
> a) the sale of goods on or from the dwelling unit or its premises;
> b) the provision of escort services within a multiple dwelling;
> c) small-scale commercial urban food production.

Whether or not a home-based business is allowed and under what conditions depends firstly on the zoning bylaw applicable to the strata corporation. A strata corporation may be content to rely on the municipal zoning bylaws to control the use of strata lots for home-based business. A use contrary to the zoning would be a breach of Standard Bylaw 3(1)(d).

If the strata corporation is not content to rely on the zoning, then the owners can enact a bylaw which either prohibits entirely the use of a strata lot for commercial purposes or else restricts the uses and imposes conditions upon owners, tenants and occupants when it comes to business use. (See the section above on bylaws regarding marijuana use for a discussion of the ability of the strata corporation to restrict the uses to which the strata lot is put). A strata corporation cannot allow a use which is prohibited by zoning. A bylaw to that effect would breach s.121 of the SPA.

When regulating home-based businesses, strata corporations are generally concerned with ensuring that the business does not involve:

(a) clients or customers of the business attending the strata lot;
(b) routine deliveries of products and goods to the strata lot (other than the occasional courier);

(c) the use of hazardous or dangerous materials;
(d) the use of machinery; and
(e) the production of an unreasonable level of noise or odours;

A bylaw allowing the operation of a home-based business could set those as conditions imposed upon any owner who operates a business. In addition, a strata corporation may wish to consider requirements for additional insurance (as a condition to be allowed to operate the business).

If the strata corporation is to allow the operation of a home-based business involving the attendance of customers then it will need to address issues such as use of visitor parking, hours of operation and liability for injury to customers. A corresponding amendment to Standard Bylaw 3(1)(e) would likely be required as well. That bylaw prohibits using a strata lot in a way that is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan. (ie. if the strata lot was intended to be residential, it cannot necessarily be used for a non-residential purpose under that bylaw). Whether a strata lot is residential or non-residential is "determined by the documents prepared and filed at and around the inception of the development" - *East Barriere Resort Limited* v. *The Owners, Strata Plan KAS1819* 2017 BCCA 183. One of those documents is, of course, the Schedule of Voting Rights which shows the intended designation of each strata lot.

A strata corporation which intends to allow commercial uses may also want to restrict certain types of businesses. In *Condominium Plan No. 942 2336* v. *Jeremy Chai Professional Corp.* 2005 ABQB 837 the strata corporation tried to get an injunction, on the basis of the use of a strata lot for an illegal purpose, to stop the operation of an escort agency/massage parlour. It was unsuccessful because it could not prove that there were ongoing acts of prostitution. Since the decision of the Supreme Court of Canada in *Bedford v. Canada (Attorney General)* 2013 SCC 72 it is no longer illegal to run a brothel. Thus a broadly worded home business bylaw could inadvertently allow such a business to operate.

Drones

The operation of drones is governed by the *Aeronautics Act*. Drones weighing less than 25 kg are exempt from the requirement of the operator to have a Special Flight Operations Certificate. However, the operator must meet certain conditions and may operate the drone only in certain areas.

Drones also come with a potential both to breach the privacy of others within the strata corporation and to interfere with their use and enjoyment of the common property and the strata lots; particularly those with cameras.

Consider also the delivery of packages by drone. Will that be allowed? If so, what restrictions (such as times of delivery) would be desired or necessary.

Bylaw Enforcement

The duty of the strata council to enforce the bylaws is a positive duty imposed on it by s. 26 of the SPA, which reads as follows:

> "Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of the bylaws and the rules."
>
> [emphasis added]

A strata council does not have the discretion to choose not to enforce a bylaw once a violation has been established. Nor does it have the ability to refuse to address a complaint or take the position that it is an issue between two owners. It must not be dismissive of the complaint's concerns – *D.W.* v. *The Owners, Strata Plan BCS XXX* 2017 BCCRT 107.

Enforcement does not always mean levying the maximum fine (although in some cases this may be completely appropriate). What it does mean is taking some step(s) to see that the bylaw is upheld and enforced. A failure to uphold the bylaws sends the message that compliance with them is optional or that they are mere guidelines. (In that same vein, the owners should never pass a bylaw that they are not prepared to take any and all necessary action to enforce).

What constitutes "enforcement" is often a subject of debate. In *Wilson* v. *Highlands Strata Corp* (1999), 29 R.P.R. (3d) 280 the court held that "accumulating fines in the amount of $10,000.00 is a form of punishment, not an enforcement of its bylaws and is unreasonable." A similar conclusion was recently reached in *The Owners, Strata Plan VR 484* v. *Lawtez* 2017 BCCRT 59 wherein the CRT held that an application for dispute resolution must be brought in a timely manner to enforce the bylaws and that once the dispute notice has been issued, the fines should stop.

A council need not take a tough stance from the get go. Dialogue and an attempt to find a resolution can avoid a great deal of turmoil and potentially save thousands of dollars. In *Muskoka Condominium Corporation No. 39* v. *Kreutzweiser* 2010 ONSC 2463 the court held that "not every minor violation of a declaration must be met with an enforcement procedure." In fact, strata corporations are not obligated to enforce bylaws merely for the sake of enforcing them when the breach is trivial - *Abdoh* v. *Owners of Strata Plan KAS* 2003 2013 BCSC 817 affirmed 2014 BCCA 270. However, the decision on whether and how to enforce a bylaw is limited and must be measured against the reasonable expectation of the owners that bylaws will be consistently enforced - *Strata Plan LMS 3259* v. *Sze Hang Holdings Inc.* 2016 BCSC 32.

Bylaw enforcement must take place in a timely way as well. In *The Owners, Strata Plan KAS 510* v. *Nicholson* 2017 BCCRT 48, the CRT dismissed a claim to force an owner to remove an unauthorized alteration since the strata corporation knew of the breach more than 2 years ago. It determined that the claim fell outside the scope of the *Limitation Act*. However, there was no discussion of the decision in *Chan v. Strata Plan VR 151* 2010 BCSC 1725 where it was held the strata corporation can never be prevented from enforcing bylaws since due to delay it has a statutory duty to do so.

The primary methods for enforcing the bylaws of a strata corporation are:

(a) imposing fines against the offending tenant or owner;

(b) taking steps to remedy a contravention pursuant to s.133 of the SPA;

(c) seeking an order of the CRT that the owner comply with the bylaws.

No matter what method the strata corporation chooses it needs to ensure that it has complied with the “due process” provisions of the SPA. Those provisions are found in s.135 of the SPA which provides as follows:

> ***Complaint, right to answer and notice of decision***
>
> **135** (1) The strata corporation must not
>
> (a) impose a fine against a person,
>
> (b) require a person to pay the costs of remedying a contravention, or
>
> (c) deny a person the use of a recreational facility for a contravention of a bylaw or rule unless the strata corporation has
>
> (d) received a complaint about the contravention,
>
> (e) given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and
>
> (f) if the person is a tenant, given notice of the complaint to the person’s landlord and the owner.
>
> (2) The strata corporation must, as soon as feasible, give notice in writing of a decision on a matter referred to in subsection 1(a), (b) or (c) to the persons referred to in subsection (1)(e) and (f).
>
> (3) Once a strata corporation has complied with this section in respect of a contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravening of that bylaw or rule without further compliance with this section.

Based on those requirements a strata council cannot simply impose a fine against a person. There are certain steps which must be taken first. If not, the fines, and any other steps taken, are not valid. In both *Strata Plan VR 19* v. *Collins* 2004 BCSC 1743 and *Dimitrov* v. *Summit Square Strata Corp. 2006 BCSC 967* the court made clear that this prerequisite must be met both when imposing fines and collecting the costs of remedying bylaw contravention, otherwise the sums sought are not collectible. Based on other decisions, it appears than an initial failure can be rectified by reversing the fine and starting over - *Cheung v. Strata Plan VR 1902*, 2004 BCSC 1750; *S.M. v. The Owners, Strata Plan ABC*, 2017 BCCRT 23.

In *Terry* v. *The Owners, Strata Plan* NW309 2016 BCCA 449 the Court of Appeal reinforced the principle that the imposition of fines before providing the particulars and an opportunity to respond makes the fines invalid. Correspondence after the fact about the alleged breach does not save fines improperly imposed. It said the following with respect to s.135 in general:

> [28] In my view, an owner or tenant who may be subject to a fine must be given notice that the strata corporation is contemplating the imposition of a fine for the alleged contravention of an identified bylaw or rule, and particulars sufficient to call to the attention of the owner or tenant the contravention at issue. In addition, the owner or tenant must be given a reasonable opportunity to answer the complaint. What constitutes a reasonable opportunity to be heard in response is a case-specific inquiry that must take account of the nature of the alleged contravention, the context in which the violation is said to have occurred, and the time that might reasonably be required to gather information or evidence needed to answer it.

The letter sent to the offending owner/tenant must also set a reasonable time for providing an answer to the complaint. Two weeks is probably sufficient (given that this is the time frame used for a number of other deadlines under the SPA). However, the court in Terry noted that the complexity of the complaint could dictate a longer period Extensions should not be granted unless the matter is complex or an opportunity to consult with legal counsel is requested. Even then, a short time line should be kept.

Where there is conflicting evidence from the complainant and the accused owner/tenant it is appropriate (and sometimes necessary) to make further inquiries of the complainant in an attempt to reconcile the competing accounts – *Chorney* v. *The Owners, Strata Plan VIS770* 2016 BCSC 148.

Recent CRT decisions have detailed the obligations of a strata council when enforcing the bylaws.

In *Mason* v. *The Owners, Strata Plan BCS4338* 2017 BCCRT 47 the CRT reviewed the various steps required to be taken by the strata council before it can enforce a bylaw. It criticized the strata council for enforcing a smoking bylaw based on email complaints which lacked detail as to the dates and times the alleged smoking took place. When the owner denied the allegations, the strata council failed to take steps to further investigate those allegations and took the complaints on face value. The CRT was of the view that in light of that denial the council should have requested photos or witness statements from the complainant. Further, the strata council was held to have prevented the accused owner from properly responding to the allegations by not providing copies of the complaints. (Complaint letters and emails are not protected by PIPA and must be produced under s. 36 of the SPA).

The decision in *A.P*. v. *The Owners, Strata Plan ABC* 2017 BCCRT 94 appears to impose an obligation to investigate complaints; particularly noise complaints.

When responding to and assessing complaints, the strata council must not act in a manner that is significantly unfair to the complainant. In other words, they have to act in good faith when assessing whether there has been a bylaw breach. - *A.P. v. The Owners, Strata Plan ABC 2017 BCCRT 94; D.W.* v. *The Owners, Strata Plan BCS XXX* 2017 BCCRT 107.

In *Doig* v. *The Owners, Strata Plan VR 1712* 2017 BCCRT 36 the CRT determined that the strata corporation acted in a significantly unfair manner when deciding that the owners had breached one of the strata corporation bylaws. The basis for the CRT's conclusion lay in the fact that the strata council did not provide reasons for its decision after the owners had requested a hearing. In other words, how did it reach the decision there was a breach? At paragraph 64 the adjudicator said the following:

> "Under the principles of procedural fairness established by the Supreme Court of Canada in *Hill v. Hamilton*, [2007] 3 SCR 129, a written decision must allow a party (in this case, the owners) or a reviewing tribunal or court to understand the meeting's outcome, and why the outcome was reached. The form and detail of adequate reasons can be different in different situations. Applied to this case, Hill says that reasons must meet the parties' functional "need to know" council's reasoning in reaching its decision about their hot tub."

It was held that an adequate decision under s.34.1 of the SPA (which would apply equally to a hearing requested pursuant to s.135) should contain:

> (a) a list of who is present at the meeting;
>
> (b) who voted on its outcome;
>
> (c) the process followed at the hearing;
>
> (d) the facts the Council relied upon in reaching its conclusion;
>
> (e) the reason why it reached its decision; and
>
> (f) the outcome of the hearing (i.e. the decision reached).

The CRT's conclusion in *Doig* was similar to that of the Alberta Court of Queen's Bench In *Condominium Corp. No. 072 9313* v. *Schultz* 2016 ABQB 338 where it applied administrative law principles. It held that when making a decision such as imposing a fine the strata council should provide reasons for its decision. In other words, what was the basis on deciding to impose a fine and how doing so would bring about compliance with the bylaws? Specifically, the court stated:

> "A reviewing court might just as well assume that the absence of reasons means that the decision is arbitrary, or that there are no proper purposes for it. And this may not be such a wild assumption here; there is no apparent reason how a fine could correct Ms. Schultz's behavior or to cause her to do anything other than what she had diligently been doing.
>
> No reasons are provided. We cannot tell what the Board had in mind.
>
> …There is no consideration of the purpose of sanction in the Board's decision. The fines levied here appear to be pointless except, possibly, from the standpoint

> of deterrence. Otherwise the decision seems to be punitive and to serve no useful purpose. It might have been different if Ms. Schulz was unwilling to comply."

Proper attention to the steps and processes required will lay a solid foundation for future enforcement action. A failure to do so will place that in jeopardy and could be considered a breach on the part of council under s.31 of the SPA.

Conclusion

Both the bylaws of the strata corporation and the processes followed to enforce them are a living thing. They need to be reviewed and updated regularly; particularly in light of changing and evolving case law. This paper should be a start down that path.

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is lawyer whose practice focuses on strata property law. He frequently writes and lectures for a variety of strata associations. He is a partner with the law firm of Cleveland Doan LLP and can be reached at (604)536-5002 or shawn@clevelanddoan.com