



Strata Corporations and Vaccine Passports

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By Shawn M. Smith

The recent introduction by the Province of a vaccine passport requirement (effective September 13) raises many questions for strata corporations:

- Do they apply to general meetings?
- Do they apply to gyms and other amenity facilities?
- If they don't, can a strata corporation impose its own vaccination requirements?

The Provincial Health Officer's Order ("PHO Order") is stated to apply to (amongst other things):

- Indoor organized events with 50 or more people. For example: Wedding receptions, organized parties, conferences and workshops;
- Gyms, exercise facilities/studios and recreation facilities (but not swimming pools);

If a strata corporation intends to hold an in person general meeting at which more than 50 people will attend, then it is required to ensure that only owners with a vaccine passport enter the meeting. This means having someone check both the person's identification and the passport against the owner's list. Those persons who do not meet the passport requirement cannot be permitted entry to the meeting. They will need to give a proxy to a vaccinated person who can attend in their place.

Unfortunately, a strata corporation cannot limit attendance in order to keep the number of attendees (owners, tenants, spouses, strata managers and guests) below 50. Every owner has the right to attend in person if they wish. They cannot be forced to give a proxy simply because a certain number of attendees has been reached. Only in the case of a hybrid meeting (i.e. a combination of in person and virtual attendance) might that be possible.

The application of vaccine passports to gyms, exercise facilities and recreation facilities within strata corporations is unclear. While the provisions of the PHO Order do not apply to "private residences" nor "fitness facilities which are part of a hotel or similar

establishment”, it is questionable whether strata corporations would fall within either of those exceptions. Strata corporations which operate a gym or recreation building which is shared with another strata corporation(s) arguably would not. Until clarity is provided that they do not, strata corporations should assume the requirements of the PHO Order apply to them.

The PHO Order does make clear, however, that the passport requirements apply only to “a gathering of participants in an inside place for the purpose of... an exercise, fitness or dance activity or class.” The passport requirements can presumably be avoided if use of the gym is limited to one person at a time; since there is no “gathering”. That restriction could be achieved, at least temporarily, by the passage of a Rule (followed by some sort of verification or enforcement).

Strata corporations which operate facilities to which the vaccine passport requirements apply will need to ensure the use of exercise and recreation facilities by vaccinated individuals only. That duty applies even where a large event is not a strata corporation sanctioned event since the definition of “organizer” includes “a person in charge of a place at which an event is held.”

A requirement to enforce vaccine passports will undoubtedly create logistical issues in terms of verification and control of access. That may in turn lead to a desire to close those facilities. If that is the wish of council, that decision can only be made by a $\frac{3}{4}$ vote of the owners.

A strata corporation may also be able to enact a bylaw imposing its own requirements for vaccination status in order to access services and facilities not captured by the mandatory requirements of the PHO Order. However, great care and a good deal of thought and planning need to go into such a decision. There are several potentially problematic legal issues to navigate, such as:

- S.71 of the *Strata Property Act* which prohibits a significant change in the use of the common property without a $\frac{3}{4}$ vote (which means a Rule cannot be used to impose the requirement);
- S.164 of the *Strata Property Act* which provides for relief against significantly unfair decisions and actions of the strata corporation (where those are burdensome, harsh, unjust, etc.);
- Privacy issues arising under the *Personal Information Protection Act* regarding the need to disclose vocational status (the Office of Information and Privacy Commissioner has said that “the necessity, effectiveness and proportionality of vaccine passports must be established for each specific context in which they will be used.”);
- The obligations owed to owners and others under the *Human Rights Code* (the Human Rights Commissioner has said that “vaccination status policies should be justified by scientific evidence relevant to the specific context, time-limited and regularly reviewed, proportional to the risks they seek to address, necessary due

to a lack of less-intrusive alternatives and respectful of privacy to the extent required by law.”);

While strata corporations must comply with passport requirements in certain settings, they should be cautious to implement them in others (and perhaps not if other procedures, such as mask mandates, would provide sufficient protection). Legal advice should be sought before enacting any such bylaw or rule.

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 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. He can be followed on Twitter @stratashawn.