Spending Money: CRF, Operating Fund, Special Levies and More

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with speaker Shawn M. Smith, Cleveland Doan Lawyers

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Good morning, everyone and thank you for joining us. I will apologize now that the title of the talk is slightly different than as advertised (Spending Money from the CRF) but the content will not be. The reason for that is as I was preparing, I realized that to really talk about this topic we have to go far beyond the CRF. So, we'll talk about the CRF, we'll talk about the operating budget, we're going to talk about all the things that are surrounding that.

So, a little bit about our law firm. So, we are a full-service law firm. Right now, we've got six lawyers. We sort of do everything but a big part of our practice is strata property. We've been doing that since the *Strata Property Act* came in in 2000 and we essentially do everything that stratas need from collections to bylaws to governance matters to CRT claims. As for myself, I'm one of the partners of the firm and this is now my 23rd year of practice and all I do day-in day-out is help strata corporations with their issues. The other little legal disclaimer of course today's presentation is not legal advice, it's information. But hopefully it's going to be useful information and as Wendy said I'll leave some time at the end for questions and hopefully you will have some good ones. I always like real life examples and situations. So, without further ado we shall plunge into the presentation.

So, what we're going to talk about today. We're going to talk about the differences between the operating fund, the contingency reserve fund, and special levies because that plays into what fund you're going to spend out of and for what expenses. Which is we're also going to then look at what comes out of what fund. We're going to talk about emergency expenditures because this is something comes up quite often and I think it's quite either quite misunderstood or much more liberally applied than it should be. We're also going to talk about unapproved expenditures and how to deal with those because if you're like me you set a budget but sticking to it is an entirely different thing. And then we're going to talk about surpluses and deficits and how you deal with those.

Some basics to start with

Some terms that we're also going to refer to. So, the *Strata Property Act* defines common expenses and when we're talking about spending money, we're really talking about out of which fund do we pay the common expenses. So that's defined in the Act as expenses that relate to the common property or common assets of the strata corporation. So usually those are repair and maintenance expenses. And then the other category of things that form common expenses are anything else required to meet any other purpose or obligation of the strata corporation. So, there may be things beyond repair and maintenance that the strata corporation commits to. One example that comes up in the case law from time to time is things like cable vision packages, or there was a case a number of years ago with one of the retirement residences where the bylaws committed owners to contributing towards the expenses of running the facility, providing meals, housekeeping etc. So, the case law said that where there's a bylaw that obliges the strata to pay certain amounts or engage certain services those too are common expenses. So, it's not just repair maintenance. It can be other things that the strata has committed to. And then it's section 91 of the *Strata Property Act* that makes the strata corporation responsible for paying those common expenses.

So, there's two main ways of paying common expenses to funds that the Act contemplates for paying them. Those are the operating fund and the contingency reserve fund or the CRF is what is often the acronym for the contingency reserve fund. I will apologize now if I use the term CRT by accident. There's too many CR acronyms in the strata world. So, if I don't catch myself just insert the right one in. The operating fund is for common expenses that occur once a year or more often. So annual or monthly or weekly. Or are necessary to obtain a depreciation report. So that's a bit of an oddity and was added to the Act sometime after they brought in the depreciation reports because, of course, under the Act you obtain a depreciation report every 3 years. So it doesn't fit with the once a year but it made no sense not to be able to budget for it. So that's the one exception to the once a year or more often than once a year requirement. A contingency reserve fund is for expenses that occur less often than once a year or that do not usually occur, so those sort of one-off things. I like to think of a CRF as sort of capital projects. Things that you're going to do on a larger scale.

Operating Fund

When you're spending out of the operating fund. Or you can only spend out of the operating fund, if it's a line item in the budget. So, it's something that's been included in the budget. Or there's a 3/4 vote resolution at a general meeting and that may sort of be confusing because as you probably know the budget is approved by way of a majority vote. What they're talking about there, what I'm talking about there is that under the Act we'll look at this later we're talking about surpluses. You can spend surpluses on things that are not in the budget by way of a 3/4 vote. If the expenditure is below the maximum threshold for an unapproved expenditure and we'll spend some time again talking about that; the emergency expenditure costs under section 98(3). Or if the owners haven't approved the budget, if you fail to approve a budget at the AGM, you carry on with last year's budget until you approve your new budget. So, you carry on with the same strata fees but you're stuck with the same expenditure limits or limitations as set out in the previous year's budget.

I wanted to touch just briefly on budget requirements. So, Regulation 6.6 of the *Strata Property Act* sets out what is supposed to be in the operating budget, what it needs to show. And there's a number of things. The most important that I want to emphasize out of this is item (c) the estimated expenditures out of the operating fund itemized by category of expenditure. So your budget as most of you probably have has different line items with a description of what those are. That becomes important when we're talking about unapproved expenditures So just sort of park that in the back of your mind for now. But your budget can't just be a lump sum it needs to have categories and descriptions of what those are.

Contingency Reserve Fund

The CRF. So again, it's for expenses that are less often than once a year or usually not at all. And there's two thresholds for approving expenditures out of the CRF. The first is a majority vote if the expense is related to repair, maintenance, or replacement as recommended in the most current depreciation report. So that's the depreciation report that you have on hand. The term "recommended" is a bit of a curious term. What does that really mean? And unfortunately, the Act doesn't define it. There's really no case law on it. It's, as those of you who have a depreciation report or who have looked at one will recall that it covers repairs and maintenance over a very long time spent. So, does "recommended" mean simply mentioned in the report? Or does it need to be a repair that's said to be done in the near future? The only case I could find in my research was a CRT decision by the name of Sweett v. The Owners, Strata Plan EPS606, 2021 BCCRT 1090 and in that particular case the depreciation report said the repairs needed to be done asap. So of course, the CRT said it was appropriate to use the majority vote and that's of course I think a very obvious example. Other things that are not needed to be done asap can they or do they fall within the recommended? My rule of thumb that I apply is if it's between now and the time that the next depreciation report is due then I would definitely consider it to be recommended. Something current. If the fact that the roof will need to be replaced in 20 years. I'm not sure really allows you, within the spirit of the section, to take a majority vote to do work on it now.

The other voting threshold is a 3/4 vote. So that's for anything else. So, any other expense an upgrade perhaps or something that's not mentioned in the depreciation report. So that's a 3/4 vote threshold.

The third way is the emergency expenditure and so we'll talk about that. As you can see already there's some criteria. The definition from the Act is quite detailed. We're going to talk later about exactly what all that means.

Special Levies

There is a third way of raising money that is usually resorted to when you are doing large capital projects, roof replacement, building envelope, because unfortunately most contingency reserve funds are not large enough to fund those projects. Special levies are addressed under section 108 of the *Strata Property Act*. It establishes first of all the ability for the strata corporation to raise funds by the way of special levies. That's the governing section. It sets out a number of things that need to be in the special levy resolution: the purpose, when the money is due, and so there's a list. So, when you go to, if you're drafting your own resolutions, you need to go to section 108. Work through that checklist. It also talks about how to manage the funds raised by the special levy. They need to be accounted for separately and at the end if there's in excess, if any owner gets over $100 back, then the money has to go back to the owners. Unlike the other two funds we've talked about, there is no restriction on the type of expense that a special levy can be raised for. So, while I said it typically is raised for things that are more akin to the contingency reserve fund it can be used for operating fund expenses. So, an example would be is if you ran over your budget and you ran over the wiggle room for unapproved expenditures you'd have to come back to raise the remaining funds by way of a special levy.

The one thing that a fairly recent case has said, you cannot use a special levy to contribute to contingency reserve fund. So that's what [Morin v. The Owners, Strata Plan VR 279, 2021 BCCRT 122] said. (See also [Strata Plan VR386 (The Owners) v. Luttrell, 2009 BCSC 1680])

And then contributing to strata fees, and this is in fact how you contribute to all common expenses, is by way of relative unit entitlement. So, every strata corporation will have a schedule of unit entitlement. It shows what each strata lot contributes to those expenses whether it's the calculation of strata fees or whether it's by way of a special levy, you'll use the same formula. You'll note that here [section 99] refers to subject to [section 100]. That is a provision in the Act that by unanimous vote—meaning every single strata lot—you can choose a completely different formula. The other thing to note [Regulation 6.4] provides some exceptions to this relative unit entitlement formula by the way of, if you have types of strata lots, or if there's only certain strata lots that have certain types of limited common property.

Which fund?

So that sort of lays the foundation for what we're going to talk about. So, the big question when the strata is facing an expenditure is what fund? How do I know as a strata council what fund we should be asking owners to pay for this through? The key distinction and you'll see this as we look at the cases is going to be the frequency of the expense. So, is it once a year or more often? Or less often than once a year? What I've noticed over the last year and a half maybe almost two years, the CRT is becoming very strict in its application of these distinctions. You'll see when we go through some case examples there's been some stratas who have gotten themselves in a bit of trouble by not doing it properly.

We're going to look at 5 cases. What we're going to do with each of them is I'm going to give you the type of expenses and then we've got a little poll just to help keep you awake and we'll see what your answers are and then we'll tell you what the CRT decided in the end.

CRT Case #1: Greene

The first is [Greene v. The Owners, Strata Plan KAS 1244 2021 BCCRT 291]. So, in this particular case the strata spent money on several repair expenses. There is a security system replacement and upgrade, they installed some locks on attic access hatches, put some screens over the dryer vents, replaced an exterior door, installed some insulation there sorry some venting in the attic, and then they did a fire upgrade and fire system inspection.

So Wendy's going to launch a poll. The question is “what fund do you think those expenses could have been paid from?” Your choices are: operating fund, CRF, or unsure. Okay perfect. So, we have 39% of you said the operating fund, 47% said the CRF, and 14% were unsure. So, we're going to tell you the answer.

So first of all, we'll talk about the fire sprinkler system because it was a bit, it was treated differently even by the strata with respect to what fund. So, it was paid for out of the contingency reserve fund which it should have been because it was a less often than once a year. However, there was, there was one component of it, there is the annual fire inspection got lumped into the system upgrade, a $500 expense. And the CRT said that should not have been paid out of the CRF because it happens every year and so that expense according to the decision should have been separated from the rest of the project and paid for separately as an operating fund item.

The other repair expenses were, the CRT held should have been paid from the contingency reserve fund because they were things that the strata corporation did not do every year. The interesting thing I found about this case is a lot of those things are, I think would strike you, at least did to me at first blush, is they're very minor things. I think the locks on the attic access in the case were only an $800 expense, not very not a particularly large expense. But the decision held that because the strata does not put locks on attic accesses every year it was not an operating fund expense. So, the interesting thing with that reasoning is <u>I think it calls into question what is our repair and maintenance category really for? And what can we put in it?</u>

CRT Case #2: Dirks

All right. So, we'll go to the next case. [Dirks v. The Owners, Strata Plan EPS2744, 2021 BCCRT 127](). So, this was the cost to re-key the building entry locks. $3,900. Wendy if we could launch the poll and folks you can tell us where you think that should have been paid from. This is where we have the Jeopardy music playing. We really should. All right. So 13% out of the operating fund, 83% under the CRF, and 4% unsure.

Those of you who said the CRF were correct. Because lock rekeying was not an annual event it couldn't, the CRT held that could not come out of the contingency reserve fund. The alternative of course is the strata could have raised a special levy if they didn't want to spend it out of the CRF. An interesting thing to note is that the fact that all the owners at the AGM approved the budget containing the expense made no difference. So that differs a little bit from the reasoning in a later case we'll look at with respect to budget categories. The other thing that the strata had ordered is that it related to security and that should allow it to spend from whatever funds sort of akin to the emergency expenditure and the CRT said no on that one as well.

CRT Case #3: Meybodi

Case study number three: [Meybodi v. The Owners, Strata Plan EPS869, 2021 BCCRT 89](). So this was the cost of repainting some of the fences within the strata about a $20,000 expense. Wendy if you'll launch the poll then we'll have a look at this. All right 8% said operating fund, 89% CRF, and 3% are unsure.

So again, those of you who chose CRF chose correctly. The one thing the strata had argued in this case is because the bylaws referred to the repair and maintenance of fences they considered it more of a maintenance issue and they should be able to be in the operating budget. The CRT disagreed with them and said that again it's the frequency of the task that governs, not the bylaws or not the general thoughts of the owners. In this case the remedy, and I mentioned this is an interesting remedy, was the order of the strata to immediately move the monies that should have been taken under the CRF back to the operating fund. And some of the other cases the remedy has been to either to do nothing because it was So long ago, or to hold a meeting to approve the expense retroactively.

CRT Case #4: Hodgson

[Hodgson v. The Owners, Strata Plan LMS 908, 2022 BCCRT 117] is another case. In this particular case we had that a patio drainage project that comprised a number of different components. So, they had to core the patio slab, there's some drain installation, membrane replacement, and then some work on planters and shrubs. So, let's launch the poll on this one Wendy and see what people think where this should have come from?

[Wendy] I love that we have so many real-life examples now coming out of CRT cases. [Shawn] Yes, that is, actually the CRT has answered many questions that were not answered before because no one was going to take them to Supreme Court. So, we do get into a lot of these issues that haven't been addressed before. It's very helpful. All right 7% said operating fund, 88% CRF, 5% unsure.

So, the CRT said those were not operating fund expenses which is where the strata had paid for them as part of their general repair and maintenance budget. It disagreed that they were typical of other building landscaping maintenance things that occur every year. That had been the strata's argument as well, this is you know we do repair and maintenance all over the place various things. This was just one of many projects. The CRT held that the strata should have obtained ownership approval either to pay out of the CRF or again alternatively a special levy.

CRT Case #4: Borland

The last case [Borland-Spry v. The Owners, Strata Plan EPS4534, 2021 BCCRT 339] dealt with a number of things I think that stratas often encounter. One of which was a tree removal services. They spent some money on that as part of ongoing efforts to remediate the landscaping. It's a fairly new strata but the landscaping had not been done either properly or to the owner's satisfaction. Part of that was also adding bark mulch annually to various locations based on the recommendation of the landscaping committee. So they would say well this area needs some more mulch, this area is fine. They had to install some paddleboard storage racks and then they put in some automatic door opener or accessibility buttons.

[Wendy re poll] Oh this is a good one we've got a little more undecided here. [Shawn] Yeah that's why I saved the best for last, sort of. All right. So we have 32% said out of the operating fund, 36% under the CRF, and 32% are unsure.

So, you're in good company with that variety of answers because the CRT broke it down subject by subject and then treated them slightly differently. So, with respect to the landscaping issues the tree removal and both the bark mulch, in this decision held that that could be part of the operating fund. It could be an operating fund expense because they were part of ongoing, at least the tree removal was part of ongoing issues for remediating the landscaping. And then the owners had to prove the mulch as part of the overall landscaping budget. So, the CRT thought that was part of the landscaping line item.

When it came to the accessibility buttons the strata simply well. So, it's a little bit more complicated. The strata had budgeted for a CRF expenditure of one button and then realized they needed two. So, the second one they just decided to slip under the security entry phone lease line item in the operating budget. And the CRT said that they couldn't have done that for two reasons, one of which is it's unrelated to that category that's not approved in the operating budget, and it was a unique purchase. So, I kind of like that phrase that they used. It was something that, again, that strata doesn't purchase that type of thing every year.

When it came to the paddleboard racks, those the CRT held were again a unique one-time expense. The strata had tried to put them through the contingency reserve fund on the basis that it was an emergency expense because the fire inspection had said they need to clear stuff out of some of these rooms. The CRT wasn't going to buy that for two reasons, one of which is it took the strata two months to get the racks installed after the report. So, when we talk about emergency expenditures, you'll see why that's important. And it said also if there was an urgency the residents simply could have removed their paddleboards.

BC Supreme Court case: LMS 509

So those give you some examples of how the CRT has been approaching these issues and also the degree to which they will parse them through. Law is, I sometimes say tongue-in-cheek, a rule and a whole bunch of exceptions to it. So, I've left the exception to the end.

This is a fairly old case. It's a BC Supreme Court case from 2001 (Strata Corp. LMS 509 v. Andresen et al, 2001 BCSC 201) and in it the court, the issue is whether or not building envelope repair expenses could be included in the operating fund. So again, the court grappled with this issue of how often does the expense occur. In this particular strata, they'd been struggling piecemeal with building envelope repairs for a number of years, and spending money every year on it. So, the court in the end said well, the major repair costs—which were somewhere in the hundreds of thousands if I recall correctly—could be put through the operating fund because they had been doing this every year. It was a once a year or more often expenditure. They were no longer unusual or extraordinary. So that's a bit of a twist to what we've been talking about, but I think it's going to be a rare exception.

What does all this mean to you as a strata?

I think what it means for stratas is they have to carefully consider how often a particular expense occurs. So, they're not going to be able to just kind of choose a category. They think, need to give some thought to it. If it's an expense that is not one that occurs annually or a unique expense as the CRT used in Borland, you're either going to need to call a special general meeting as expenses arise throughout the year, or you need to start planning very carefully for your AGM to ensure you've got resolutions on the AGM to spend from the contingency reserve fund. Or do you start to consider more frequent work and descriptive budget categories? So, remember when I said at the beginning when we talked about [Regulation 6.6] and the categories of the budget? One of the things that in *Borland* the CRT looked at is that the line item was landscaping and there was a very clear discussion recorded in the minutes about what constituted that. So that's perhaps a way of moving certain expenses that might otherwise be considered to be CRF into the operating fund. Practically this could mean lower repair and maintenance line items. When you look at the *Greene* decision what actually is left that we can do out of that category? Could mean higher CRF contributions. If you're going to have to put more things through the CRF, you're going to have to put more money in there. Or alternately more special levies. Or you again take that *LMS 509* case and start somehow trying to spend things every year, spread it out, and start to make it an annual expense. Wendy, I notice we've got some questions in the Q and A and I thought maybe I would just pause here for a moment and answer those if they relate to what we've been talking about. So, I'll just have a quick look at those.

Question 1:
Q: Do you have to have a 3/4 vote for replacing locks for $800?
A: Just to emphasize, yes, that in fact was what the CRT said because they didn't do that every year. So that's why, if that line of thought continues that's why you have to really start budgeting carefully, or thinking carefully at the AGM what your expenses are going to be.

Question 2:
Q: What about predicted one-time legal fees, for example taking an owner to the CRT for collection of fines?
A: So legal fees is something we're going to talk about when we get to emergency expenditures and also unapproved expenditures. It's hard sometimes to predict what your legal fees are going to be. I get it nobody likes to pay lawyers so the budget's often small. And so those are things you do have to grapple with. I will say you should make sure though that you have a line item at least for legal fees so that it's in the budget.

Question 3:
Q: If owners all agreed to use the operating fund what caused the cases to come in front of the CRT for a ruling in the first place?
A: Somebody changed their mind. Or sometimes you can't always tell from the decision when they say all the owners it might have been all the owners at the meeting, but not all the owners in the strata.

Question 4:
Q: It seems reasonable to have a miscellaneous maintenance category to cover the small repairs rather than convene an SGM for a 3/4 vote.
A: I completely agree but when you look at the reasoning applied in the *Greene* decision, at least that adjudicator, didn't think so. They were very strict on the application of what, of how often the expense occurred. So, I think to get around that you might want to look applying sort of

the logic from the Borland case defining what that category is about and being trying to cover it that way. Because it certainly would not make sense to call an SGM to raise money to spend $800 to replace locks but sometimes the Act is what the Act is.

All right take one last question and then we'll just keep us on track.

Question 4:
Q: During the fiscal year a common property window is broken and needs replacement for $400. Operating fund or CRF?
A: I think the answer depends on how often your windows get broken and how often you're replacing them. If you're always doing window replacement then I think operating fund clearly. If windows don't get broken that often, on a strict interpretation, it's going to be a CRF expenditure. But good, you're all starting to think about the complexities that arise when you're looking at the expenditures of cases.

Emergency Expenditures:
We'll turn now to emergency expenditures. Section 98 of the *Strata Property Act* deals with emergency expenditures and I pulled out the three subsections that apply specifically to it. Subsection (3) sets out the criteria for when you can make it or what is an emergency expenditure. Subsection (5) sets out a restriction. And then (6) requires the strata to inform owners as soon as feasible about the expenditure. And that's something that often gets overlooked. And as soon as feasible doesn't mean at the next AGM or six months from now. If it's either a note out to people or if you're having a council meeting in short order you can deal with it then.

So, to be an emergency expenditure you have to tick off certain boxes. First of all, there must be reasonable grounds to determine, to say that it is an emergency. So how would you objectively justify that? It must be immediately necessary, the expenditure must be immediately necessary. So, what does that mean? I made a note at the bottom of the slide. Essentially the way you judge that is, can it wait 20 days? 20 days is the length of time that it takes to give notice to call a special general meeting to get approval. If it can wait longer than 20 days it is not an emergency. It's not immediately necessary.

It also has to be necessary to ensure safety or prevent significant loss or damage whether physical or otherwise. And so that now—due to some amendments to the Act—includes obtaining and maintaining insurance. But there's the test you have to meet. You have to show that there's a safety issue or that there's going to be loss or damage that's going to occur and significant loss or damage. The other thing, and this is often overlooked, is that it must not exceed the minimum amount needed. So, what is the band-aid solution? So, I like to use a roof repair as an example. So, if a hole develops suddenly in a roof from a really bad seagull or something falling off plane, or whatever might cause a hole in the roof, and then you have to spend money to fix it on an emergency basis. Tarping it or some very simple solution is going to be the minimum amount needed. You can't go ahead and re-roof the whole building because of that one hole. So, you have to restrain to the band-aid solution.

There are some cases that have looked at emergency expenditures. So, Mitchell v. The Owners, Strata Plan KAS 1202, 2015 BCSC 2153 is a BC Supreme Court case and in there the court said a "thoughtful analysis" of whether an expense is an emergency is required. So not just for example "yeah, we're going to make this an emergency expense". Council has to think about it and apply that test. What's helpful in the second bullet point is having some independent evidence or the advice of a professional. So, an engineer or a trades person. Somebody that says this can't wait 20 days, it needs to be done now.

The fact that something needed repair and you should have gotten to it and you haven't and now there's some sudden urgency to that, doesn't now automatically make that an emergency. In fact, it indicates the opposite. If you've left it for three months it's not an emergency. One exception to that is that sometimes things can suddenly become an emergency because they may worsen just due to a change in circumstances. But simply because the strata suddenly wakes up one day and goes "oh we need to get this done", that doesn't make it suddenly an emergency.

In the Stevenson case (Stevenson v. The Owners, Strata Plan VIS 1419, 2017 BCCRT 70) the CRT looked at the lumping of expenses and you can't lump non-urgent expenses in with urgent expenses. You have to separate them out. So that goes back to that minimum amount necessary.

Cost overruns. In Stevens v. The Owners, Strata Plan KAS 2490, 2021 BCCRT 492 the strata did a project, they ran over budget, and again it was a small amount. I believe it was somewhere around $750, and they just paid for it out of the CRF and deemed it to be an emergency. And the CRT said no it's not, that's not what that fund is for. It's not urgent. You should have gone and got owner approval.

Legal fees are an interesting category expense. So sometimes they can be an emergency expenditure if there's something urgent that the strata needs to respond to where there's any issue that is going to—shall we say explode and cause the strata money or damage in some other way—then it could be deemed to be an emergency. Just because the legal issue arises though doesn't automatically make it an emergency. You have to look at the consequences. So, it could in fact just be an unapproved expenditure, have to be treated as an unapproved expenditure. So, in that category you have to again look at the "thoughtful analysis" from Mitchell, what is the situation that we're actually facing?

Unapproved expenditures

Which leads us to unapproved expenditures. So, section 98. The first two subsections deal with what that is. So, subsection (1) gives the power for the strata to spend money beyond what's budgeted and then subsection (2) imposes some limits or restrictions on that.

So, what is an unapproved expenditure? So, section 98(1) says it's something not put forward for approval in the budget. So, in other words it's not something contemplated by the budget.

But that doesn't really define it I think in a practical sense. So, the SPA doesn't really doesn't expand on that and we're going look at some decisions though where the CRT has looked it up but they seem to take different approaches. One thing I wanted to note before we go there is the Wollf case (Wollf v. The Owners, Strata Plan NES3191, 2021 BCCRT 987) where the CRT said, that in order for something to be considered an expenditure the money actually has to have been paid. It's not merely incurring the expense it's actually writing the cheque and taking the funds out of either the contingency reserve fund or the operating fund.

So, as I said there's different interpretations in the case law with respect to what an unapproved expenditure is. Woytuik v. The Owners, Strata Plan VIS 5970, 2017 BCCRT 3 was interesting in that case they held that an unapproved expenditure is only something for which there isn't a line item. So, sort of a sky's the limit approach if you have a $1,000 for landscaping you could spend $20,000 and it's not going to be considered unapproved. Perhaps not a practical approach but that was a very narrow view of it. The second is Gadbois v. The Owners, Strata Plan NES 206, 2020 BCCRT 353 that essentially said where one or more approved expense categories exceed the budget overall, that would be considered to be an unapproved expenditure. The third line of cases (Haw v. The Owners, Strata Plan EPS 1869, 2019 BCCRT 509, and 1093870 B.C. Ltd. v. The Owners, Strata Plan NW213, 2022 BCCRT 328) looks at it line item by line item. So, an unapproved expenditure is where you exceed the line item. So, if you had $2,500 for landscaping and you get to $2,501 that extra dollar is now an unapproved expenditure.

So, as you can see those cases I think are hard to reconcile. They all take a very different approach. In my mind you can reconcile them. I like sort of a combination between the first two and I often explain an unapproved expenditure as something for which there's not a line item in the budget, or which exceeds the budget overall. With respect to the CRT members saying in the last category, I think this interpretation is more practical and consistent with the SPA. One thing that stratas could consider, section 98 subsection (4) talks about you can put other restrictions and limits on unapproved expenditures. So, could you start to define in fact what an unapproved expenditure is in your bylaws to give it some to reconcile these cases? I haven't seen a case that dealt with that, so I leave it there just as a question.

Sort of a checklist to keep in your back pocket with respect to unapproved expenditures. There is a limit to them. So, under the Act it's $2,000 or 5% of the strata fee contributions. Or the amount in the bylaws. And so, the other thing to note here is this is a cumulative total for the fiscal year. So, it's not a $2,000 per unapproved expenditure, that's it for the fiscal year. So, when I draft bylaws for strata corporations, I usually increase that $2,000 limit. That limit was put back in 1998 when the Act was enacted and as we all know a buck isn't a buck anymore. So, you want to think about inflation. You want to think about what your history in your strata with unapproved expenditures is and you'll want to think about also the size of your strata. $2,000 for a 4-unit strata might be practical. For a 200-unit strata it's not going to be. Because once you hit that limit, now you're having to call an SGM to approve anything else that's an unapproved expenditure.

That cap however does not apply to emergency expenditures. So, an emergency expenditure is sort of by nature an unapproved expenditure but you're not subject to that cap. However, whatever you spend on an emergency expenditure is going to count towards that cap. So, if you have a $1,000 emergency expenditure, it's going to go towards that $2,000 cap. The limit though, however applies only to operating fund expenses. Unapproved expenditures apply only to operating fund expenditures. You can never have an unapproved expenditure out of the contingency reserve fund. You can only have either. Money out of the CRF either has to be approved by a vote or it has to be an emergency expenditure. Operating fund items you can extend them as an unapproved expenditure. So going back to the legal fee example if you exceeded your legal fee budget, the additional legal fees could be an unapproved expenditure.

Some more things to note. You need to seek approval before exceeding the limit. So, you can't run up over past the limit and then try and deal with it at the annual general meeting. Expenses also need to be consistent with the category. So, if you are taking the category approach or you're looking to see if there is a line item, then you have to make sure that that line item is consistent with what you're wanting to refer to as an unapproved expenditure. And then again, the bylaws can set out further conditions in the limitations. So, they can increase the amount, they can put limitations with respect to what could be considered an unapproved expenditure, what couldn't be, or whether certain things need different approvals. You have a bit of flexibility there.

Loans from the CRF

I also wanted to touch on loans from the contingency reserve fund because this happens quite often. Operating fund, you're a little short, that's kind of like raiding your kid's piggy bank and—not that I've ever done that—but you know you've got this other pot of money, we're going to just go over and get into it. There's only one time that the *Strata Property Act* approves doing that and that's the [Regulation 6.3](). It says that the strata can take money from the contingency reserve fund and loan it to the operating fund where it's a temporary shortage. In other words, you have an expenditure that becomes due but you haven't collected all the strata fees. So often insurance is a good example of this. The premium becomes due in one lump sum in the 2nd or 3rd month of the fiscal year but in fact that's been spread out over 12 months by virtue of the strata fees. So that's the criteria for transferring the money. The other thing is that the loan must be repaid by the end of the fiscal year. So, you can't just roll that insurance loan or whatever other loan over to the next year. It has to be taken care of. Which you should be able to because if you have—if it's simply being done based on a shortage of strata fees—then those will be collected for the rest of the year should take care of itself. What you cannot do is use the contingency reserve fund to make up for poor budgeting. So, if you haven't budgeted enough in the operating fund, you can't just be pulling over money to make up for that. And I know there are stratas out there who do that and then they seek—it's the old the question "do I seek permission or do I seek forgiveness?"—who come and seek forgiveness at the annual general meeting. And by and large I think they get it. But technically under the Act that's not allowed. If it's not to cover a temporary shortage then you have to go to the owners for approval. And then you also have to ask the question "what's the nature of the CRF"? It's for expenses that are less often than once a year. So those monies really shouldn't be used to cover operating fund expenses.

Surpluses and Deficits

So, coming up just in the last couple minutes we'll talk about surpluses and deficits. A surplus is if you end the year with extra money. So, you've spent less than you've budgeted. First of all congratulations, good job! And then now the question is what do we do with this money? So, there are a few things that section 105 says that you can do with it. That surplus can be transferred to the contingency reserve fund. You can carry it forward as a surplus, so a little bit of extra money just there in case you need it. Or you can use it to reduce next year's strata fees. So, you basically apply it towards the budget and then calculate your strata fees off that lesser amount. The Act also says “or any other use approved by 3/4 vote”. So, the first three items are usually reflected in the operating budget and approved as part of it. So, either the budget or the financial statements will show what you're going to do with it. The Kierans case (Kierans et al v. The Owners, Strata Plan EPS 1290, 2019 BCCRT 1086) which is the second bullet point was interesting because the CRT said actually those first three options you don't even need to go to the owners for approval. Council can decide. If council decides they want to send it to the contingency reserve fund, then they can go ahead. That's not usually my advice. I think that should be left to the owners to decide or at least bless the suggestion put forward by council. The Lo decision (Lo v. The Owners, Strata Plan VR 2100, 2018 BCCRT 366) the last bullet point says you can use the surplus for non-operating funding expenses. So that's that final category, the 3/4 vote. So, if you have some money sitting here and you want to apply it towards a capital project that would need a 3/4 vote or else you can transfer to the CRF and then do a vote out of the CRF.

Deficits. Nobody likes deficits but sometimes they happen. Budgeting is forecasting. So unlike governments all over the world you just can't keep the deficit going. Section 105 of the *Strata Property Act* says that it must be eliminated during the next fiscal year. So, if you end a year in a deficit position, you have to figure out for the coming fiscal year what you're going to do about it. So, a few ways of eliminating the deficit. You can increase strata fees. So, basically there's a line item in the budget this is “deficit elimination”. You can also apply a prior year's surplus against the deficit. So, if you ended the year before in the black, you can now apply that and just get rid of it. Or you can operate below your budget. So, if you're really prudent during the fiscal year you might be able to make up that ground without changing strata fees. The Townsend case (Townsend et al v. The Owners, Strata Plan NW 2545, 2018 BCCRT 209) is interesting because there's that, and another case by the name of Lawlor et al v. The Owners, Strata Plan KAS 1459, 2019 BCCRT 968 which said that it's okay to pass a budget that has a deficit in it, that anticipates ending the year in a deficit, so long as in the next year you get rid of it. I’m not sure that that's the most prudent approach but those two decisions for what they are, are out there.

So that ladies and gentlemen takes us to the end of spending money under the Strata Property Act.

This webinar transcript 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.