

VISOA Webinar: Spending Money

April 23, 2022 Speaker: Shawn M. Smith, Cleveland Doan



Disclaimer: These answers are 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.

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Question	Answer
Where can I watch the video of the webinar and get the slides?	Watch the video on YouTube at: https://youtu.be/ezuxFiezH9k Download the slides and transcript at: https://www.visoa.bc.ca/?page_id=3405
Where can I read the CRT decisions that Shawn mentioned.	Download the transcript at https://www.visoa.bc.ca/?page_id=3405 . We've put in links to all of the CRT decisions and BC Supreme Court cases.
How do owners approve an annual budget?	<i>Strata Property Act</i> Section 103(1): The strata corporation must prepare a budget for the coming fiscal year for approval by a resolution to be passed by a majority vote at each annual general meeting.
Do CRF expenditures need to be separate resolutions at general meetings, or is inclusion in an approved budget good enough?	Separate resolutions are required. See below. If you have several proposed projects to be funded by the CRF, it is best practice to have a separate resolution for each project.

Question	Answer
<p>How do owners approve an expenditure from the Contingency Reserve Fund (CRF)?</p>	<p>The approval is made by a resolution passed by owners at an AGM or SGM by either a majority vote or 3/4 vote. It depends on what the expenditure is for. The details are in <i>Strata Property Act</i> Section 96: The strata corporation must not spend money from the contingency reserve fund unless the expenditure is...first approved by a resolution passed by</p> <p>(A) a majority vote at an annual or special general meeting if the expenditure is</p> <p>(I) necessary to obtain a depreciation report under section 94, or</p> <p>(II) related to the repair, maintenance or replacement, as recommended in the most current depreciation report..., or</p> <p>(B) a 3/4 vote at an annual or special general meeting if the expenditure is not described in clause (A) (I) or (II);</p> <p>(ii) the expenditure is authorized under section 98.</p>
<p>How do owners approve a special levy?</p>	<p>The approval is made by a 3/4 vote resolution passed by owners at an AGM or SGM. <i>Strata Property Act</i> Section 108 says: The strata corporation may raise money from the owners by means of a special levy...the levy must be approved by a resolution passed by a 3/4 vote at an annual or special general meeting.</p> <p>(3) The resolution to approve a special levy must set out all of the following:</p> <p>(a) the purpose of the levy;</p> <p>(b) the total amount of the levy;</p> <p>(c) the method used to determine each strata lot's share of the levy;</p> <p>(d) the amount of each strata lot's share of the levy;</p> <p>(e) the date by which the levy is to be paid or, if the levy is payable in instalments, the dates by which the instalments are to be paid.</p>
<p>Is it an Operating fund expense or Contingency Reserve Fund (CRF) expense?</p> <p>Tip: The key distinction is the frequency of the expense!</p>	
<p>Can a new water fountain (not a replacement) come from the CRF or operating fund?</p>	<p>Installing a new water fountain on the common property lawn is not an expense that usually occurs either once a year or more often than once a year. So this can't be paid for from the operating fund. By a 3/4 vote, owners could approve this expense from the CRF or by special levy.</p>

Question	Answer
<p>We want to add bicycle racks to our parking garage over the course of 2 years. Can it be paid from the operating fund?</p>	<p>This is similar to the CRT dispute named <i>Borland-Spry v. The Owners, Strata Plan EPS4534</i>, 2021 BCCRT 339. The CRT found that purchasing paddleboard racks was a unique, one-time expense and not, therefore, an operating expense. Subject to section 98(3), the CRT found that the money should have been taken from the CRF (SPA section 92(b)) or alternatively, from a special levy under SPA section 108 and only after obtaining the 3/4 vote approval. https://decisions.civilresolutionbc.ca/crt/sd/en/item/494871/index.do</p>
<p>Would replacing natural lawn with artificial turf come out of the landscaping allowance in the operating fund?</p>	<p>This appears to be a unique expense that doesn't occur every year. If so it's not an operating expense. Also, replacing natural lawn with artificial turf might trigger section 71 of the <i>Strata Property Act</i> which requires a 3/4 vote of the owners at a general meeting to approve "a significant change in the use or appearance of common property".</p>
<p>Is it an operating or CRF expense to pay the cost of a feasibility report like an EV Ready Plan (our quote is \$4,000 - 75% rebate from CleanBC)?</p>	<p>Reports such as an EV Ready Plan, Building Envelope Condition Assessment, Hazmat Review etc generally do not occur every year. With a 3/4 vote funding could be approved from the CRF or by special levy.</p>
<p>During the fiscal year, a common property window is broken and needs replacement for \$400.00. Operating fund or CRF?</p>	<p>The answer depends on how often your windows get broken and how often you're replacing them. If you're always doing replacements then I think operating fund. If windows don't get broken that often, on a strict interpretation, it's going to be a CRF (or special levy) expenditure. There are a lot of scenarios such as whether this is about cracked glass or full window replacement, whether it can be charged back to an owner...there are a lot of twists to it.</p>
<p>Do you have to have a 3/4 vote for replacing locks for \$800?</p>	<p>Yes. That was what the CRT said in <i>Greene v. The Owners, Strata Plan KAS 1244</i>, 2021 BCCRT 291, because they didn't install locks on attic hatches every year. That's why you really have to start budgeting carefully at the AGM for what your expenses are going to be (and hold the required votes to approve funding from the CRF or by special levy). https://decisions.civilresolutionbc.ca/crt/sd/en/item/494363/index.do</p>
<p>We usually do patio cleaning once every three years as a CRF expense. Could we do 1/3 of them every year on a rotating basis and include that as an expense in the annual operating budget?</p>	<p>I think it can particularly based on the <i>LMS 509</i> decision (<i>Strata Corp. LMS 509 v. Andresen et al</i>, 2001 BCSC 201) where building envelope repairs became an annual expense. I think if you only do it every 3 years, then based on the interpretations in the cases, it has to be a CRF expense because you're not doing it annually. So break it up over time and then you can keep it within the operating budget. https://www.canlii.org/en/bc/bcsc/doc/2001/2001bcsc201/2001bcsc201.html</p>

Question	Answer
<p>Our strata does fireplace inspections every two years. We have been including these expenses in the Operating budget. Should these be CRF expenses?</p>	<p>Based on the interpretations of cases, it has to be a CRF expense because you're not doing it annually. If you spread it out and do some annually, then you could keep it within the operating budget.</p>
<p>The strata does dryer vent cleaning every second year. Can we prorate (accrue) the expense over two years in the Operating budget?</p>	<p>It sounds like you're trying to do a run-around with accounting. If the work was completed in one fiscal year, it's not reasonable to account it to two different fiscal years. Something like insurance is often accrued monthly but that makes sense because the strata is receiving the service of insurance coverage every month.</p> <p>An alternative approach would be to clean half of the vents one year and the other half the next year and so on, thus making it an annual expense.</p>
<p>Are stucco repairs that don't happen every year a CRF expense?</p>	<p>Again, based on the interpretations of cases, it has to be a CRF expense because you're not doing it annually. However, if you spread it out and do some annually, then you could keep it within the operating budget.</p> <p>But if you need a lot of work done on the building envelope it might be more practical and cost-effective to do the work as a project and have the funding approved from the CRF or special levy.</p>
<p>Can we use CRF funds to replace common property furniture?</p>	<p>Yes, since that is a common expense. But keep in mind that additional approval regarding the specific items may be required under s.82 if the value is over \$1,000.</p>

Question	Answer
<p>If the expense is small, such as door knobs, can the money come from the CRF without owner approval (our limit is \$5K without approval)</p>	<p>First let's clarify your comment about a limit. The only expenses that a strata can pay from the CRF without owner approval relate to payment of an insurance deductible, or an emergency expense under section 98(3). The limit you're referring to is likely a limit stated in your bylaws about spending under section 98(2) which is about spending from the Operating fund not the CRF.</p> <p>For small items, a rotating repair and maintenance plan might be the way to handle it. Also, you have to sort of judge your ownership to some extent. I mean these CRT cases are sort of extreme. And often they're brought about by multiple issues, some larger abuse, and then everything just gets lumped together in the CRT case. So I don't think you should walk away thinking that you can't ever use the repair and maintenance category of your operating fund for little things. I think most reasonable owners wouldn't have an issue with replacing doorknobs in the operating budget. Things like doorknobs, well the CRT is not getting down to looking at a particular doorknob.</p> <p>But if it's a project to replace all the doorknobs you might want to get owner approval to pay for it from the CRF. Looking back at the Greene case, installing locks on the attic access hatches was not a particularly large expense. But the CRT decision held that because the strata does not put locks on attic access hatches every year it was not an operating fund expense.</p> <p>https://decisions.civilresolutionbc.ca/crt/sd/en/item/494363/index.do</p>
<p>We are painting outside steps and railings, and installing new screens in the screen doors. Does the funding have to come from the CRF?</p>	<p>In the Meybodi case about painting fences, the CRT said that, again, it's the frequency of the task that governs, not the bylaws, and not the general thoughts of the owners. So, similar to some of the other questions here, you may want to do some rotating painting on an annual basis if you want to keep it within the operating budget. If you're doing all the painting at once, it would be advisable to get owner approval for funding from the CRF or by special levy.</p> <p>https://decisions.civilresolutionbc.ca/crt/sd/en/item/491775/index.do</p> <p>Replacing the door screens probably occurs less often than once a year or does not usually occur. So unless you're replacing some door screens every year, it would be advisable to get owner approval for funding from the CRF or by special levy.</p>

Question	Answer
<p>What about one-time legal fees for a CRT dispute? Is it an operating or CRF expense for legal costs incurred to take an owner to the CRT for collection of fines?</p>	<p>It's hard to predict what your legal fees are going to be but you should at least make sure that you have a line item for legal fees so that it's in the operating budget. If you exceed your legal fee budget, additional legal fees could be an "unapproved expenditure" (in accordance with s 98(2)).</p> <p>Sometimes legal fees can be an emergency expenditure if there's something urgent that the strata needs to respond to where there's an issue that is, shall we say, going to explode and cause the strata money or damage in some other way. Then it could be deemed to be an emergency. But just because a legal issue arises doesn't automatically make it an emergency. You have to look at the consequences. So it could in fact just be an approved (operating) expenditure.</p> <p>Some legal fees might be an operating expense and others a CRF expense. It depends on the situation. You have to look at the "thoughtful analysis" as in the Mitchell decision –what is the situation that we're actually facing? Mitchell v. The Owners, Strata Plan KAS 1202, 2015 BCSC 2153, https://www.canlii.org/en/bc/bcsc/doc/2015/2015bcsc2153/2015bcsc2153.html</p>
<p>Approving special levies and expenditures approved from the CRF</p>	
<p>If we are replacing something that's not identified in the depreciation report, do we need a 3/4 vote to spend money from the CRF?</p>	<p>Correct. See the wording in the <i>Strata Property Act</i> section 96 B: "(A) a majority vote at an annual or special general meeting if the expenditure is (I) necessary to obtain a depreciation report under section 94, or, (II) related to the repair, maintenance or replacement, as recommended in the most current depreciation report obtained under section 94, of common property, common assets or the portions of a strata lot for which the strata corporation has taken responsibility under section 72 (3), or (B) a 3/4 vote at an annual or special general meeting if the expenditure is not described in clause (A) (I) or (II);</p>
<p>Can special levies be deposited into the contingency reserve fund? If not, how can a strata financially administer major remediation project?</p>	<p>S.108 of the SPA requires that levy funds be accounted for separately from other money of the strata corporation. Best practice is to keep it in a separate account, but <u>at a minimum the requirement is track expenses separately</u>. If combining a levy and CRF monies, it is important for the resolution to specify what funds get used first. Excess funds from a special levy cannot be added to the CRF - Strata Plan VR386 (The Owners) v. Luttrell, 2009 BCSC 1680 (CanLII). https://www.canlii.org/en/bc/bcsc/doc/2009/2009bcsc1680/2009bcsc1680.html</p>

Question	Answer
<p>Can a special levy be used to pay for installation of an air exchange system costing over \$100,000?</p>	<p>It sounds like this is for common property, not an individual strata lot. So yes it could be funded by a special levy. Unlike the other two funds we talked about (operating fund and CRF), there is no restriction on the type of expense that a special levy can be raised for. Just ensure that the 3/4 vote resolution is properly worded following the check list in s108 of the SPA.</p>
<p>We've been doing a lot of projects so our CRF is depleted. Can we approve a special levy to "bump up" the CRF?</p>	<p>No you can't do a special levy to bump up the CRF. See <i>Morin v. The Owners, Strata Plan VR 279, 2021 BCCRT 122</i>: https://decisions.civilresolutionbc.ca/crt/sd/en/item/492093/index.do</p> <p>Section 92 of the <i>Strata Property Act</i> says "To meet its expenses the strata corporation must establish, and the owners must contribute, <u>by means of strata fees</u>, to a contingency reserve fund for common expenses that usually occur less often than once a year or that do not usually occur."</p> <p>So, to build up your CRF, owners can approve an annual budget with higher contributions to the CRF.</p>
<p>Can you have a special levy to cover a deficit?</p>	<p>There's no restriction on the type of expense that a special levy can be raised for. So a special levy could be used to pay for operating expenses in a situation where the current fiscal year has a deficit. Make sure it is a properly worded ¾ vote resolution that meets all the criteria in s108 of the SPA.</p>
<p>At our AGM owners approved a project to be paid from the CRF. The amount was based on the quote from the contractor but the project went over budget. Can we pay the excess from the CRF? Or can we pay it from the operating fund?</p>	<p>So the first thing always is try and anticipate cost overruns and budget for that. Because the technical answer is you once you hit your authorized limit you have to go back to the owners. You can't just pay the money out of the CRF because the project ran over. So call an SGM to get owner approval.</p> <p>If it's a project that was approved out of the CRF you could never pay for it out of the operating fund because they're different. By definition the expense can't qualify as an allowable expense under both the CRF and operating funds.</p> <p>The only way you could maybe get around that is if you had a trade who's jumping up and down and threatening to file liens. Then maybe you would call it an emergency expenditure (from the CRF) based on loss and damage by the filing of liens. Before going down that road the strata could get legal advice.</p>

Question	Answer
<p>For expenses that occur less often than once per year, what is best? CRF or special levy? Which is easier to get approved by owners and which seems to be most fair?</p>	<p>Every strata is different. What is best will depend on the cost of the project, how much money is in the CRF and the desires of your owners. Some stratas like to contribute to the CRF and avoid special levies. Other stratas try to have lower contributions to the CRF and pay special levies as needed. If the project is identified in a depreciation report, only a majority vote is required to approve an expenditure from the CRF. If not, a 3/4 vote is required. A 3/4 vote is always required to approve a special levy.</p>
Operating budget	
<p>It seems reasonable to have a miscellaneous maintenance category in the Operating budget to cover the small repairs, rather than convene an SGM for a 3/4 vote (to pay the expense from the CRF or by special levy).</p>	<p>I completely agree but when you look at the reasoning applied in the Greene decision (Greene v. The Owners, Strata Plan KAS 1244 2021 BCCRT 291) that adjudicator didn't think so. They were very strict on the application of how often the expense occurs. So I think to get around that you might want to look at applying some of the logic from the Borland case (Borland-Spry v. The Owners, Strata Plan EPS4534, 2021 BCCRT 339) and defining what that category means and 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 (<i>Strata Property Act</i>) is what the Act is.</p> <p>https://decisions.civilresolutionbc.ca/crt/sd/en/item/494363/index.do https://decisions.civilresolutionbc.ca/crt/sd/en/item/494871/index.do</p>
<p>How specific does each line of the operating budget have to be?</p>	<p>In Borland-Spry v. The Owners, Strata Plan EPS4534, 2021 BCCRT 339 the applicants argued there was no separate line item for mulch in the overall budget. However, the CRT found no requirement in the SPA, Regulation or the bylaws that each expense be specified. Section 6.6 of the Regulation says that estimated operating fund expenditures must be itemized by "category of expenditure". The CRT made a finding that mulch fits within the "landscaping" expenditure category and it did not need to be itemized and that the owners approved the mulch as part of the overall landscaping in the operating budget.</p> <p>https://decisions.civilresolutionbc.ca/crt/sd/en/item/494871/index.do</p>

Question	Answer
<p>How do you add more specific line items in the Operating budget? Does this require an AGM vote?</p>	<p>The council (and manager if applicable) prepare the proposed budget for inclusion in the notice of the AGM. They can add whatever line items (categories of expenditures) they wish to the budget as long as they are common expenses that usually occur either once a year or more often than once a year, or are necessary to obtain a depreciation report.</p> <p>The budget must be passed by a majority vote resolution at an AGM. However the budget may be amended by a majority vote before the budget itself is put to a vote. So an owner could make an amendment to increase or decrease a budget line, to break down a line into more specific sub categories etc. Amendments must receive a majority vote. Once all amendments are dealt with, a final majority vote is held "to approve the budget as amended".</p>
<p>Unapproved expenditures, Emergency expenditures</p>	
<p>Our snow removal cost was higher than budgeted for in our operating budget. Can we pay the amount that was over budget from the CRF?</p>	<p>No. If it cost more than expected it's still an operating expense. Just like hydro, gas or many other expenses, stratas make their best guess when preparing an annual budget but there are times that these items with cost more than expected. The extra amount for snow removal could be an "unapproved expenditure". After considering the CRT's decisions, 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, and the expense is consistent with a category. In <i>Haw v. The Owners, Strata Plan EPS 1869, 2019 BCCRT 509</i> the CRT took a narrow view and looked at overages in the operating budget line by line.</p> <p>https://decisions.civilresolutionbc.ca/crt/sd/en/item/400716/index.do</p> <p>Check your bylaws to see if there's a set limit for the amount of unapproved expenditures council can make from the operating fund. If not the limits in SPA section 98(2) apply.</p>
<p>Our driveway is developing a sinkhole due to an underground water leak. Our plumber said it's an emergency but due to staff shortages the earliest he can schedule the work is 20 days. Can we pay for the work from the CRF as an emergency or do we need to call an SGM to approve the expense?</p>	<p>This is where a "thoughtful analysis" comes in. On the one hand, a professional has advised that the matter should be addressed immediately. On the other hand you have to look at it objectively. If the contractor thinks it can wait 20 days is it really an emergency? How long has this sink hole been happening? Months? Years? And is the work they are proposing the <u>minimum</u> amount necessary to ensure safety or prevent significant loss or damage whether physical or otherwise? It's possible that the minimum is covering the area so that it is safe to drive over, or cordoning off the area. Then the strata can hold an SGM in 20 days to get funding from the CRF or special levy to pay for the plumbing work.</p>

Question	Answer
<p>Can we amend our bylaws to allow council to make expenditures from the Operating fund instead of the CRF up to a limit in the annual approved budget?</p>	<p>No. By definition the expense can't qualify as an allowable expense under both the CRF and operating funds. In other words, if it's an expense that's permitted to be spent from the CRF you can't pay for it out of the operating fund because they have different criteria.</p> <p>However, section 98(2) allows council to make unapproved expenditures from the Operating fund up to a certain amount. That amount can be set in your bylaws. The expense still has to be for something that qualifies as an operating expense.</p> <p>So if it's something that's not an operating expense, 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 agenda to spend from the contingency reserve fund.</p>
<p>Exceptions: Insurance premiums, Insurance deductibles, and expenses for obtaining a Depreciation Report</p>	
<p>A depreciation report is required unless the strata waives it. Do we need to seek approval at an AGM or SGM to pay for a depreciation report?</p>	<p>Yes. The owners vote to approve the cost of the report and where the funds are paid from. See the two options below.</p>
<p>Can the expenditure for getting a Depreciation Report be paid from the operating budget?</p>	<p>Yes. The owners can approve the cost of getting a depreciation report as a line in the operating budget. The budget is passed by a majority vote of the owners at an Annual General Meeting.</p>
<p>Can the expenditure for getting a Depreciation Report be paid from the CRF?</p>	<p>If the owners want to use funds from the CRF to get a depreciation report, they need a majority vote resolution at an Annual or Special General Meeting to approve that expenditure from the CRF.</p>

Question	Answer
<p>Can the strata corporation's insurance premium be paid from the CRF?</p>	<p>As a general rule no because insurance occurs annually. But there's an exception in SPA s98(3.1) where paying an insurance premium might be considered an emergency expenditure. We saw this happen during the insurance crisis when strata's experienced large, unexpected increases in premiums from 50% to 800% without any warning. Section 98(3.1) allows the amount that was over the budgeted amount to be paid from the CRF as an "emergency expense".</p> <p>But it's intended to be used rarely as an emergency measure. You can't intentionally under budget to keep strata fees low and keep paying for insurance premiums from your CRF.</p>
<p>Can an insurance deductible be paid from the CRF without owners' approval?</p>	<p>Yes. This is an exception in the Act. Section 158(3) says Despite any other section of this Act or the regulations, strata corporation approval is not required for a special levy or for an expenditure from the contingency reserve fund to cover an insurance deductible required to be paid by the strata corporation to repair or replace damaged property, unless the strata corporation has decided not to repair or replace under section 159.</p>
<p>When mistakes happen</p>	
<p>Our annual budget has been approved, but council now realizes there is one expense that should come from CRF. We haven't done the project or spent the money yet. What should we do?</p>	<p>You could call an SGM to hold a vote to approve the expenditure from the CRF or by special levy.</p> <p>Then, if at the end of the year you have a surplus from the operating fund, Section 105 of the <i>Strata Property Act</i> provides 3 options of what can be done with the surplus.</p>
<p>What should a council do if they spent money from the operating fund and then realized it should have been paid from the CRF or by special levy?</p>	<p>Council could get some legal advice if you think you're getting into a sticky situation. Particularly if you have an owner who's raising that issue you'll want to get some legal advice with respect to how to handle it. We can see from the questions here just how difficult it is for council members to apply the Act to each situation. Depending on the situation, the advice might be to call an SGM and ask owners to approve it as a CRF expense or pass a special levy to make up for it. And then move those funds to the operating fund to reimburse it.</p>

Question	Answer
<p>If owners all agreed to use the Operating fund (for an expense that should be paid from the CRF or by special levy), what caused these cases to come in front of the CRT for a ruling in the first place?</p>	<p>Somebody changed their mind. Or, sometimes you can't always tell from a decision when they say all the owners, it might have been all the owners at a meeting but not all the owners in the strata. The key point is that the decision of the owners can be challenged because the Act didn't permit the expense to be paid from the operating fund.</p>
<p>What should a council do if money was spent from the CRF but then they realized it should have been an operating expense? The CRF expenditure was approved at a AGM.</p>	<p>If it's something that falls within a line of the approved budget and isn't a very large amount, you might be able to transfer funds from the operating account to the CRF to correct the error.</p> <p>Again, council could get some legal advice. Another possible solution could be to increase your CRF contribution the following year to make up for it. Or you don't do anything about it and hope that no one takes you to the CRT over it. And maybe that's not good advice from lawyer but it's practical. I mean sometimes things are just not issues to people because if you have a strata where everyone realizes that it's either coming out of my left pocket or my right pocket does it really matter? Certainly a council should correct their ways and not make the same mistake in the future.</p>
<p>What are the consequences for a strata council that spends from the CRF without approval of the owners?</p>	<p>An owner might file a claim with the Civil Resolution Tribunal (CRT). It's important for the owner to decide what remedy they want the tribunal to order, what outcome they want to resolve the situation. We've seen several approaches in CRT orders such as ordering the strata to hold an AGM or SGM to approve the expense retroactively. And in some of the other cases the remedy has been to do nothing because it was so long ago.</p> <p>Council members may also be found personally liable if sued by the strata corporation and found to have breached their duties under s.31 of the SPA. Council could get some legal advice if they think they're getting into a sticky situation. Particularly if they have an owner who's raising an issue.</p>