

**BYLAW ENFORCEMENT: REMEDIES FROM FINES TO  
INJUNCTIONS AND EVICTING OWNERS**

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## INTRODUCTION: GOOD FENCES MAKE GOOD NEIGHBOURS

*“Mr. Edgar is the kind of neighbour for whom fences were developed. In the context of a strata development of the type that binds the other strata owners to Mr. Edgar and Ms. Harvey, traditional fences have been replaced by a carefully-developed set of rules embodied in the Strata Corporation Bylaws and in the Act.”<sup>1</sup>*

The bylaws governing the use of strata property are at the core of a strata corporation’s duties.<sup>2</sup> Strata lot owners are not permitted to do with their property or the common property that which they might do if they lived in single family housing. Strata living is communal living and it requires a great degree of cooperation between owners.

According to the BC Assessment Roll for 2011, approximately 90% of all assessed properties in British Columbia are residential and of those, approximately 35% are residential strata. That is up by approximately 40% since 2007.<sup>3</sup> The growth of strata housing in BC over the years is likely due to the steep increase in the price of single family detached homes during the same period.

As the cost of buying single family detached homes increases, more consumers are looking at condominium developments in order to achieve their dream of home ownership. Many older owners of single family homes are also “cashing in” on their home equity and downsizing into strata developments.

Yet the transition to strata living is not easy for everyone. If I could make a generalization about the people who “struggle” with strata living it would be this: people who move from single family housing to multi-family housing find it the hardest. They are, generally speaking, not used to being in such close proximity with other people. They also struggle with the concept of “common property” and the related concept that the strata corporation can regulate the way they use their own homes. People who transition from multi-family rental housing can also struggle with the change, but generally speaking they are more tolerant of the sights, sounds and smells that come from higher density living.

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<sup>1</sup> *Strata Plan VR 390 v. Harvey*, 2010 BCSC 715

<sup>2</sup> *Parlett v. Owners Strata Plan LMS 2706*, 2000 BCSC 1565 (SC)

<sup>3</sup> Data obtained from <http://www.buyric.com/news/2011/01/british-columbia-assessments-surpass-1-trillion-for-the-first-time-2011-139/> on April 5, 2012

Strata bylaws are indeed the “good fences” of strata living. They are intended to enhance strata living by regulating the conduct of owners and governing how they use their property and the common property. In this session we will look at bylaw enforcement and the options available to the strata corporation when an owner or tenant does not “respect the fences”.

This paper summarizes the basics of strata bylaw enforcement and the common enforcement tools used by strata corporations. The common tools of bylaw enforcement are not always effective or appropriate. In such cases an injunction against the owner and possibly even an eviction may be the only appropriate remedy. This paper concludes with an examination of four cases in which Courts in British Columbia and Ontario have issued unusual injunctions to control the behavior of particularly unruly owners.

## THE BASICS OF STRATA BYLAWS

Section 119 of the *Strata Property Act* provides that a strata corporation must have bylaws.<sup>4</sup> The Act further provides that 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.<sup>5</sup>

Section 120(1) states: “The bylaws of the strata corporation are the Standard Bylaws except to the extent that different bylaws are filed in the land title office.” This is an important fact to keep in mind because many strata owners and realtors will tell you that a particular strata has “no bylaws”. This is often the case with smaller stratas (especially duplexes and triplexes).<sup>6</sup> Even if the owners have never had a general meeting to approve the bylaws, they are bound by the Standard Bylaws under the Act. Note also that as a result of s. 128(2), bylaw amendments that are not filed at the land title office are unenforceable.

Given the powers of the strata corporation conferred by s. 119 of the Act, strata corporations typically pass bylaws that regulate many aspects of strata living and strata property. For example, the Standard Bylaws include provisions dealing with:

- (1) the use, repair and maintenance of strata lots and common property;
- (2) alterations to strata lots and common property; and
- (3) governance of the strata corporation.

Optional but commonly found bylaws include:

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<sup>4</sup> Section 119(1) of the Act

<sup>5</sup> Section 119(2) of the Act

<sup>6</sup> Yes, Virginia a duplex with two fee simple homes is a strata and is subject to the Strata Property Act!

- (1) age restrictions,
- (2) additional pet restrictions, and
- (3) rental restrictions.

Section 26 of the Act requires the council to exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules. Although the strata council has the discretion over how to enforce a bylaw, it does not have the discretion to choose not to enforce a bylaw.<sup>7</sup> This is reflected in sections 163 and 165 of the Act which provide that a strata corporation may be sued for not enforcing bylaws and rules. See also s. 164 which permits the Court to regulate how a strata corporation enforces its bylaws.

It used to be said that strata law was concerned mainly with the “Three Ps”: pets, parking and precipitation. To this I would add the “Two Rs”: rentals and renovations, and the “Big N”: noise. These are the most common areas in which a lawyer will be consulted when it comes to bylaw drafting and bylaw enforcement.

## **BYLAW ENFORCEMENT**

As stated above, a strata corporation must enforce its bylaws and rules.<sup>8</sup> Enforcement measures may include fines, injunctions, removal of privileges, removal of objects, eviction (for tenants and in some cases owners), and recovery of costs.

Although s. 27(1) permits the owners to give directions to the strata council by a majority vote at a general meeting, the owners may not direct or restrict the council if the direction or restriction is contrary to the Act, regulations or bylaws, or interferes with the council's discretion to determine:

- i. whether a person has contravened a bylaw or rule,
- ii. whether a person should be fined, and the amount of the fine,
- iii. whether a person should be denied access to a recreational facility,
- iv. whether a person should be required to pay the reasonable costs of remedying a contravention of the bylaws or rules, or

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<sup>7</sup> *Strachan v. Strata Corp.* VR 574 (1992), 28 R.P.R. (2d) 279 (B.C.S.C.).

<sup>8</sup> s. 26 of the Act

- v. whether an owner should be exempt from a bylaw that prohibits or limits rentals by reason of hardship.<sup>9</sup>

In exercising the powers and performing the duties of the strata corporation, each council member must act honestly and in good faith with a view to the best interests of the strata corporation, and exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.<sup>10</sup>

Section 32 of the Act further provides that a council member must be absent from a council meeting in which a matter is being addressed in which that council member may have an interest, if that interest could result in the creation of a duty or interest that materially conflicts with that council member's duty or interest as a council member.<sup>11</sup> This section precludes council members from being involved in bylaw enforcement matters where the council member is either the complainant or the subject of the complaint.

## **COMPLAINT, RIGHT TO ANSWER, AND NOTICE OF DECISION**

The rules of natural justice apply to the strata corporation's enforcement of bylaws and rules. Sections 34.1 and 135 of the Act give owners and tenants the right to a hearing before council as part of the bylaw enforcement process.

Before the strata council enforces the bylaws, s. 135 provides that a person is entitled to:

- (a) particulars of the complaint,
- (b) a hearing if requested, and
- (c) a written decision from the council.

A hearing means an "in-person" hearing before council if requested by the owner or tenant, although many people prefer to send in a written submission to council instead of an in-person hearing. Note that if an owner or tenant makes a written request for a hearing, the council must hold a council meeting to hear the applicant within 4 weeks after the request, and the council must give a written decision on the hearing within one week after the hearing.<sup>12</sup>

As noted above, compliance with s. 135 is mandatory regardless of the bylaw enforcement option chosen by the council. Compliance can be cumbersome if the bylaw contravention is

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<sup>9</sup> s. 27(2) of the Act

<sup>10</sup> s. 31 of the Act

<sup>11</sup> See also s. 135 of the Act, which provides that if a complaint is made about a council member contravening a bylaw or rule, the council member cannot participate in the enforcement process.

<sup>12</sup> s. 34.1 of the Act

continuous or repeated. Accordingly, s. 135(3) relieves the strata corporation of the obligation to comply with the requirements of s. 135 in respect to continuing bylaw contraventions, but not repeated bylaw contraventions. The distinction between continuing and repeated bylaw contraventions is important and is discussed further under the heading “Fines”, where the issue typically arises.

## BASIC BYLAW ENFORCEMENT OPTIONS

When enforcing a rule or bylaw, s. 129 permits a strata council to:

- (a) impose a fine under s. 130,
- (b) remedy a contravention under s. 133,
- (c) deny access to a recreational facility under s. 134, and/or
- (d) evict a tenant under s. 138.

Before enforcing a rule or bylaw, the council may give a person a warning or time to comply with the bylaws or rules.<sup>13</sup>

## FINES

Fines are the most common bylaw enforcement option exercised by councils. Under s. 130, fines can be levied against owners or tenants, with respect to their personal conduct or conduct of guests or occupants of their strata lots.

Owners and landlords can also be fined for the conduct of their tenants. Under s. 131, if a tenant is fined or required to pay the costs of remedying a contravention of a bylaw or rule, the strata corporation can collect the fine or costs from the tenant, the tenant’s landlord, or the owner, but not in an amount greater than the fines or costs. If the landlord pays some or all of the fines or costs, the landlord can recover same from the tenant.<sup>14</sup>

Under s. 132, the maximum amount of fines and the frequency with which they can be levied must be set out in the bylaws and cannot exceed the maximum noted in the regulations. Under the Standard Bylaws the default maximum fine is \$50 for each contravention of a bylaw and \$10 for each contravention of a rule.<sup>15</sup> Under the Regulation, the maximum amount that a strata corporation may set out in its bylaws as a fine for the contravention of a rental restriction

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<sup>13</sup> s. 129(2) of the Act

<sup>14</sup> s. 131(2) of the Act

<sup>15</sup> Standard Bylaw s. 23

bylaw is \$500 and the maximum fine for all other contraventions is \$200 for each contravention of a bylaw, and \$50 for each contravention of a rule.<sup>16</sup> The maximum frequency that a strata corporation may set out in its bylaws for the imposition of a fine for a continuing contravention of a bylaw or rule is every 7 days.<sup>17</sup>

The distinction between a “continuing contravention” and a “repeated contravention” is an important one. As noted above, s. 135 sets out the procedure that the strata corporation must follow to enforce the bylaws against an owner or a tenant. That procedure includes giving the owner reasonable notice of the particulars of the complaint and a reasonable opportunity to be heard, including a hearing if requested. Once a strata corporation has complied with s. 135, it may impose a fine or other penalty for a continuing contravention of that bylaw or rule without further compliance with this section.<sup>18</sup> As long as the contravention continues, the strata corporation can impose fines for the contravention every seven days. In the case of a rental restriction bylaw or a pet prohibition bylaw, fines could theoretically be imposed on an owner every seven days for as long as the owner continues to be in breach of the bylaw.

All other alleged bylaw contraventions, however, require strict compliance with s. 135 of the Act before fines are imposed even if the bylaw contraventions are repeated and identical. A good example is noise bylaws. If the noise complained of occurs intermittently, even if the noise is identical, the strata corporation must comply with s. 135 each time before fines are imposed.<sup>19</sup>

## REMEDYING A CONTRAVENTION

Under s. 133 of the Act, the strata corporation may do what is reasonably necessary to remedy a contravention of a bylaw or rule, including doing work on a strata lot, common property, or common assets and removing objects from the common property or common assets. The strata corporation may also require the reasonable costs of remedying the contravention to be paid by the person who may be fined under s. 130. If exercising this remedy requires entry into a strata lot and the owner or tenant will not provide access, it is recommended that the strata corporation obtain a Court order for entry before exercising its rights under s. 133. If the owner

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<sup>16</sup> *Strata Property Regulation* s. 7.1

<sup>17</sup> *Strata Property Regulation* s. 7.1(3) and Standard Bylaw 24

<sup>18</sup> 135(3)

<sup>19</sup> *Strata Plan VR 2000 v. Grabarczyk*, 2006 BCSC 1960, affirmed 2007 BCCA 295

or tenant is expected to be hostile or violent, it is possible to obtain police assistance to enforce the order but it is recommended that police assistance be included as a term of the order.<sup>20</sup>

The relief under s. 133 of the Act can be an effective tool for dealing with unsanitary strata lots, removing items improperly stored or installed on common property, or removing unauthorized alterations to strata lots and common property.

Section 133, along with sections 171 and 173 also serves as statutory authority for injunctions to enforce bylaws. Injunctions against owners are discussed further below.

## **DENIAL OF ACCESS TO RECREATIONAL FACILITY**

Under s. 134, the strata corporation may, for a reasonable length of time, deny an owner, tenant, occupant or visitor the use of a recreational facility that is common property or a common asset if the owner, tenant, occupant or visitor has contravened a bylaw or rule relating to the recreational facility. This remedy is not often used, but when it is exercised, it is often done improperly. To deny an owner access to a recreational facility, the bylaw infraction must relate to the use of the recreational facility. For example, some strata corporations will disable an owner's fob access to recreational facilities when an owner falls into arrears with their monthly strata fees. That would be an improper use of the power under s. 134.

This relief is most appropriately used when an owner or tenant misuses a recreational facility or uses it in a way that interferes with the rights of other owners or tenants to use and enjoy the recreational facility.

Note that recreational facilities are typically either common property or common assets of the strata corporation and they are owned by all owners as tenants in common.<sup>21</sup> Accordingly, this remedy, which would have the effect of denying an owner their property rights, should be used sparingly. Moreover, the denial must only be for a "reasonable length of time". A denial for a longer period of time or even a permanent denial would likely require an application to the Court for injunctive relief.

## **EVICTING A TENANT**

With respect to residential strata lots, the Act permits landlords and strata corporations to evict

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<sup>20</sup> For a sample order, see the order of Madam Justice Sinclair Prowse, entered April 27, 2009 in *The Owners, Strata Plan LMS 3259 v. Leon Lam and Sze Hang Holding Inc.* BCSC Action No. L052756, Vancouver Registry.

<sup>21</sup> s. 66 of the Act

a tenant for repeated contraventions of a “reasonable” and “significant” bylaw. Under s. 137, the landlord of a residential strata lot is entitled to terminate a tenancy under the *Residential Tenancy Act* (the “RTA”) if the tenant has repeatedly contravened or continues to contravene a reasonable and significant bylaw or rule of the strata corporation. Section 138 similarly allows strata corporations to evict a residential strata lot tenant under the RTA for “repeated or continuing contraventions of a reasonable and significant bylaws or rules by a tenant” of a residential strata lot that seriously interfere with another person’s use and enjoyment of a strata lot, the common property, or the common assets of the strata corporation.

There is no case law on what constitutes a “reasonable” and “significant” bylaw. Note also that for the strata corporation to exercise its right to evict a tenant, the tenant’s conduct must “interfere with another person’s use and enjoyment of a strata lot, the common property, or the common assets of the strata corporation”. There is also some controversy about whether a strata corporation has standing to apply for an order of possession under the RTA. Accordingly, a strata corporation seeking to evict a tenant should consider bringing its application for relief to the Supreme Court under sections 171 and 173.<sup>22</sup>

## INJUNCTIONS

In particularly egregious cases, the basic tools of bylaw enforcement (fines, denying access to a recreational facility, or doing work in and about the strata lot or the common property) will be insufficient or ineffective. Some owners do not respond to fines, will never allow the strata on their property and will always refuse to follow the strata corporation’s rules. In those cases, an injunction may be the only appropriate remedy.

This paper looks at four examples of injunctions issued by the Courts to control the behavior of unruly owners. Three of the cases are from British Columbia and one is from Ontario. In three of the cases, *Strata Plan NW 1080 v. Verlaan* (22 February 2007), Vancouver S065342 (B.C.S.C.), *Metropolitan Toronto Condominium Corporation No 747 v. Korolekh*, 2010 ONSC 4448, and *The Owners Strata Plan LMS 2768 v. Jordison*, 2012 BCSC 31, the Court effectively “evicted” an owner by restricting the owners’ right to reside in their strata lot and/or ordering the owner to sell her unit. The cases are significant because although the Act confers authority on a strata corporation to evict a tenant, there is no similar express authority for evicting an owner.

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<sup>22</sup> *BC Strata Property Practice Manual*, Continuing Legal Education Society of British Columbia, 2011, “Strata Corporation as Landlord” §9.23.

## STATUTORY AUTHORITY FOR INJUNCTIONS

In addition to the inherent jurisdiction of the Supreme Court to issue injunctions, the Act also authorizes the strata corporation to apply to the Court for relief in respect to bylaw enforcement.

Section 170 of the Act provides that a strata corporation may sue an owner. Section 171 further provides that a strata corporation may sue “as representative of all owners, except any who are being sued” about any matter affecting the strata corporation, including the interpretation or application of the Act, the regulations, the bylaws or the rules. Before the strata corporation sues under this section, the suit must be authorized by a resolution passed by a 3/4 vote at an annual or special general meeting and for the purposes of that vote, a person being sued is not an eligible voter.<sup>23</sup>

Any lawsuit commenced by the strata corporation must also be funded. Because an expense related to legal proceedings is not an ordinary operating expense, the proper way to fund a lawsuit is through a special levy approved by a 3/4 vote resolution of the owners. The owner who is being sued is not liable to contribute to the special levy and does not, despite being an owner, have the right to information or documents related to the lawsuit or a right to attend those portions of a meeting at which lawsuit is being discussed.<sup>24</sup>

Section 173 further provides that on an application by the strata corporation, the Supreme Court<sup>25</sup> may do one or more of the following:

- (a) order an owner, tenant or other person to perform a duty he or she is required to perform under this Act, the bylaws or the rules;
- (b) order an owner, tenant or other person to stop contravening this Act, the regulations, the bylaws or the rules;
- (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

It is unclear whether a 3/4 vote resolution is required for legal proceedings commenced under s. 173. Section 173 makes no reference to a 3/4 vote, so arguably one is not required. As a practical matter though, all legal proceedings in Supreme Court will require funding if a lawyer

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<sup>23</sup> s. 171(2) and (3) of the Act

<sup>24</sup> s. 169 of the Act

<sup>25</sup> Section 25 of the Strata Property Amendment Act 2009, which is not yet in force, will amend s. 173 by allowing such applications to be brought in Provincial Court.

is involved and that expense must be funded by a special levy approved by a 3/4 vote resolution. Prudent practice suggests that a 3/4 vote resolution to authorize the litigation should be obtained at the same time.

In some cases it will not be possible for the strata corporation to approve or fund litigation before proceedings are commenced. This may arise in cases where an immediate injunction is necessary to prevent damage to property or injury people. Section 173.1 permits the strata corporation to approve litigation retroactively and s. 98(2) permits the strata corporation to make unapproved expenditures on an emergency basis. Special care should be taken to review these sections when relying on them to commence legal proceedings without prior authorization.

## **WHEN INJUNCTIONS ARE AN APPROPRIATE REMEDY**

An injunction is an appropriate remedy when an owner has made unauthorized alterations to his or her strata lot or the common property, or where an owner is using a strata lot or the common property in a way that substantially interferes with the use and enjoyment of another strata lot or the common property by other owners.

In the case of an unauthorized alteration, the scope of the injunction would be to order the owner to remove the alteration, or to permit the strata corporation to remove the alteration and charge the cost of doing so back to the owner. In the case of a substantial interference with the rights of other owners, the scope of the injunction will be to restrain the conduct of the owner or tenant, and if warranted, an eviction.

The BC Court has trended towards encouraging strata corporations to apply for injunctive relief when fines have proven to be ineffective, or where the imposition of fines has become excessively punitive in nature. In the case of repeated bylaw contraventions, as opposed to continuous contraventions, fines are likely to be ineffective. The contravention of noise bylaws helps illustrate the point. If an owner has a very noisy party once month, the strata corporation can only fine the owner once in respect of each contravention of the noise bylaw. Some owners look at a \$200 fine as “the cost of doing business” and simply pay the fine. An injunction may be the only effective remedy against such a scofflaw.

Other owners will simply refuse to pay the fines. In such cases the strata council may be tempted to levy significant fines and then sue the owner to collect those fines when they have accumulated to a certain level. There is a certain appeal to this strategy when dealing with extremely difficult people. If the judgment remains unpaid, the strata corporation can execute against the owner’s strata lot and sell it to satisfy the judgment under the *Court Order*

*Enforcement Act* (the “COEA”). Until the decisions in *Verlaan* and *Jordison*, this was the only way to “evict” an owner in British Columbia. Unfortunately, execution against land under the COEA can be time consuming and costly. This strategy can also backfire because the owner can always pay the judgment at any time and the Court has the discretion to give the owner time to pay.

## **CASE SUMMARIES – INJUNCTIONS IN PRACTICE**

### ***Strata Plan VR 2000 v. Grabarczyk, 2006 BCSC 1960, aff’d 2007 BCCA 295***

This case illustrates how the Court will issue an injunction to restrict an owner’s behavior if compelling evidence exists to support the relief.

Ms. Grabarczyk engaged in a deliberate campaign of intense, frequent and regular noise making against her downstairs neighbor (a council member) after she was required to reimburse the strata corporation for \$200 arising from a small flood in her apartment. The noise consisted of screaming obscenities, crying, moaning, stomping about the unit, constantly moving furniture about and washing metal or glass objects in the bathtub. The areas in her unit where Ms. Grabarczyk made the noise were above the complainant’s bedroom. Ms. Grabarczyk made the noise on an almost daily basis for 5 years and it lasted for hours at a time, usually starting at around midnight. The strata corporation fined Ms. Grabarczyk \$22,000 and brought an application for judgment on the fines and for an injunction to restrain her from making the noise.

The Court found that Ms. Grabarczyk had deliberately and repeatedly made loud noises that were highly disruptive to the complainant’s right to enjoy her property with a reasonable threshold of peace and quiet. The strata corporation adduced affidavits from the complainant and neighbours who testified to Ms. Grabarczyk’s bizarre behavior. The complainant herself kept detailed logs about the nature, time and duration of the noise over a period of years. The complainant also had evidence to show that noise was affecting her health and sleep patterns. On the basis of the evidence, the Court granted an injunction requiring Ms. Grabarczyk to stop making the noise and further requiring her to abide by a quiet time from 9 p.m. to 8 a.m. She was also ordered to pay costs at what was then Scale 4.

Although Ms. Grabarczyk’s primary defence was that she was not making the noise, she filed no evidence to support that defence. It is significant that Ms. Grabarczyk was self-represented at the hearing, but that she had the assistance of various advocacy groups. Those groups assisted Ms. Grabarczyk to file voluminous and largely inadmissible materials alleging a vast conspiracy to

“defraud” her of her apartment. When taken in its totality, Ms. Grabarczyk’s evidence read like a defence of provocation and justification for her behavior to towards the complainant.

This case is also significant because it confirms that noise, unless it continues uninterrupted, will be a repeated contravention of the bylaws and not a continuing contravention of the bylaws for the purpose of s. 135. The strata corporation had not followed the s. 135 procedure (discussed above) uniformly and as a result, the Court reluctantly reduced Ms. Grabarczyk’s to \$2,500.00.

### ***Strata Plan NW 1080 v. Verlaan (22 February 2007), Vancouver S065342 (B.C.S.C.)***

*Verlaan* is the first case in which the BC Court considered whether it can “evict” an owner.

Mr. Verlaan had trouble complying with a number of the strata corporation’s bylaws for a long period of time. He kept a number of large vicious dogs in his unit. He allowed his unit and the adjoining common property to remain in an unsanitary condition. He also had a steady stream of questionable visitors to his apartment who were themselves excessively loud. These visitors occasionally fought with each other in the unit and outside on the common property. All of this was extremely disturbing to the other owners and all of it was contrary to the bylaws. Mr. Verlaan’s vocation (or avocation) is not stated in the reasons but it appears that he was operating a “home based business” of some sort.<sup>26</sup>

The strata corporation had previously sought and obtained an injunction enjoining Mr. Verlaan from engaging in this conduct. That order included a term that the strata corporation could apply to the Court to evict Mr. Verlaan if he failed to comply with the order. Needless to say, Mr. Verlaan did not comply with the order and the strata corporation applied to evict him from his unit.

The strata corporation presented detailed evidence of Mr. Verlaan’s ongoing bylaw infractions. Mr. Verlaan failed to enter a response to the petition and did not appear at the hearing.

The Court reviewed s. 173 of the Act, and specifically that part authorizing the Court to make any order it deems necessary to give effect to an order made pursuant to s. 173, and concluded that the Court had sufficient jurisdiction to evict an owner in circumstances where the owner’s breaches of the bylaw were “egregious and where the respondent, despite warning and direction, has failed or refused to comply with the bylaws”. In reaching this conclusion the Court also relied on a case decided in Alberta under a similarly worded section of the *Alberta Condominium Property Act*.<sup>27</sup>

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<sup>27</sup> *The Owners: Condominium Plan 022 1347 v. NY 2003 ABQB 790*

Despite all the contradicted evidence of Mr. Verlaan's failure to comply with the bylaws (and the Court's previous order) the Court did not "evict" him per se. Instead the Court made an order that Mr. Verlaan "vacate" his unit within 8 days. My recollection from speaking to counsel on the file was that Mr. Verlaan had likely vacated the unit by the time of the hearing. The Court also issued a warrant for his arrest if he failed to comply with that order, authorizing the police to arrest him and bring him before the Court to answer the allegations against him.

It is unclear from the reasons for judgment what the difference is between evicting an owner and simply ordering the owner to permanently vacate his unit. It may be a distinction without a difference.

### ***Metropolitan Toronto Condominium Corporation No 747 v. Korolekh, 2010 ONSC 4448***

In this case the Ontario Superior Court of Justice evicted a particularly troublesome owner by ordering her to sell her unit.

Ms. Korolekh was, quite simply, the neighbor from hell. The Court described Ms. Korolekh's conduct in this way:

*[2] The conduct alleged against the Respondent is serious and wide-ranging. It includes physical assaults on other unit holders, acts of mischief against their property, racist and homophobic slurs and threats repeatedly made against other unit holders, playing extremely loud music at night, watching and besetting other unit holders and using her large and aggressive dog to frighten and intimidate other unit holders and their children, as well as failing to clean up the dog's feces.*

The condominium corporation applied under s. 134 of the Ontario *Condominium Act* for an order that Ms. Korolekh sell or vacate her unit. It claimed that she had caused injury or damage to property and interfered with the use, enjoyment or operation of the property, in contravention of s. 117 of the Act and the condominium declaration. Ms. Korolekh resisted the application by arguing that complaints against her were a complete fabrication, but even if they were true, she submitted that a less draconian injunction would be sufficient.

The condominium corporation adduced extensive evidence of Ms. Korolekh's wrongdoing, including evidence from the other people in the neighbourhood who had observed Ms. Korolekh's behavior. For her part, Ms. Korolekh adduced no evidence in support of her defence other than the bald assertion that the allegations against her were untrue and part of a larger conspiracy against her. She deposed that she was a foreign exchange trader and that because of recent fertility treatments, she was simply too busy to have committed all of the acts alleged against her.

Mr. Justice Code found that under the extreme circumstances of the case, the Court's discretion to order "such other relief as is fair and equitable in the circumstances" as provided for under the Ontario Act, empowered him to order Ms. Korolekh to sell her unit and leave the complex:

*[87] ...this case is a "perfect storm" where the misconduct is serious and persistent, where its impact on a small community has been exceptional and where the Respondent appears to be incorrigible or unmanageable. [...] [S]ome of the affiants are vulnerable and fear reprisals. They are entitled to the security of an order that removes Ms. Korolekh from their condominium corporation. [...] There is no sign ... that she is willing or able to change.*

*[88] In all these circumstances, it would be unwise to try to reintegrate Ms. Korolekh into a community that fears her and that she has persistently tried to intimidate. People join condominium corporations voluntarily on the basis that they agree to share certain collective property and to abide by a set of rules and obligations that protect the collectivity. There is no right to continue membership in this corporation or this community, once a clear intention to harm it and a persistent refusal to abide by its rules have been exhibited in the extreme ways seen in this case. Ms. Korolekh has irreparably broken the bond with her community and an effective order cannot be made that would force these parties to now join together again.*

The Court ordered that Ms. Korolekh sell her unit within 3 months; should she fail, the condominium corporation could apply for conduct of sale. Note that unlike Verlaan, the Court did not order Ms. Korolekh to vacate the unit. Instead the Court issued an injunction against her that she comply with the Act and the bylaws while she remained in the unit, and that she forthwith remove her dog from the complex. She was also ordered to pay costs of \$35,000.00 to the condominium corporation.

### ***The Owners Strata Plan LMS 2768 v. Jordison, 2012 BCSC 31***

This is the second case in British Columbia in which a Court "evicts" an owner. In this case, the respondents failed to appear or file any materials in response to the application despite being served. Note also that this case is presently under appeal.

As in the Korolekh case, the evidence before the Court was that the Jordison's were the neighbours from hell.

The facts of this case, while disturbing, are not that unusual. Ms. Jordison and her teenaged son acquired title to their strata lot in 2008. Soon after, they turned on their neighbours and started

a campaign of verbal abuse against many of the other owners. The perpetrator of the noise and abuse was primarily the son. He was alleged to have used particularly abusive and harassing language towards the women in the complex. There was also evidence of loud banging, pounding, and stomping with force sufficient to dislodge nails from the ceiling of a neighbouring unit. This noise would continue for as long as two hours at a time and occur as frequently as once a week or more. Ms. Jordison's son would frequently accost other owners in the hallways and elsewhere on the common property. The affidavit of one neighbour documented 257 such incidents. Several residents deposed that they felt bullied and afraid in their own homes.

The strata corporation wrote several warning letters and issued \$30,000.00 in fines, all with no effect. As often happens in these cases, Ms. Jordison denied the allegations and threatened to sue the strata corporation if it did not stop harassing her and her son. She even filed a human rights complaint, alleging that her son had autism and the strata corporation was discriminating against him. The human rights complaint went no further when she failed to produce any medical evidence to support her claim.

The strata corporation petitioned the Court for an injunction requiring Ms. Jordison to sell her unit and an order that she pay the strata corporation the fines. The Court granted the relief sought and ordered Ms. Jordison to list her property for sale within 30 days. Under the terms of the order, if she failed to sell her property within 90 days, the strata corporation could apply for conduct of sale. The Court further ordered that if Ms. Jordison breached a term of the order, the Act or the bylaws, the strata corporation could apply to the Court for vacant possession of the strata lot, effectively a Verlaan type order.

Following *Korolekh, Blair, J.* found that under s. 173(c), the Court was empowered to make an order for sale if such an order was necessary to stop further contraventions of the Act, regulations, bylaws or rules. Like Ms. Korolekh, notwithstanding that her and her son's behaviors were less severe than that of Ms. Korolekh, Ms. Jordison had been given opportunities "to reform her ways or even to offer to reform her ways. There [was] no sign from her that she [was] willing or able to change." An order for sale was therefore justified. The following passage from the judgment is instructive on the Court's approach to the case:

[54] In *Sterling Village Condominium, Inc. v. Breitenbach* (1971), 251 So. 2d 685, the District Court of Appeal of Florida, Fourth District addressed a situation in which the owners of a condominium made changes to their residence contrary to the rules of the condominium development. The Court wrote of the long history of condominium property development and the need to strictly interpret the rules governing condominium developments. Judge Driver, for the Court, wrote:

Daily in this state thousands of citizens are investing millions of dollars in condominium property. Chapter 711, F.S.A., 1967, the Florida Condominium Act, and the Articles or Declarations of Condominiums provided for thereunder ought to be construed strictly to assure these investors that what the buyer sees the buyer gets. Every man may justly consider his home his castle and himself as the king thereof; nonetheless his sovereign fiat to use his property as he pleases must yield, at least in degree, where ownership is in common or cooperation with others. The benefits of condominium living and ownership demand no less. The individual ought not be permitted to disrupt the integrity of the common scheme through his desire for change, however laudable that change might be.

[55] In *Sterling Village*, the appeal court ordered the owners to return their unit to its original state. The reasoning of the appellate court's decision is applicable in the instant case in that the Jordisons have acted in a manner contrary to the Bylaws and rules and that cannot continue. The Jordisons cannot live in their unit as they please. Their conduct is subject to the Bylaws and rules where ownership is in common or cooperation with other Strata owners, that being a cost to their enjoying the benefits of strata living and ownership.

[56] The Jordisons cannot be permitted, through their harassment and abuse of fellow strata members, to disrupt the integrity of the common scheme offered by the Strata. The Bylaws and rules of the Strata, when properly constituted, form a framework of behavioural decency accepted by the Strata's members, breaches of which can lead to action by the Strata to enforce adherence by strata members to the provisions of the Act, its regulations, the Bylaws and the rules.

Despite the compelling evidence against Ms. Jordison and her son, the Court made no order with respect to the fines. In reviewing the \$30,000 in fines imposed on Ms. Jordison, Blair J. followed earlier authorities which have viewed fines in excess of \$10,000 to be punitive and unreasonable. His Lordship effectively concluded that given the seriousness of the allegations, the strata corporation should have applied for an injunction much earlier when it became apparent that the fines were not having the desired effect.

## CONCLUSION

An injunction can be an important bylaw enforcement tool, especially where fines are an inappropriate or ineffective means of correcting an owner's behavior. The courts are clearly trending towards the protection of owner's rights and their reasonable expectations to enjoy their property in peace. As was observed in *Jordison*, condominiums are expensive investments. The people who buy and live in them have a right to be free from unreasonable interference with their rights as condominium owners. In the right circumstances, the court will issue an injunction to enforce the bylaws, even where the injunction requires the eviction of an owner.

As with all injunction applications, the onus is on the strata corporation to prove its case and the onus is high, especially where the strata corporation is seeking to control an owner's behavior, or seeking to have the owner vacate or sell the unit. In those cases the strata corporation will require detailed and compelling evidence of the offending owner's conduct. It is also preferable to have the complaints corroborated by more than one witness, or independently verified.

The affected owners should be asked to keep detailed logs of the dates, times and durations of the matters giving rise to the complaint. If the conduct is occurring outside of the building, consider getting evidence from neighbouring property owners.