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## CRT Comments On Filing Bylaws and Contingency Reserve Fund Expenditure

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In the case of *Fournier v. The Owners, Strata Plan LMS 768, 2017 BCCRT 11* ("Fournier") the Civil Resolution Tribunal ("CRT") decided governance issues, including the proper processes for creating bylaws and expending funds from the contingency reserve fund.

Although CRT tribunal members are not bound to follow the same reasoning that other tribunal members used in previous cases, the reasoning in CRT decisions will likely be persuasive to other tribunal members. It is prudent to ensure that your strata corporation's practices are consistent with CRT decisions. In this article, I have summarized the *Fournier* decision. Where applicable, I have provided a "Take Away" paragraph that can be used by councils and strata managers to refine their governance practices in light of the *Fournier* decision.

In most strata cases at the CRT, the parties agree on what happened, but do not agree on how the law should be applied. As a result, the decisions involve applying legal principles, which makes them relevant to other strata corporations.

In the *Fournier* case, the owner commenced CRT proceedings about the following matters:

- (a) a consolidated set of bylaws not voted on but filed in the land title office;
- (b) expenditures made from contingency reserve fund;
- (c) allegations of conflict of interest; and
- (d) the requested termination of the management contract.

The findings of the tribunal member regarding filing the bylaws and the expenditure from the contingency reserve fund are of particular general interest.

### A. Bylaws

#### *Background and Decision*

In *Fournier*, the Strata Corporation had filed bylaws in the land title office in 1996 ("1996 Bylaws"). The owners voted on a rental bylaw at the February 5, 2016 special general meeting ("2016 SGM"), but no other bylaws. The Strata Corporation then filed the Schedule of Standard Bylaws from the *Strata Property Act* along with the rental bylaw voted on at the 2016 SGM.

The CRT found that a consolidated set of bylaws should not have been filed in 2016. The 1996 Bylaws were still in force and effect, except where they conflicted with the mandatory provisions of the *Strata Property Act*. The Schedule of Standard Bylaws only apply to the extent that they do not conflict with the 1996 Bylaws that are still in force and effect.

The CRT ordered the Strata Corporation to re-file the 1996 Bylaws in the land title office.

#### *Take Away*

It is important to only file bylaws at the land title office that have been passed by the owners at a general meeting. Councils that want to file a comprehensive set of bylaws need to propose that set of bylaws to the owners and the owners need to approve them by a  $\frac{3}{4}$  vote resolution at a general meeting before they can be filed.

### B. Expenditures from the Contingency Reserve Fund

#### *Background and Decision*

In *Fournier*, there was a  $\frac{3}{4}$  vote resolution passed by the owners at the 2016 SGM to expend money from the contingency reserve fund for deck repairs. The owner provided evidence to the CRT that the resolution to expend money from the contingency reserve fund recorded in the minutes for the 2016 SGM was not the

resolution that was passed by the owners at the meeting. In fact, the resolution passed by the owners at the 2016 SGM included a requirement that prior to spending money from the contingency reserve fund, the Council would ensure that there would be an inspection and would obtain multiple quotes for the repair. The owner advised that there was an inspection, but quotes were not obtained prior to monies being expended. The Strata Corporation did not dispute the owner's submissions. The Strata Corporation relied on section 98 of the *Strata Property Act*, which provides as follows:

**Unapproved expenditures**

98 (1) If a proposed expenditure has not been put forward for approval in the budget or at an annual or special general meeting, the strata corporation may only make the expenditure in accordance with this section.

(2) Subject to subsection (3), the expenditure may be made out of the operating fund if the expenditure, together with all other unapproved expenditures, whether of the same type or not, that were made under this subsection in the same fiscal year, is

- (a) less than the amount set out in the bylaws, or
- (b) if the bylaws are silent as to the amount, less than \$2 000 or 5% of the total contribution to the operating fund for the current year, whichever is less.

(3) The expenditure may be made out of the operating fund or contingency reserve fund if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise.

(4) A bylaw setting out an amount for the purposes of subsection (2) (a) may set out further conditions for, or limitations on, any expenditures under that provision.

(5) Any expenditure under subsection (3) must not exceed the minimum amount needed to ensure safety or prevent significant loss or damage.

(6) The strata corporation must inform owners as soon as feasible about any expenditure made under subsection (3).

The Strata Corporation advised the CRT that the deck repairs were under \$2,000.00 and so were allowed under the \$2000.00 limit or 5% of the operating budget, whichever is less, for unapproved expenditures, pursuant to section 98 of the *Strata Property Act*. There was no evidence of an emergency.

The Tribunal found that the funds were improperly expended from the contingency reserve fund for the deck repair. The Strata Corporation was ordered to stop contravening sections 96 and 98 of the *Strata Property Act*.

The tribunal member also questioned whether the Strata Corporation, or an owner, was responsible to pay for the deck repair pursuant to the 1996 Bylaws. The tribunal member asked the Strata Corporation to consider who was responsible to pay for deck repairs.

**Take Away**

Councils need to make sure that ¾ vote resolutions voted on are correctly transcribed in the minutes of the general meeting. When drafting resolutions to approve expenditures, consider whether to include in the resolution steps that council must follow before expending money. If there are steps in the resolution that council must follow before making an expenditure, precisely follow those steps before making an expenditure. Unapproved expenditures to a certain dollar value can be made pursuant to section 98 out of the operating fund, but not out of the contingency reserve fund unless there are reasonable grounds to believe that an immediate expenditure is necessary to

ensure safety or prevent significant loss or damage, whether physical or otherwise.

### **Conflict of Interest/Cancellation of Strata Management Contract**

The CRT found that the Council President, and other Council members, were not in a conflict of interest. Although the 1996 Bylaws may make an owner responsible for deck repairs, there was no evidence that the President or other Council members had acted in bad faith. The owner requested the termination of the management company because of how the bylaws were dealt with. The CRT declined to consider the termination of the management company.

### **C. Costs and Enforcement**

The *Fournier* decision, like all CRT decisions, can be enforced as a judgment of the Supreme Court of British Columbia. For decisions within the monetary jurisdiction of Small Claims, or for the return of personal property, the decisions can be enforced through Small Claims Provincial Court.

### **D. Conclusion**

Councils can review the decisions of the CRT to help refine their governance practices. The decisions are available at <http://decisions.civilresolutionbc.ca/crt/en/nav.do>. This article is for educational purposes only. For specific legal concerns, please consult a lawyer.