
Strata Owners and Tenants: This Commercial Agreement Could Save Your Life

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Written by: David Liden / Remedios & Company

An emergency response access system developed by the Vancouver Police Department is being implemented by more and more strata projects in the City of Vancouver, and is under consideration by other municipalities across the Province. This access system facilitates police response to 911 calls coming from strata projects in Vancouver. A strata corporation wishing to implement this access system must sign an agreement (the "VPD Access Agreement") with the Vancouver Police Board.

Part 1: Unauthorized Police Access to Common Areas

Imagine the following scenario.

You live alone in a strata unit in Vancouver. You are relaxing in your favourite couch one evening and watching television. Suddenly, you feel an intense pain in your chest which almost knocks you out. It takes a minute or so before you regain full consciousness. You realize that intense pain is still there and you think: "Oh my God, I'm having a heart attack, call 911". Luckily for you, there is a cordless telephone on a small table beside the couch. You are able to get to the phone, and you dial 911. When the operator answers, you think, thank God. But then you discover you are unable to speak.

Now you are in a complete frenzy, which somehow causes you to knock the table over with your leg, which in turn sends the phone flying. You immediately try to get up from the couch to retrieve the phone but discover you can't. You are able to move your limbs, but not enough to enable you to get up from the couch. You can hear the operator saying, "Hello, are you there? Are you okay? Hello, is someone there?"

The duties of a police officer in Canada fall into two categories: duties imposed by the general law, and duties imposed by legislation. Police duties imposed by the general law include a duty to protect life, prevent death and prevent serious injury. These duties were discussed by the Supreme Court of Canada in a case called, *R. v. Godoy* [1999] 1 S.C.R. 311. In *Godoy*, the Court made the following ruling in paragraph 16:

"A 911 call is a distress call – a cry for help."

"The police duty to protect life is therefore engaged whenever it can be inferred that the 911 caller is or may be in some distress, including cases where the call is disconnected before the nature of the emergency can be determined."

In plain English, whenever a legitimate 911 call is made, the police in Canada are legally obligated to investigate the call. *Godoy* makes it clear this duty to investigate gives police officers the legal authority to take appropriate action to gain forced entry into a strata building if authorized entry cannot be obtained.

Let's return to the above scenario. The police officers arrive at the entrance to your building. Unfortunately for your strata corporation (and you), it has not implemented the VPD access system. Consequently, if the officers cannot gain authorized entry from someone inside the building, they will be forced to take action to gain forced entry, in which case the strata corporation will be faced with paying the costs of repairing the damage the officers cause to the building entrance.

Once the police officers have gained entry into the building, their next task is to get to your floor. Unfortunately for you, elevator access to the floors of your building is by key fob only, and each floor has its own separate fob code. The officers look for the entrance to the stairs in the building and discover that access to the stairs is also by key fob only. Now, your only hope is if the officers can reach someone on your floor in time.

How does the VPD access system work? The Vancouver Police Department is given a confidential code which enables a 911 operator to remotely open the entry door to the building once the officers have successfully passed a security check by the operator. This authorized entry into the building grants the officers access to all common areas, including every floor, and it overrides any key fob access system operating in the building.

The VPD Access Agreement states that all costs of purchasing, implementing, maintaining, repairing and replacing the system are the responsibility of the strata corporation.

Part 2: Unauthorized Police Entry into a Strata Unit

In *Godoy*, the Court makes it clear that whether a police officer may forcibly enter a strata unit in the course of investigating a 911 call, “depends on the circumstances of each case”.

From a legal perspective, the VPD Access Agreement cannot give Vancouver police officers the legal authority to forcibly enter a strata unit, nor does the Agreement purport to do so. On the contrary, the Agreement expressly states it does not grant access to strata units.

Readers may fear that facilitating police entry into their building could have the unintended consequence of making it easier for police to forcibly enter their homes, thereby eroding their right to privacy. In *Godoy*, the Court acknowledges this fundamental right in paragraph 17 in the following words:

“There is unquestionably a recognized privacy interest that residents have within the sanctity of the home.”

Let’s return once again to the above scenario. The officers are frantically trying to figure out how to locate someone on your floor when the elevator doors open,

and that very person exits the elevator into the lobby. The officers arrive at your unit and knock on the entrance door. You are still fully conscious, but you cannot speak, nor are you able to get up from the couch, so the officers’ knocks on your door and their shouts to you are met with silence. Now you have lost all hope and are thinking, “I’m going to die, I’m going to die”.

The Court in *Godoy* addressed this possible circumstance in paragraph 21 as follows:

“Thus in my view, the importance of the police duty to protect life warrants and justifies a forced entry into a dwelling in order to ascertain the health and safety of a 911 caller. The public interest in maintaining an effective emergency response system is obvious and significant enough to merit some intrusion on a resident’s privacy interest. However, I emphasize that the intrusion must be limited to the protection of life and safety. The police have authority to investigate the 911 call and, in particular, to locate the caller and determine his or her reasons for making the call and provide such assistance as may be required. The police authority for being on private property in response to a 911 call ends there.”

Hopefully, the officers reach you in time.

Part 3: Does the VPD Access Agreement Need a ¾ Vote Approval?

Section 71 of the *Strata Property Act* states in plain English that, except in situations where a strata corporation must act immediately to ensure safety or prevent significant loss or damage, the strata does not have the legal authority to make a significant change in the use of common property unless the change has first been approved by a ¾ vote resolution of the strata lot owners. Authorized access to common areas in a strata building is a fundamental issue for the building’s residents. It is therefore clear a strata must obtain a ¾ vote approval before it signs the VPD Access Agreement.

Part 4: Should the VPD Access Agreement be Reviewed by a Lawyer?

A crime in progress or criminal activity in the building could also be the reason a 911 call is made. A strata corporation wishing to implement this access system needs to ensure the VPD Access Agreement cannot be interpreted to also give the officers the right to engage in other police activities, such as evidence gathering or surveillance, while they are in the course of investigating the 911 call, or are still in the building. In addition, a strata could experience problems with the building's residents, and potentially expose the strata to liability to them, if the VPD Access Agreement could be interpreted to purport to do something that a strata corporation does not have the legal authority to do: that "something" is to purport to waive strata owners' or tenants' privacy rights.

Part 5: But I Don't Live in Vancouver – What do I do if I want my Strata to Have this Access System?

The RCMP provides police services in municipalities (and regional districts) that do not have their own police force. Strata owners and tenant who live outside Vancouver are advised to contact their own local community police office and discuss options for emergency entry into their buildings for 911 services such as police, fire and ambulance.