

Headline: The Case of the Unenforced Bylaws

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Written by: Adrienne Murray / Law Corporation

Is a strata corporation responsible to ensure that an owner complies with the *Workers Compensation Act* regarding the appropriate identification, handling and disposal of hazardous materials such as asbestos? This question was recently considered by the British Columbia Supreme Court in *Chorney v. The Owners, Strata Plan VIS 770* as a result of a claim by Ms. Chorney that the strata corporation failed to enforce certain strata corporation bylaws.

Ms. Chorney sought a declaration that the strata corporation had failed to enforce bylaws 3(5) and 4(1). Bylaw 3(5) required owners to comply with the Building Code and any applicable provincial, municipal or regional laws and regulations when altering or repairing the owner's strata lot or common property. Bylaw 4(1) prohibited an owner from causing a nuisance or hazard to another person.

Ms. Chorney also sought a declaration that in failing to enforce the bylaws, the strata corporation breached its duty to protect residents and visitors from the hazards posed by asbestos. The Court considered the following facts.

In August 2011 as a consequence of building envelope repairs, a Hazardous Materials Survey was obtained and provided to the owners which advised that asbestos was found in a number of areas including the drywall joint compounds, the pipe insulation and the crawl space. The Survey noted that "prior to the performance of any work that may disturb asbestos containing materials it is a regulatory requirement that a qualified person perform a Risk Assessment". The Survey also noted that the "removal of asbestos containing drywall joint compound from the ceiling should be conducted using High Risk asbestos abatement procedures and that the removal of asbestos containing drywall joint compound from the original walls should be conducted using a Moderate Risk asbestos abatement procedure".

The owners were subsequently advised through emails sent on behalf of the strata council that WorkSafeBC had specific guidelines for working with asbestos and that owners planning renovations must consider the guidelines and follow the Occupational Health and Safety Regulation. Approximately one month later, a further email was circulated to the owners advising that a failure to comply with the regulations for dealing with asbestos would be a breach of the strata corporation's bylaws which prohibit an owner from causing a nuisance or a hazard to another person. The email advised that a breach would result in action by the strata corporation.

At an Annual General Meeting held May 25, 2012, one owner, Mr. W, acknowledged that he had commenced renovations in a strata lot without the required Hazardous Materials Assessment. At the meeting, Ms. Chorney advised the owners and newly elected strata council members which included Mr. W that the strata council should ensure that the proper steps were undertaken regarding meeting asbestos removal protocol.

At a strata council meeting held May 31, 2012, the minutes indicate that the strata council had decided to fine Mr. W \$200 for failing to obtain a Hazardous Materials Assessment. On the basis of the fine, the strata council then suggested that it would be able to issue a letter of approval in respect of the alterations to the City. After further discussion the strata council recognized that notwithstanding the fine, it must require the owner to obtain a Hazardous Materials Assessment.

During the strata council meeting a second council member, Mr. V, indicated that he also would be conducting renovations to his strata lot, strata lot 1, and that he would be obtaining a Hazardous Materials Assessment.

In June, Ms. Chorney contacted WorkSafeBC to advise them of the construction activities that appeared to be ongoing particularly in relation to strata lot 1, Mr. V's strata lot. Subsequently the strata council minutes indicated that Mr. W produced evidence that a Hazardous Materials Assessment had been conducted in relation to strata lot 8, Mr. W's strata lot and Mr. V indicated that he would provide the appropriate assessments in relation to strata lot 1.

Ms. Chorney received the Hazardous Materials Assessments for each of strata lots 1 and 8 later in June however she was concerned that they were only partial assessments and she subsequently contacted WorkSafeBC.

WorkSafeBC issued a number of Inspection Reports for the building to Mr. V and Mr. W and to the strata corporation. The Inspection Reports to the owners noted that demolition had proceeded prior to the inspection for hazardous materials, that various violations of protocol for dealing with asbestos had occurred and that there was continued non-compliance.

On July 16, 2012, WorkSafeBC issued an Inspection Report to the strata corporation detailing the strata corporation's responsibility regarding asbestos. The Inspection Report noted:

Renovation projects have commenced in the structure that are likely to disturb materials containing asbestos and there has been no notifications or work procedures submitted to WorkSafeBC regarding the projects. The absence of notifications indicates that this employer is not doing everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with the *Workers Compensation Act*, Part 3 and the regulations in respect of the work place.

This is in contravention of the *Workers Compensation Act*, section 118(2)(b).

The prime contractor of a multiple employer work place must do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with the *Workers Compensation Act*, Part 3 and the regulations in respect of the work place.

Subsequently, further Inspection Reports were issued to the contractors for Mr. W and Mr. V noting numerous violations of the protocol for dealing with asbestos.

On August 28, 2012, WorkSafeBC issued a further Inspection Report to the strata corporation requiring that the strata corporation put in place a process to ensure future compliance with the *Workers Compensation Act* and regulations through an amendment to its bylaws.

On September 26, 2012, WorkSafeBC issued a further Investigation Report to the strata corporation and issued a Stop Work Order.

After considering the chronology of events, the Judge concluded that the bylaws require compliance with applicable regulations and that the strata corporation had repeatedly failed to enforce the bylaws in relation to the matter of renovations. The strata corporation argued that although there was evidence of failure on the part of certain owners, it could not be said that the strata corporation had failed to perform its duty to ensure compliance. The Judge disagreed and found that there was no evidence of any actions taken by the strata council to enforce its bylaws.

The Judge concluded that the strata corporation had failed to enforce its bylaws. The Judge granted the declarations sought by the Petitioner.

The *Chorney* case has significant implications for strata corporations.

The case makes it clear that the strata council, on behalf of the strata corporation, must not only be aware of what renovations are being carried within a strata lot but more importantly that the strata council take the necessary steps to ensure compliance with all provincial and municipal laws and requirements particularly if residents' and visitors' health and safety could be at risk. The strata corporation must also respond quickly and effectively in the event of non-compliance. Additionally, notwithstanding that the alterations were occurring within a strata lot, WorkSafeBC clearly stated that the strata corporation must do everything that is reasonable practicable to establish and maintain a system or process that will ensure compliance with the *Workers Compensation Act*.

Strata councils that are uncertain of their obligations in relation to alterations within a strata lot or common property should seek legal assistance.