

**Condo Smarts**

Headline: An Alternative System to Resolve Strata Disputes

Topic: Disputes

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Under the current legislation for condo owners across BC, the *Strata Property Act & Regulations*, there are really only 3 choices to resolve disputes in your community. An obvious solution is for some sort of mediation where the parties meet with a neutral third party and hopefully come to a consensus on how to resolve a problem. The two other formal solutions are Arbitration which is mandatory under the Strata Property Act or court action either through Provincial Court ( small claims ) or an application to the Supreme Court of BC. There are a significant number of pitfalls to arbitration and the court system, the greatest of which is the basic cost. For many home owners, they are in a situation where they are pitted against the collective strength and financial grouping of the strata corporation and the remaining owners. As a result, access to justice for many home owners is often more a decision of economics than the will to resolve a dispute, or force their strata corporation into some sort of compliance. Strata corporations are in much the same situation, although their common limitations are the unwillingness of the owners to fund Supreme Court actions, or the unreasonable period of time it takes to have a matter addressed or resolved. Through a number of public consultations since 2005, surveys to condo owners and strata corporations, and submissions to government, the current government under the Ministry of Rich Coleman are considering the concept of administrative justice through a tribunal system.

The proposed tribunal would provide a dispute resolution process that is affordable, timely, user friendly and accessible and would improve compliance with the Strata Property Act and Regulations as well as strata corporations' own bylaws. The tribunal would use web-based technology to improve the simplicity and efficiency of service delivery and be available to engage the parties early in the resolution process, including information about what the law requires and how to resolve their current dispute without the assistance of the tribunal.

It would be flexible and responsive to people's needs and would not require a lawyer, although the parties may still choose to retain legal representation. Different situations require different solutions. People must be able to resolve their disputes in a way that fits their circumstances and the particular issues. Some will be settled via mediation and a mutually acceptable agreement, while others will require a binding decision by an adjudicator. There will still be matters that must be addressed through an application to the Supreme Court of BC. For example, an order for sale proceeding, to collect a special levy or unpaid strata fees, that would result in an owner losing their home, would still require a Supreme Court application.

The proposed tribunal would establish a searchable data base of tribunal decisions and opinions, with personal information removed. Like other tribunals, the proposed tribunal would report and be

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accountable annually to its responsible Minister. This will continue to provide important feedback to the government on aspects of the Act that are creating conflicts or confusion.

One of the greatest benefits of a tribunal system that incorporates web based technology, mediation and adjudication is the greatly improved accessibility of strata corporations and owners in remote parts of the province where time delays and lack of qualified arbitrators is a chronic complaint.

By far, the most common complaint that we hear from across the province is: "our strata council is not complying with the Act, isn't there an alternative to going to court?" The tribunal dispute resolution process could also enable the adjudicators or arbitrators to order compliance, so in a total change as to how we understand current justice issues in strata communities, we could in essence suddenly have a compliance system. Many strata corporations are frustrated by their inability to approve three quarter votes for special levies when a roof is leaking. Those types of frustrations could also be addressed through a tribunal system, where the tribunal could potentially, with the authority of the legislation, order the three quarters vote and order the repairs. So whether you are a strata owner frustrated by your council who are unwilling to enforce bylaws, or a strata council that simply wants to enforce bylaws and recover costs for penalties and damages, the tribunal system could make the process much quicker, much more affordable. Even matters around the responsibility of an insurance deductible, or damages caused by neighbours could be addressed through a decision of the tribunal.

Strata corporation disputes are often technically complex with unique circumstances and fact patterns that make simple, quick decisions, extremely difficult. Complicate those with the personalities

and expectations of the strata owners involved, and will be a daunting task for a tribunal system to meet all of the demands of condo owners. A system that improves current dispute resolution procedures for condo owners and makes justice affordable, would be a significant contribution to improving condo living. This is a great opportunity to get involved and add your voice to the survey being hosted by the Housing Policy Branch go to:

<http://housing.gov.bc.ca/strata/index.htm>, the Strata Property Act web page, review the proposed model and take the survey, which expired on October 31st. There are a number of issues that still need to be contemplated, from the cost of applications, to who is going to be appointed to the tribunal, to dealing with vexatious applicants who attempt to harass strata corporations with constant complaints. Here's your chance, take the survey and contribute your knowledge and experience.

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