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CONDOMINIUM LAW AND ADMINISTRATION

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Condominium Law and Administration is an invaluable resource for those involved in conveyancing, development, condominium management or the representation of condominium corporations, whether inside or outside of Ontario.

This release contains updates to the case law and commentary in Appendix K3: British Columbia. Additionally, the *Strata Property Act*, S.B.C. 1998, c. 43 and *Strata Property Regulation*, B.C. Reg. 43/2000 have been updated.

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Highlights

- **Appendices — Appendix K. Provincial Legislation — Appendix K3. British Columbia — British Columbia Strata Property Act — § K3:1. Strata Property Act, S.B.C. 1998, c. 43 — Section 112 —** Where, unbeknownst to the strata corporation, the unit owner was now deceased, and a demand letter for payment of outstanding arrears under s. 112(2) was mailed to the unit and to another address where the unit owner was thought to reside, any deficiencies in notice in the proceeding when the executor of the unit owner's estate finally identified himself did not alter the fact that arrears were accumulating. The unit was tenanted by residents unknown to the strata corporation. There is no requirement under Rule 4-2(2) of the Supreme Court Civil Rules to prove that notice was actually received, only that it was delivered by the means set out in the rule: A judge's determination that it is not in the interests of justice to set aside an order under Rule 4-7 is a discretionary decision that attracts substantial deference absent an error of law or principle or a palpable and overriding error of fact: *Schlieper v. The Owners, Strata Plan VR59*, 2022 CarswellBC 3103, 2022 BCCA 375.
- **Appendices — Appendix K. Provincial Legislation — Appendix K3. British Columbia — British Columbia Strata Property Act — § K3:1. Strata Property Act, S.B.C. 1998, c. 43 — Section 117 —** Sections 117(3) and (4) contemplate that the court may grant judgment for the amount of the lien or some other amount the court finds owing and affords it a discretion to order sale of a strata lot for realization of the indebtedness. A court must make three determinations: (1) whether the strata corporation is entitled to enter judgment against the owner (2) whether there should be an order for the sale of the owner's lot "after considering all the circumstances"; and (3) how long the owner should have to pay the judgment, before a sale takes place. Concerning the first question, the appropriate order for judgment is not in a fixed amount but instead for "the amount owing under the lien", because the strata corporation is entitled to include in the judgment its reasonable legal costs, land title and court registry fees, and other reasonable disbursements; SPA, s. 118. The possible inability of the owner to pay the amount claimed does not constitute hardship warranting the outright refusal of an order for sale, once the amount owing is determined: *The Owners, Strata Plan VR 2027 v. Dr. C.A. Whittington Inc.*, 2022 CarswellBC 2147, 2022 BCSC 1335, appeal dismissed as abandoned 2023 CarswellBC 2751, 2023 BCCA 362, motion vary dismissed 2023 CarswellBC 3460, 2023 BCCA 437.
- **Appendices — Appendix K. Provincial Legislation — Appendix K3. British Columbia — Civil Resolution Tribunal (Excerpts) — § K3:15. Civil Resolution Tribunal Act (Excerpts), S.B.C. 2012, c. 25, ss. 1, 2, 2.1, 20, 56.5 (repealed), 56.6, 56.7, 120-123.1 — Section 2 —** Where a tribunal has discretion to hold an oral hearing and permit witnesses to be cross-examined, the judicial exercise of that discretion requires the tribunal to weigh the advantages of an oral hearing and cross-examination against efficiency. The advantages of an oral hearing must be balanced against the CRT's statutory mandate to resolve strata

property disputes in an "accessible, speedy, economical, informal and flexible" manner. That balancing exercise requires the tribunal to consider, in particular, the extent to which the dispute before it hinges upon the centrality of the questions that turn on credibility, and the extent to which cross-examination may assist in resolving those issues. What might initially strike an observer to be procedural unfairness in a case is the inevitable result of legislation that diverts disputes — some of which are large in terms of money and of vital concern to residents of condominiums — into a tribunal that is not required to afford the litigants a traditional hearing, even where there are credibility questions. The impression that the process is unfair is reinforced by the statutory limitation on the scope of appellate review of the tribunal decisions. But the decision to move disputes involving strata corporations into this dispute resolution process is a policy decision of the legislature, and reflects the legislature's balancing of the competing claims of efficiency and fairness. It is not necessary to permit cross-examination in all cases where there are conflicts in the evidence in order to afford the parties procedural fairness, particularly where such conflicts in the evidence were limited and addressed in a reasoned manner by the Vice Chair. Fairness is a concept fundamentally concerned with appropriate procedures. The key question for a reviewing court is whether, considering all the circumstances, those whose interests were affected had a meaningful opportunity to present their case fully and fairly. The procedural safeguards afforded parties will normally, but not necessarily, increase as the dollar value or significance of a dispute becomes more meaningful: *Downing v. Strata Plan VR2356*, 2023 CarswellBC 504, 2023 BCCA 100.

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