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CONDOMINIUM LAW AND ADMINISTRATION

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Release No. 3, May 2025

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 features updates to Appendix K (Provincial Legislation).

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Highlights

- **BRITISH COLUMBIA—STRATA PROPERTY ACT—Section 5 and 6—Fiduciary Duty of Owner-Developers**—Sections 5 and 6 of the Act do not impose a statutory fiduciary duty on owner developers to contribute more than the minimum amount to the contingency reserve fund. Where the legislature has set a statutory minimum contribution to a contingency reserve fund, it is not dishonest or disloyal for an owner developer to contribute that amount, nor does it result in the owner developer profiting at the expense of a strata corporation. (*The Owners, Strata Plan VIS 1210 v. Ngai Estate*, 2024 CarswellBC 3620 (B.C. S.C.)).
- **BRITISH COLUMBIA—STRATA PROPERTY ACT—Section 31—Council member’s standard of care—Example cases**—An e-mail by a council member to contract partners and fellow owners suggesting that another council member, who also had a property management business, had a reputation for taking kickbacks was defamatory. The defence of qualified privilege was not applicable. The defamatory statement was not made during a strata council meeting, or in response to any particular incident or complaint that was brought to either his attention (in his capacity as a member of the strata council or the owners’ association), or to the attention of strata council. The statements did cause the contract partner to pause the deal, justifying a general damages award in the amount of \$85,000. (*Sanderson v. Bennett*, 2025 CarswellBC 189 (B.C. S.C.)).
- **BRITISH COLUMBIA—STRATA PROPERTY ACT—Section 31—Council member’s standard of care—Other potential sources of liability**—Although the mixed-use strata corporation took four years to comply with a CRT order to repair the elevator servicing the commercial units, a contempt order against the individual strata council members was not appropriate. It was not entirely certain whether a contempt order against a strata corporation can or should also subject councillors to individual responsibility. Taking on the role of a strata councillor already imposes a heavy burden for which an individual generally receives little thanks or reward. Imposing individual fines would have an unduly chilling effect. (*Trinden Enterprises Ltd. v. The Owners, Strata Plan NW2406*, 2024 CarswellBC 3753 (B.C. S.C.)).
- **BRITISH COLUMBIA—STRATA PROPERTY ACT—Section 76—Short term exclusive use—Generally**—Owners cannot reasonably expect permanent permission to use common property. The elements of the equitable defence of promissory estoppel are as follows: (1) the parties be in a legal relationship at the time of the promise or assurance; (2) the promise or assurance be intended to affect that relationship and to be acted on; and (3) the other party in fact relied on the promise or assurance. It is implicit that such reliance be to the promisee’s detriment. Where successive strata councils over the years failed to closely examine the strata plan to determine the status of parking stalls being used by the commercial unit owners and their customers, it could not be said that the strata corporation had promised to allow the commercial unit owners to permanently exercise control over the disputed parking stalls. The strata was entitled to reclaim the stalls, even after

17 years. (*Trinden Enterprises Ltd. v. Civil Resolution Tribunal and The Owners*, 2024 CarswellBC 3354 (B.C. S.C.)).