



**In cases where the complaint concerns common strata property, Engineers and Geoscientists BC (the “Association”) requires written confirmation from the Chair of the Strata Council that the complaint is being made on behalf of the Strata Corporation.**

The Association’s policy of requiring written confirmation from the Chair of a Strata Council prior to investigating complaints involving common strata property was established in response to the “leaky condo crisis” of the 1990s and early 2000s. During this time, multiple complaints were being made to the Association by strata owners who were often in conflict with their own strata corporations.

The Association’s policy is based on the *Strata Property Act*, S.B.C. 1998, c. 43 (the “Strata Property Act”) and the case law that has interpreted it. Section 3 of the Strata Property Act states:

Except as otherwise provided in this Act, the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.

There is case law that has interpreted Section 3 of the Strata Property Act. In *Royal Bank of Canada v. Holden*, 1996 CanLII 3440 (BC SC) the Supreme Court of British Columbia, interpreting the *Condominium Act*, R.S.B.C. 1979, c. 61 (the predecessor to the Strata Property Act) reinforced the responsibility of the strata corporation to maintain common property. Bauman J., as he then was, stated at paragraphs 17-18 that:

The strata corporation has certain essential duties under the Act to maintain common property, common facilities and assets of the strata corporation. These are fundamental duties, and, I perceive, their execution by the strata corporation is critical to the realization of the condominium concept - that is people living

together in individually owned units within a common shell. The mix of personal fee simple title and co-operative living necessitates a vehicle by which maintenance and repairs of the common property will be undertaken and payment shared and forthcoming from the individual owners. The vehicle created by the Act is, of course, the strata corporation.

S. 34(1)(d) of the Act imposes this imperative duty on the strata corporation:

34(1) The strata corporation shall

- (d) keep in a state of good and serviceable repair and properly maintain common property, common facilities and assets of the strata corporation.

Section 34(1) of the Condominium Act, as interpreted in *Holden*, is similar to the current wording of the Strata Property Act.

Section 3 of the Strata Property Act was specifically interpreted by the Supreme Court of British Columbia to give strata corporations the responsibility of managing and maintaining common strata property in *Strata Corp. LMS 509 v. Andresen et al*, 2001 BCSC 201. In that case, a “leaky condo” decision, Skipp J. found at paragraphs 56-57 that:

Limited common property is defined in s. (1) of the Strata Property Act as:

common property designated for the exclusive use of the owners of one or more strata lots.

Although the balconies and decks in their daily use may be considered limited common property, as these areas relate to the structure of the apartment building, I find them to meet the definition of common property, as outlined above. As such, the repair of these areas falls under the obligations of [the strata corporation].

Accordingly, the Association's policy is based on the Strata Property Act as interpreted by the relevant case law, which states that it is the obligation of the strata corporation to manage and maintain common property. Our policy provides that it is the prerogative of the strata corporation to bring forth any complaints about engineering services related to maintenance of common property, and not that of individual strata owners who may be in conflict with their strata council over the maintenance of common property.

In this context, the Association's policy of only accepting complaints that have been confirmed by strata council helps to ensure that the complaints investigated are meritorious and actually representative of the views of the strata as a whole, as represented by the strata council.