

# THE (NON) SMOKING GUN: WHAT YOU NEED TO ENFORCE STRATA BYLAWS IN COURT

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In the recent BC Supreme Court decision of *Strata Plan NW 1815 v Aradi*, 2016 BCSC 105, the Court clarified its authority to step in and enforce bylaws enacted by strata councils. The bylaw at the centre of this dispute between the strata corporation (the "**Strata**"), and the strata lot owner (the "**Owner**") was one prohibiting smoking in individual strata units and around the common areas (the "**Bylaw**"). In response to complaints from neighbours of cigarette smoke and smell coming from the Owner's unit, the Strata issued numerous warnings and fines, none of which the Owner complied with or paid.

On his part, the Owner did not deny smoking cigarettes regularly in his unit. Instead, the Owner alleged that his disability made it impossible for him to walk to a permitted smoking area and so the Strata's bylaw unlawfully discriminated against him and could not be enforced.

This human rights aspect was simultaneously put to the BC Human Rights Tribunal and was not (*really*) raised by the Owner as a defence to the proceeding or considered by the Court in its decision. Rather, the Court made its decision on the basis that the Bylaw had been validly enacted by the Strata and that the Owner (in part by his own admission) had violated the prohibition against smoking on more than one occasion.

## Court's Decision

The Court was asked by the Strata to exercise its power pursuant to section 173 of the *Strata Property Act*, SBC 1998, ch 43 (the "**Act**") in order to :

- a. declare that the Owner was in contravention of the Bylaw; and
- b. make an order that the Owner must immediately cease and desist from contravening that Bylaw (i.e. smoking in his unit or on the common strata property).

Section 173 of the Act allows the Court, among other things, to order an "owner, tenant or other person" to comply with the Act and the bylaws of a strata corporation.

The Court clarified that although section 173 is injunctive in nature, courts will not analyze it in the same manner as the test for obtaining an injunction at common law. Instead, the threshold test is based on the

Court's broad discretion under section 173. Namely, a Court's discretion can be exercised "in appropriate circumstances and in accordance with the overall objectives of the Act."

In making its decision, a court will balance a strata corporation's interests against those of the owner or person against whom the order is sought. The purpose and object of the Act as well as the particular circumstances of the case will guide the Court. Appropriate considerations include the number of owners seeking relief, if the order sought is in the best interests of the strata, and whether not granting the order would unfairly prejudice the strata.

Having taken the above considerations into account, the Court decided that the Strata was entitled to a declaration under section 173 and ordered the Owner to stop smoking cigarettes in his unit. Importantly, the Court noted that the strata bylaws are meant to govern the living arrangements among private owners of property living in close quarters with one another. The Court confirmed that the modern condominium setting necessarily requires owners to forgo a portion of his or her independence for the mutual benefit of the entire condo community.

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### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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