

Recent Case Law Review

Prepared for: Legal Education Society of Alberta

49th Annual Refresher: Real Estate

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For presentation in:

Lake Louise, Alberta – April 24 - 26, 2016

RECENT LAW CASE REVIEW

It struck me when I was asked to give this presentation that I wouldn't be talking to a bunch of Condominium litigators who were hanging on my every word about court room drama. Neither would I be presenting to property managers or condominium owners or directors about their daily problems with pets, parking or people. Rather, I would be speaking to solicitors who deal with Condominiums on more of a transactional basis, and who probably get questions about technical Condominium Law from their clients in passing while signing transfers and mortgages. Such questions as: "They can't evict me from my condo, can they?"; "I can rent my condo, can't I?"; "Can the Condominium sue me for water damage from my unit to other units?" Accordingly, I have attempted to anticipate what some of the more common and recently topical questions that may be posed to you by clients and chosen appropriate cases that answer those questions.

1. CAN THE CONDOMINIUM CHANGE THE CONDO FEES AND HOW THEY CALCULATE THEM?

Answer – **Yes.** Section 39(1)(c) of the *Condominium Property Act* ("CPA") allows a condominium to raise or levy contributions on owners in proportion to the unit factors of the owners' respective units or, if provided in the bylaws, on a basis other than in proportion to the unit factors of the owners' respective units (emphasis added). In *Francis*, the Court of Appeal was considering section 31 of the 1980 Condominium Property Act which only allowed contributions to be assessed by way of unit factor. Along with other key passages about fundamentals of condominium law which I encourage you to review (para 26-29); the Court also states the following:

"[30] The respondents also argue that the provisions of the Act are to be given a liberal and remedial interpretation. However, broad, liberal and remedial interpretations do not permit courts to ignore words that are part of an enactment. The only provision in the Act dealing with the issue of how fees are to be collected is s.31. That provision enables a condominium corporation to collect fees on a unit factor basis. It does not empower condominium corporations to collect fees based on other considerations. It is not the role of the courts to enlarge what the legislature has chosen to provide for whenever a possible inequity may occur as a result of the enforcement of the plain meaning of the legislative provision. The appropriate remedy is either to avoid the problem by correctly allocating unit factors in the first place, or by an amendment to the legislation. With respect to s.31 the legislature has chosen to do exactly that. I conclude it did so because it perceived situations, perhaps such as the one presented here, where other considerations aside from unit factors formed the appropriate basis for the attribution of a condominium fees."

Condominium Plan No. 8222909 v. Francis, 2003 ABCA 234 – Tab 1

2. CAN I BE EVICTED FROM MY OWN CONDOMINIUM EVEN THOUGH I OWN IT?

Answer – **Yes.** Section 67 of the CPA provides a broad selection of remedies the Court may award for "improper conduct" of a developer, Condominium Board, or an