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Chorney v. Strata Plan VIS770

Linda Chorney and Marilyn Carey, Petitioners and The Owners, Strata Plan VIS770, Respondents

British Columbia Supreme Court

Ross J.

Heard: December 3, 2012

Judgment: January 8, 2013

Docket: Victoria 12-2630

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Counsel: Linda Chorney, Marilyn Carey, Petitioners, for themselves

Brian Whittingham, for Respondents

Subject: Property

Real property

**Ross J.:**

### **Introduction**

1 This matter concerns allegations that the respondent **strata corporation** has failed to enforce bylaws of the **strata corporation** in relation to renovations undertaken by owners that contravene regulations concerning asbestos. The respondent took the position in the written response to the petition that the relief sought should not be granted because the **strata corporation** had not failed to enforce the relevant bylaws.

2 The bylaws at issue are 3(5) and 4(1)(a) which provide:

#### **Repair and maintenance of property by owner**

3(5) An owner must comply with the British Columbia Building Code established by the British Columbia Building Code Regulation, any applicable provincial laws or regulations, and any applicable municipal or regional district bylaws when altering, repairing, or renovating any part of the owner's strata lot or the common property.

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### Use of Property

4(1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets contrary to any of the following bylaws:

- a) in a way that causes a nuisance or hazard to another person,

### Facts

3 The petitioners Linda Chorney and Marilyn Carey each own and occupy a strata lot in Strata Plan VIS770, 5 and 2 respectively.

4 The **strata corporation** building is located at 1001 Terrace Avenue, Victoria B.C. ("the Building"). The Building is a designated heritage building designed in 1912 and constructed shortly thereafter. It was used as a single family dwelling until the late 1970s when it was converted into eight strata lots. The design of the Building is such that the space between floors contains little to no impediment to air flow, see [Chorney v. The Owners, Strata Plan VIS770, 2011 BCSC 1811](#).

5 From April 2008 to May 31, 2012, Gerry Fanaken was the administrator of the **strata corporation** appointed pursuant to the order of Mr. Justice Macaulay dated March 20, 2008, and then reappointed each year until 2012. As administrator, Mr. Fanaken exercised all the powers and performed the duties of the strata council for the **strata corporation**.

6 In 2011, repairs were to be made to the Building's envelope. As part of the preparation for this work a Hazardous Materials Survey was obtained (the "Surevy"). Mr. Fanaken provided a copy of the Survey to the owners on August 17, 2011. The Survey noted that samples had been collected only from materials that were to be impacted by the proposed renovations. Asbestos was found in drywall joint compounds, and the report stated that all drywall joint compounds from the original 1978 renovation should be considered to contain asbestos. Asbestos was observed in the pipe insulation in the crawlspace. The exterior paint was found to contain lead in a concentration above the WorkSafe BC criteria.

7 The Survey contained a section entitled Risk Assessment that noted that:

Prior to the performance of any work that may disturb asbestos containing materials it is a regulatory requirement that a qualified person perform a Risk Assessment...

...

The removal of asbestos containing **drywall joint compound from the ceiling** should be conducted using **High Risk** asbestos abatement procedures. [The minimum requirements were then specified]

...

The removal of asbestos containing **drywall joint compound from the original walls** should be conducted using **Moderate Risk** asbestos abatement procedures. [The minimum requirements are then specified].

8 On September 1, 2011, Mr. Fanaken circulated a memo to the owners reiterating the results of the Survey. The memo states in part:

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### **Asbestos**

It has been brought to my attention that some owners in the past have undertaken interior renovations resulting in the removal of wall and ceiling materials. Other owners may be planning renovations in the future that could result in the release of airborne asbestos particulates when removing existing walls or ceiling drywall. These asbestos particulates will be a risk to the owner as well as other owners through air circulation in the building. Also, the removal of any drywall or ceiling materials may expose materials containing asbestos that are currently hidden behind the walls and ceiling.

There are specific guidelines for working with asbestos set out by WorkSafe BC. In particular, WorkSafe BC has a booklet entitled Safe Work Practices for Handling Asbestos. A copy of this publication is available online at: [http://www.worksafebc.com/publications/health\\_and\\_safety/by\\_topic/assets/pdf/asbestos.pdf](http://www.worksafebc.com/publications/health_and_safety/by_topic/assets/pdf/asbestos.pdf)

Sections 6.01 to 6.32 of Part 6 of the Occupational Health and Safety Regulation deal with the handling of asbestos. These sections should be reviewed and followed by anyone undertaking renovations in their unit which could release asbestos particulates from the drywall joint compound.

- 9 On October 3, 2011, Mr. Fanaken circulated an e-mail to owners that stated:

#### **Compliance with Regulations**

Failure to comply with the requirements for dealing with asbestos or lead resulting in the release of particulates containing asbestos or lead into the common area or the strata lots of other owners when conducting renovations in an owner's strata lot will be a breach of bylaw 4(1)(a) which provides that:

A owner, tenant, occupant or visitor must not use the strata lot, the common property or common assets contrary to any of the following bylaws:

- (a) In a way that cause a nuisance or hazard to another person, ...

Such breach will result in action by the **Strata Corporation**.

I urge each owner for their own health and safety, and out of concern for the health and safety of the other owners, to comply with the requirements for the safe handling of materials containing asbestos or lead should they plan to undertake renovations in their strata lots which could result in the release of asbestos or lead particulates.

- 10 At a Special General Meeting held March 9, 2011, Mr. Whittingham acknowledged that he had removed drywall in strata lot 7 without first having obtained an asbestos assessment. At the meeting Ms. Chorney reminded the owners of the steps that were required by the regulations to deal with asbestos and distributed a document from WorkSafe BC on the subject.

- 11 On October 3, 2011, Mr. Fanaken sent an e-mail to Mr. Whittingham that stated in part:

Brian: as you know it is an established fact that Bowser is loaded with asbestos materials. This is in insulation and in drywall etc. As you are renovating your three strata lots, it is mandatory that you take steps to have all areas tested and verified to be asbestos free. If that determination cannot be established, it is incumbent upon you to ensure that full and proper steps be taken for dealing with the asbestos removal. Worksafe B.C. has guidelines and policies which you should research and abide by. Please confirm that this is your intention. Thank you.

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12 A Special General Meeting was held on May 25, 2012. Mr. Fanaken's final term was coming to an end. Chris Pepperdine (Secretary), Erik Vilnis (Vice President) and Brian Whittingham (President and Treasurer) were elected to the strata council.

13 The subject of renovations was addressed at the May 25, 2012 meeting. In the course of the discussion Mr. Whittingham acknowledged that he had commenced renovations in a second strata lot, lot 8, without the required hazardous materials assessment. He acknowledged that all the demolition activities he had undertaken had been conducted without a risk assessment. The minutes reflect the following discussion:

Renovations at Strata Lot 7: Linda Chorney demanded to know from Brian Whittingham, the status of his planned renovation and, in particular, the status of his application for permits to the City of Victoria. Mr. Whittingham stated that he had received a consent letter from the Administrator (on behalf of the **strata corporation**) which the City has acknowledged (according to Mr. Whittingham) as being sufficient. Mr. Fanaken stated that he had not issued a consent letter but rather a letter stating that the **strata corporation** "had no objection" to the contemplated renovations and that asbestos protocols must first be produced.

Linda Chorney cautioned the new strata council to not now simply "rubber stamp" approval to Mr. Whittingham given that the Administrator is no longer in control. She advised that she would commence legal action against the **strata corporation** should it fail to ensure that proper steps are undertaken in all respects, including meeting asbestos removal protocols.

Mr. Whittingham conceded that he has not yet addressed the matter of the asbestos removal protocols citing allegations that Farmer Construction Ltd. had undertaken work within strata lots without following such protocols. Mr. Fanaken advised Mr. Whittingham that, notwithstanding the allegation about Farmer, he (Mr. Whittingham) remains obligated to procure certification of asbestos-free premises and only then can the **strata corporation** offer the City a letter of consent for the proposed renovations. Mr. Vilnis stated that "we should get a hazmat expert in."

*(Subsequent to the meeting, Mr. Fanaken checked with Farmer Construction Ltd. on Mr. Whittingham's statements. Farmer stated that all work done by them and their sub-contractors was undertaken with complete "hazmat" compliance).*

Mr. Whittingham stated also that he has commenced renovations in strata lot 8 including the removal of linoleum and that he had not undertaken the required hazardous materials assessment. Linda Chorney advised him that he was in violation of not only Worksafe BC requirements but also the **strata corporation's** bylaws concerning creating hazards.

14 On May 29, 2012, Ms. Chorney sent an e-mail to Mr. Fanaken and the new council advising them that she expected the new council to adopt Mr. Fanaken's position of requiring compliance with WorkSafe BC protocols before issuing **strata corporation** letters of permission with respect to work permits. She requested that the strata council fulfil its legal obligation to protect owners from any possible further exposure. The e-mail states in part:

2. Secondly, I request that the **strata corporation** fulfil its legal obligation to protect owners from any possible further exposure to hazardous materials by way of Brian Whittingham's future renovation activities by requiring him to obtain a risk assessment survey. (This owner has indicated his further construction plans include renovating the bathroom of unit #8 and altering the ceiling of unit #4. In addition, plumbing work has been done in units #4 and #7 without permit, consequently openings in walls and/or in floors will need to be made to allow for City inspection of the kitchen plumbing in #7 and the laundry facilities of #7 and #4.)

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I direct incoming council to bylaw 3(5) of the **strata corporation** that requires an owner to comply with all applicable provincial laws or regulations when altering, repairing, or renovating any part of a strata lot. The regulations of WorkSafe BC (provincial legislation) require that a risk assessment be conducted prior to demolition activities by an owner, the owner's representative, or the employer in any pre-1990 building, and further, that testing, based on the results of the assessment be done if required prior to construction activities. The Public Health Act (another piece of provincial legislation) forbids the creating of a health hazard. Section 15 of Part 3 Division 1 reads as follows:

*"A person must not willingly cause a health hazard, or act in a manner that the person knows, or ought to know, will cause a health hazard."*

15 Mr. Fanaken responded by e-mail dated May 30, 2012 which stated in part:

At this very late stage of my role as administrator I am reluctant to take charge of the matter; however, I am duty bound to offer my opinion and make recommendations to the incoming council.

First, all of the facts and statements made by Linda Chorney are accurate and have my endorsement. There is nothing inaccurate or incorrect.

Second, you must act according to the steps laid out in her letter. To do otherwise will expose each of you to liability. Further, as council members you have a statutory duty to enforce the bylaws and to uphold to the best of your ability the powers and duties rested upon you by the Strata Property Act.

Should you fail to do so you will surely attract legal actions against the **strata corporation** and yourselves personally.

Third, given the seriousness of this matter I recommend that Brian Whittingham recuse himself from any deliberations in the handling of the file.

I urge you to not treat this matter lightly.

16 The minutes of a meeting of the administrator and strata council dated May 31, 2012 contain reference to the following discussion:

Bylaw Violation Unit 7: Mr. Vilnis advised that the strata council had decided to fine Mr. Whittingham a sum of \$200 for failing to obtain a hazardous materials assessment in respect of the renovations in progress at Unit 7. (As council has not, as of this date, had the authority to meet and make decisions, the new strata council will have to meet and formally address this matter including making available to Mr. Whittingham an opportunity or a hearing as prescribed in the *Strata Property Act*).

On the basis of the above-noted fine, council suggested that Mr. Whittingham could now obtain a letter of approval from the **strata corporation** to present to the City; however, Mr. Fanaken stressed that such a letter cannot be issued until such time as a hazardous materials assessment has been completed. Mr. Whittingham stated that such an assessment would be unnecessary since all potentially hazardous materials have been removed. Mr. Fanaken emphasized that, notwithstanding the removal of the materials, a hazmat assessment must be done in order to establish that no asbestos materials remain exposed in Unit 7. Mr. Fanaken reminded council that this protocol must also be followed in respect of Unit 8, which is also being renovated by Mr. Whittingham.

Mr. Fanaken explained that before the City will inspect a strata lot, and before it grants building permits, it must be

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given a hazmat assessment. Likewise, the strata council cannot issue a letter of consent to the City until such hazmat assessment has been completed.

Mr. Vilnis stated that he understood the explanation and that Mr. Whittingham must obtain such an assessment. Mr. Vilnis also stated that he is undertaking renovations to his strata lot (# 1) and will be obtaining a hazmat assessment.

Mr. Whittingham stated that the owners should consider changing the relevant bylaws to replace the existing requirements in respect of owner renovations to provide that an owner "advise the **strata corporation** of contemplated renovations and offer a commitment."

Notwithstanding the previous advice from the Administrator that Mr. Whittingham recuse himself from council discussions concerning his renovations, Mr. Whittingham did not avail himself of the recommendation.

17 By e-mail dated June 1, 2012, Mr. Vilnis informed owners that he intended to begin renovations to his strata lot, unit 1, the following day. Ms. Chorney responded with an e-mail dated June 6, 2012 reminding members of council of the WorkSafe BC requirements.

18 Mr. Vilnis sent an e-mail in response. Ms. Chorney requested clarification from the strata council whether a qualified professional had completed a Hazardous Materials Survey regarding the work to be undertaken in unit 1.

19 On June 6, 2012, Ms. Chorney observed that construction activities appeared to be ongoing in relation to strata lot 1. She contacted WorkSafe BC to advise them of the circumstances.

20 The minutes of the strata council meeting dated June 11, 2012 reflect the following:

3. Bylaw 4(1)(a) and 7(2) strata #8 - Brian Whittingham recused himself from this portion of the meeting. Regarding the May 29, 2012 violation for "failing to obtain a hazards material assessment" a fine of \$200.00 is to be imposed. In regards to 7(2) Mr. Whittingham will be required to provide documentation that a hazards assessment has been conducted prior to approval by council for City of Victoria permits. Subsequent to this meeting Brian Whittingham produced a receipt of his compliance of the 4(1)(a) violation. (June 12, 2012)

4. In regard to L. Chorney's email of May 29, 2012, - B. Whittingham assured the council that no further work which would disturb hazards materials will be undertaken until the proper assessment has been completed and subject to all necessary compliance with work safe BC regulations and City of Victoria Building requirements are met. Any request of Strata approval will be assessed at that time.

5. Report of strata #1 renovations - Erik Vilnis recused himself from this portion of the meeting. As per 7(2) of the bylaw act it is requested that Mr. Vilnis will provide the appropriate assessments prior to council approving a letter of approval to the city.

21 On June 13, 2012, and later at a Special General Meeting held on June 19, 2012, Ms. Chorney requested copies of each of the Hazardous Materials Surveys obtained. Mr. Vilnis suggested that only the summary pages needed to be provided. Ms. Chorney took the position that council was obliged to provide copies of the entire document on request by an owner.

22 On June 21, 2012, Hazardous Materials Surveys for lots 1 and 8 were provided to Ms. Chorney. Ms. Chorney was concerned that the Surveys were only partial assessments. She addressed her concerns to the council by e-mail.

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23 On July 16, 2012, WorkSafe BC issued an Inspection Report (the "Report"), which was e-mailed to each council member along with the following directive: "The Occupational Health & Safety Regulation requires that one copy of the attached inspection report remain posted in a conspicuous place at or near the operation inspected for at least seven days, or until compliance has been achieved, whichever is the longer period."

24 The Report had not been posted by council as of July 24, 2012, the date on which construction related work commenced in strata lot #1. Ms. Chorney observed that part of the construction related to a vent had been inserted into an open window and that dust particles were being vented from strata lot #1 into the air outside.

25 Upon becoming aware of the work underway in strata lot #1 on July 24, 2012, Ms. Chorney posted a copy of the Report on each of the prominent entrance doors, placed a copy under the door of strata lot #1, and contacted WorkSafe BC. An investigation undertaken on that date by WorkSafe BC resulted in a stop work order being issued, until such time as proper procedures for asbestos abatement were implemented.

26 WorkSafe BC has issued a number of Inspection Reports for the Building since June 1, 2012. These include:

(a) June 14, 2012 - issued to E. Vilnis - Violation - activities related to the demolition/and or salvage of flooring, cabinets and appliances for this site proceeded prior to the inspection of the site for hazardous materials.

(b) July 16, 2012 - issued to Strata VIS770 - the report detailed the responsibilities of the strata and owners and contains the following:

Renovation projects have commenced in this structure that are likely to disturb materials containing asbestos and there has been no notifications or work procedures submitted to WorkSafeBC regarding the projects. The absence of notifications indicates that this employer is not doing everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with the Workers Compensation Act Part 3 and the regulations in respect of the workplace.

This is in contravention of the Workers Compensation Act Section 118(2)(b).

The prime contractor of a multiple-employer workplace must do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with the Workers Compensation Act Part 3 and the regulations in respect of the workplace.

Provide written confirmation of the system or process that is to be implemented to ensure that all applicable notifications and procedures, that are required when working with hazardous materials, have been submitted to WorkSafeBC prior to the start of any demolition or renovation activities.

(c) July 25, 2012 - issued to contractor for E. Vilnis - numerous violations of protocol for dealing with asbestos were observed. The report states in part:

For the purpose of this asbestos clean-up work the following is required;

1. signage,
2. limited access to the work area,
3. an equipped and designated decontamination area designed and intended to limit the spread of asbestos fibre into non contaminated areas,

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4. placement of the exhaust ventilation unit in the immediate work area,
5. disposal of asbestos contaminated PPE in asbestos labelled bags,
6. training of workers re asbestos, respirators, procedures to control the spread of asbestos fibre,
6. supervision of workers (supervision of workers inexperienced with asbestos work).

(d) July 25, 2012 - issued to contractor for B. Whittingham - a representative of WorkSafe BC attended to review in detail the procedures required for drywall work.

(e) August 16, 2012 - issued to B. Whittingham - the inspector noted that work had begun or was completed with respect to suites 4, 7 and 8, but that no hazardous material survey had been undertaken. Numerous violations were noted. The report states in part:

Before work began on the demolition or salvage of machinery, equipment, buildings or structures, the employer or owner:

- failed to ensure that a qualified person inspected the site to identify any asbestos — containing materials, lead or other heavy metal or toxic, flammable or explosive materials that may be handled, disturbed or removed;
- did not have the inspection results available at the worksite, including any drawings, plans or specifications, as appropriate, to show the locations of any hazardous substances;
- failed to ensure that any hazardous materials found were safely contained or removed; and
- where hazardous materials were discovered during demolition work that were not identified in the inspection required by paragraph (a), failed to ensure that all work ceased until such materials were contained or removed.

This is in contravention of the Occupational Health and Safety Regulation Section 20.112.

Before work begins on the demolition or salvage of machinery, equipment, buildings or structures, the employer or owner must

- (a) ensure that a qualified person inspects the site to identify any asbestos — containing materials, lead or other heavy metal or toxic, flammable or explosive materials that may be handled, disturbed or removed,
- (b) have the inspection results available at the worksite, including any drawings, plans or specifications, as appropriate, to show the locations of any hazardous substances,
- (c) ensure that any hazardous materials found are safely contained or removed, and
- (d) if hazardous materials are discovered during demolition work that were not identified in the inspection required by paragraph (a), ensure that all work ceases until such materials are contained or removed.



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This owner who also serves as the president of Strata Plan 770 is aware of the requirements regarding hazardous materials assessments prior to renovation (and materials disturbance) (Reference IR 2012112840146)

And, as evidenced by the work underway in suites 4, 7 and 8.

Building materials that are likely asbestos containing have been disturbed without the use of safe work procedures.

The owner of these workplaces is not complying with the Workers Compensation Act Part 3, the regulations and any applicable orders.

This is in contravention of the Workers Compensation Act Section 119 (c).

The owner is functioning as the prime contractor for the purposes of renovating Suites 4, 7 and 8 in this condominium managed by Strata Plan 770

Building materials likely to contain asbestos, have not been assessed prior to the commencement of renovations and have been disturbed in the course of these renovations.

The prime contractor of a multiple — employer workplace has not ensured that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated, and done everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Part and the regulations in respect of the workplace.

This is in contravention of the Workers Compensation Act Section 118(2).

(f) August 28, 2012 - issued to Strata VIS770 - required the employer (the strata council) to put in place a process to ensure future compliance with the *Workers Compensation Act and Regulations* through an amendment to its bylaws.

(g) September 25, 2012 - issued to B. Whittingham - inspector found continuing non-compliance with respect to renovations in units 4, 7 and 8.

(h) September 25, 2012 - issued to B. Whittingham - stop work order in relation to renovation work on suites 4, 7 and 8 until a hazardous materials survey has been undertaken.

(i) September 26, 2012 - issued to Strata VIS770 - inspector had attended again observing renovation work in suite 1 and discovered that work was being undertaken in the crawl space which was known to contain asbestos. A stop work order was issued until a hazardous materials survey was undertaken for that area.

(j) October 4, 2012 - issued to Strata VIS770 - directive order with respect to continuing work in the crawlspace.

## Discussion

27 As noted above, the respondent took the position in the response to petition filed August 17, 2012 that the relief sought by the petitioners should not be granted because the **strata corporation** has not failed to enforce bylaws 3(5) and 4(1)(a) of the Strata. In oral submissions at the hearing, Mr. Whittingham conceded that there had been numerous violations of the regulations, a concession virtually compelled in light of the history of violations reported in the

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Inspection Reports from WorkSafe BC.

28 It was his submission that the owners who were undertaking renovations, himself and Mr. Vilnis, were well intentioned, but not fully aware of what was required. In my view, this contention cannot withstand scrutiny. The owners were given clear instructions in the Survey provided to them in August 2011 and then reminded of the requirements repeatedly by Mr. Fanaken and Ms. Chorney thereafter. Even when WorkSafe BC intervened and issued violation reports, detailing the requirements and responsibilities, violations continued. Indeed the violations continued even after the response to the petition was filed as evidence by the chronology of Inspection Reports. The Bylaws require compliance with applicable regulations.

29 In my view, the chronology set out above establishes that the **strata corporation** has repeatedly failed to enforce the bylaws in relation to this issue.

30 Mr. Whittingham next contended that although the owners were not in compliance with the regulations, it could not be said that the strata council had failed to perform its duty to ensure compliance. The problem with this contention is that two of the three members of the council were the owners who were racking up the violations. Thus, the separation between council and owner is not of practical significance in these circumstances. In any event, the record does not disclose actions taken by council to enforce the bylaws after the departure of Mr. Fanaken, the administrator.

31 Mr. Whittingham's final submission was that the members of council have now learned their lesson, are cognizant of their responsibilities and will do better in the future.

32 I turn to the relief sought by the petitioners. The petitioners seek:

1. A declaration that the respondent **strata corporation** has failed to enforce bylaws 3(5) and 4(1)(a) of the **strata corporation**.
2. A declaration that in failing to enforce bylaws 3(5) and 4(1)(a), the respondent **strata corporation** is in breach of its duty to protect residents of and visitors to the **strata corporation's** building from the hazards posed by asbestos.

33 In light of the record I find that the **strata corporation** has failed to enforce bylaws 3(5) and 4(1)(a) in relation to the circumstances surrounding the renovations undertaken by Messrs. Whittingham and Vilnis. The presence of asbestos in the Building is well documented. The risks posed by asbestos are also well documented. I find that the failure of the council to enforce the bylaws is in breach of its duty to protect residents, visitors and workers at the Building from the hazards posed by asbestos. Accordingly, I grant the declarations sought by the petitioners.

34 The petitioners then seek two orders, namely:

3. An order pursuant to section 165 of the Strata Property Act that the respondent **strata corporation** perform its duty under bylaw 3(5) by ensuring compliance with all laws regarding asbestos assessment and abatement whenever renovations or repairs are undertaken in the **strata corporation's** building.
4. An order pursuant to section 165 of the Strata Property Act that the respondent **strata corporation** perform its duties by taking all reasonable measures to ensure that residents of and visitors to the **strata corporation's** building are protected from the asbestos hazard posed whenever renovations or repairs are undertaken in that building.

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35 This relief is sought pursuant to s. 165 of the *Strata Property Act*, S.B.C. 1998, c. 43, which provides:

**165** On application of an owner, tenant, mortgagee of a strata lot or interested person, the Supreme Court may do one or more of the following:

- (a) order the **strata corporation** to perform a duty it is required to perform under this Act, the bylaws or the rules;
- (b) order the **strata corporation** to stop contravening this Act, the regulations, the bylaws or the rules;
- (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

36 Mr. Justice Schultes in [Chorney v. The Owners, Strata Plan VIS770, 2011 BCSC 1811](#), discussed the approach the court should take to the exercise of the discretion created by the section as follows at paras. 31 and 32:

Put another way, court intervention in strata disputes should be limited to that which the governing council or administrator are incapable of doing for themselves. If fines are unsuccessful in remedying the problem, the administrator may seek injunctive relief through the further application of s. 165. That course of action always remains open to the petitioners as well.

I believe that this more restrained approach to the application of s. 165 is consistent with the analysis in the recent decision of our Court of Appeal in [Jiwan Dhillon & Company Inc. v. Gosal, 2010 BCCA 324](#).

37 At the hearing the petitioners sought an order pursuant to s. 165(c) that the **strata corporation** be required to provide owners with copies of all present and future WorkSafe BC Inspection Reports and Hazardous Materials Surveys, or similar assessments issued in relation to the Building. The respondent consented to this relief and I made the order with the added *proviso* that such reports be provided within seven days of receipt. I agreed with the submission of the petitioners that if such information is required to be disclosed on a timely basis, the **strata corporation** will be made accountable and there will be less opportunity for it to avoid compliance with its responsibilities.

38 Although there has been a history of failure by the council to perform its duty in relation to the matters at issue in the petition, I have concluded that further orders are not called for at this juncture. I am prepared to take Mr. Whittingham at his word that future performance will be consistent with the council's responsibilities in this regard. Accordingly, I decline to make the orders sought in paras. 3 and 4 of the petition.

39 The petitioners have achieved substantial success. They will have an order for costs.

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