



## **SPABC LEGAL CORNER**

### **The Good, The Bad, and The Proxy: A Review of *Shen v. The Owners, Strata Plan EPS3177*, 2020 BCCRT 1157**

**by Lisa Mackie, Alexander Holburn Beaudin + Lang LLP**

Just when Strata Councils thought they had a handle on their General Meetings, along came a pandemic to really liven up the event. Since British Columbia declared its state of emergency on March 18, 2020, strata corporations across the province have been grappling with managing their meetings while minimizing the risk of COVID-19 transmission in their community. It has been an unprecedented balancing act for Strata Councils, and an issue that has gone viral at the Civil Resolution Tribunal (“CRT”).

Over the last year, the CRT has published a potpourri of pandemic-related decisions ranging from contested facilities closures, to maintenance delays, to the predictable noise disputes arising from everyone living and working under the same roof. The COVID-19 pandemic has really given new meaning to the Court’s historic observations in *The Owners, Strata Plan LMS 1537 v. Alvarez*, 2003 BCSC 1085: “you are all in it together.”

### **All In**

A dispute about the validity of a General Meeting is hardly new territory for the CRT. However, a dispute regarding the use of “restricted proxy” voting during a pandemic certainly broke new ground.

In the case of *Shen v. The Owners, Strata Plan EPS3177*, 2020 BCCRT 1157 (“*Shen*”), the CRT was tasked with deciding whether a Special General Meeting conducted largely by proxy still met the requirements of the *Strata Property Act* and the community’s bylaws. Although the CRT ultimately found that restricted

proxy voting was an acceptable option to deploy for owners during the pandemic (in order to safeguard physical distancing measures and comply with related health orders), the CRT nonetheless concluded that this voting mechanism did not obviate the need to meet ordinary notice requirements, follow traditional meeting procedures, or offer alternative voting options.

### **What Went Wrong?**

In arriving at its conclusion to invalidate the Special General Meeting (“SGM”), the CRT noted the following procedural missteps:

- The strata corporation treated the restricted proxies as “advance voting ballots” rather than what these proxies actually were: forms appointing a person to stand in the place of the voter at the SGM;
- Both the community’s bylaws and the *Strata Property Act* afforded all eligible voters the option of appearing in person or by proxy. The Notice for the SGM did not afford owners with any alternative means to attend the meeting apart from restricted proxy;
- The strata corporation could have facilitated electronic attendance (telephone or computer) at the meeting, which would have met physical distancing measures and which was expressly enabled for all strata corporations under Ministerial Order No. M114;
- The strata corporation required owners to use its designated proxy-holder for voting, rather than allowing owners to freely choose their own proxy as permitted under section 56 of the *Strata Property Act*;
- The strata corporation could not prove that their SGM Notice was issued within the 2 week timeline prescribed under section 45 of the *Strata Property Act* or in the manner prescribed under section 61. Reminder notices or posted messages about the meeting in the common areas or facilities is not a substitute for proper notice; and

- The  $\frac{3}{4}$  vote resolution contained in the SGM Notice did not match the resolution published in the SGM Minutes. Even though the resolution was not substantively changed, there was no evidence that a resolution amendment was ever voted on or approved.

In the end, the CRT concluded that the SGM was not validly called and the voting was therefore invalid. The CRT did, however, note that the strata corporation could try again at another General Meeting. The CRT also concluded that while the *Strata Property Act* requires that eligible voters be provided the opportunity to vote in person or by proxy at an SGM, the legislation does not actually mandate any pre-vote discussions as part of that participation. With that said, communities should take special care to review their bylaws to confirm whether any other meeting procedures have been adopted which would afford this opportunity to voters beyond what is statutorily required.

### **Where Do We Go From Here?**

While *Shen* does not ban restricted proxy voting, it does serve as a useful reminder for Strata Councils who wish to deploy this voting option for their next General Meeting. Before calling a General Meeting, Councils wishing to encourage restricted proxy attendance should be careful to mind the V.O.T.E.:

**V**olunteer other attendance methods apart from restricted proxy voting (e.g. limited in-person attendance, telephone attendance, computer attendance).

**O**nly deliver Notice of a General Meeting using the prescribed form, content and timing under the *Strata Property Act*.

**T**ake a look at the community's registered bylaws to verify whether any additional voting requirements, notice procedures, or voting procedures apply.

**E**nable owners to select their own proxy holder, not just a person suggested from the Strata Council or property management.

Just remember: you are all in it together, and every vote counts.

**This case comment was prepared by Lisa Mackie, Partner and Strata Property Practice Leader, Alexander Holburn Beaudin + Lang LLP**

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