

Office of the Commissioner for Body Corporate and
Community Management

SCA State Conference 2016

*“The intrigue of adjudication”: recent notable
and noteworthy orders and what they may
mean for you*

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Management



Firstly – some context

As of end of December 2015:

No. of schemes:	45,076
No. of lots:	427,913
Standard	28,903
Small	9,397
Accommodation	3,507
Commercial	1,958
Two-Lot	1,388

Titles Office is aware of the discrepancy in the total number of schemes

Statistics cont.

Summary	No. of schemes
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6 Lots and under	31,733
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7 to 10 Lots	5,531
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11 to 20 Lots	3,741
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21 to 50 Lots	2,600
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51 to 100 Lots	1,060
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Over 100 Lots	411
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TOTAL	45,076
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Summary	No. of Lots
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6 Lots & under	103,083
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7 to 10 Lots	46,039
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11 to 20 Lots	54,112
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21 to 50 Lots	83,865
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51 to 100 Lots	74,620
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Over 100 Lots	66,194
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TOTAL	427,913
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Statistics cont.

Commissioner's Office 2014-2015

- 1,284 applications lodged
- 27,380 client contacts
- 66.7% of conciliation applications resolved by agreement
- 1.1% of adjudication orders overturned or altered on appeal
- 67% of adjudication applications resolved within 60 days of referral

Why adjudication orders 'matter'

- 'Precedent'
- Guidance for self-management
- Search of orders – disclosure for prospective owners
- Important qualifier: each case is considered on its merits

Intriguing orders

The mysteries of the quorum



Intriguing orders

- Sierra Grand [2015] QBCCMCmr 447 (25 September 2015)
- Owner v BC
- Disputing validity of motion purportedly passed at AGM re: air-conditioning systems at the scheme, raising special levy

Intriguing orders

- Adjudicator said:

“I consider that section 81 does not preclude an individual from being a ‘voter’ if they owe a body corporate debt. Therefore, I consider that any voters who were disqualified from voting on the basis that they owed a body corporate debt would still be counted when determining the number required to constitute a forum”

Intriguing orders

Toilet noises...



Intriguing orders

- Kooba Court (09 February 2016)
- Two-lot scheme, owner v owner
- At issue: amongst other things, whether sounds of toilet use are unreasonable – and what could be done about it
- Applicant owner sought ‘nuisance’ order

Intriguing orders

- **Adjudicator said:**

“Can the Applicant...be expected to put up with the very ordinary, but very unpleasant, noises from the lot above, in that they are expected sounds from living in proximity to another lot? I cannot order the occupants of Lot 2 not to use the toilet, or to use it only at certain times of day”

And

“I am satisfied that the noise is objectively unreasonable. Whilst it may be unavoidable in its creation, it is unreasonable for the Applicant to have to listen to it every night or morning whilst lying in her bedroom below.”

And

“I therefore conclude that unreasonable interference is caused to the Applicant’s unit by the transference of sound through a concrete slab with inadequate sound isolation. The sound commences in [the Respondent’s] unit but carries through into the Applicant’s unit”

Intriguing orders

- Adjudicator declared:

“the two owners in this scheme...are jointly responsible for improving the noise attenuation of the slab between [the Applicant’s] bedroom and [the Respondent’s] toilet

- Adjudicator ordered:

- Applicant to trigger works to be carried out, as per quote; and
- If so, respondent to provide quote for complementary works and make the lot available for works; and
- All works paid for in equal shares by applicant and respondent

Intriguing orders

Communication overload



Intriguing orders

- Tank Tower [2015] QBCCMCmr 322 (9 July 2015)
- BC v owner
- Seeking orders for 'nuisance' breach and/or by-law breach
- Respondent had been sending a large volume of correspondence on regular occasions to numerous people on the committee
- Applicant asserted the correspondence is repetitive, aggressive and threatening

Intriguing orders

- Nuisance could not be made out; however, BC had a specific by-law about reasonable communication with committee

- Adjudicator said:

“In sending emails to multiple persons, the respondent does not appear to understand that individual committee members have no capacity to unilaterally act or respond on behalf of the Body Corporate. Responses to correspondence, and action on issues raised, can generally only be determined by the Committee as a whole, for example through a formal committee meeting. The respondent’s demands for acknowledgement of correspondence and action within specified timeframes, are not mandated by the legislation and fail to recognise the statutory decision-making obligations”

Intriguing orders

- Adjudicator found a by-law breach
- Adjudicator ordered there be restrictions placed on respondent's communications
- BC not required to acknowledge communications and can disregard those that do not comply with restrictions
- BC still required to act reasonably, e.g., in determining if communications repeat matters already raised

Intriguing orders

Smile for the camera...



Intriguing orders

- Xanadu [2015] QBCCMCmr 381 (14 August 2015)
- BC v caretaking service contractor
- At issue: whether CCTV footage is a body corporate record
- A police incident occurred on common property requiring the footage, which was handed over incomplete

Intriguing orders

- Adjudicator found CCTV footage was body corporate property constituting a 'record'
- Subsequent issue: was BC request valid?
- Adjudicator said:
“...because section 204 of the Accommodation Module requires and authorises body corporate records held by a service contractor to be provided to the Body Corporate, the disclosure of body corporate records under that section that include personal information is authorised by law”

Intriguing orders

A ghost building (temporarily, anyway)



Intriguing orders

- Artique [2015] QBCCMCmr 526 (4 November 2015)
- BC v various occupiers
- Applicant sought urgent orders to have all occupiers vacate scheme land for a day while urgent electrical work took place
- At issue: occupier safety; BC responsibility; practical issues

Intriguing orders

- Adjudicator considered as emergency application, found it was just and equitable for BC to take the action it proposed – taking into account occupier safety and BC responsibility to maintain common property
- With 57 affected occupiers, issue of distributing notice of order practically
- Adjudicator afforded BC a few options to achieve this

Intriguing orders

Cast your vote!



Intriguing orders

- Florentino Apartments [2015] QBCCMCmr 253 (21 May 2015)
- Owners/caretaking service contractors v BC
- At issue: validity of secret voting paper that had voters' names on it; related to secret voting on a motion to extend contract

Intriguing orders

- Adjudicator found voter had ‘*clearly*’ not kept their vote secret – but did this affect validity of the vote?
- Adjudicator said:
 - “The specific voting procedures in the legislation exist to protect voters from having their voting intentions disclosed without their consent. It does not of itself prevent voters from choosing to disclose their voting intentions” and*
 - “The only person who could have been disadvantaged by the message on the voting paper was the voter themselves”*

In conclusion

- Broken record alert, but applications always considered on merit
- Appeal may confirm/deny decision
- Ultimately, legislation is about ‘self-management’ – decision-making based upon accurate and qualified information