1. By virtue of the fact that the ownership structure of a strata property is generally more complicated than a freehold title, expropriation of a strata property often presents a number of potential legal and logistical difficulties and a number of added costs and unavoidable delays that must be taken into consideration when the expropriating authority is considering acquiring land for a given project.

2. There are three primary parts of strata property that might be affected by an expropriation (be it a section 3 agreement to expropriate or a section 6 formal taking – the common property, limited common property and the individual strata lot.

3. Each will have different legal and logistical considerations, and those in turn will differ again depending on whether you proceed under section 3 or section 6.

4. With a section 3, the primary consideration is consent – it is essential to establish, for the land title office, an evidentiary basis to show that the appropriate parties have consented to the disposition of strata property. With a section 6 formal take, where consent is not really an issue, the focus is more on the related issues of naming, notice and service.

5. The issue of strata corporations first hit us around the time of the millennium line construction, when it became apparent from the design plans required RTP to acquire common property of several commercial strata which, in turn, had hundreds of individual owners. The crux of the problem is an apparent disconnect between ownership and control of the common property.

6. Section 251(1) of the Strata Property Act requires the Registrar of Land Titles to include, on each indefeasible title for a strata lot, a reference to the owner's share in the common property created by the strata plan. When you search the title of an individual strata lot, the resulting legal description will invariably be, for example, "Strata Lot 1 of Strata Plan VR3825 <u>together with an interest in the common property as shown on the Schedule of Unit Entitlement.</u>

7. Section 251(2) of the Strata Property Act however prevents a strata lot owner from dealing with his share of the common property separately from his indefeasible title to the strata lot. That authority, by virtue of Section 80 of the Act remains vested in the Strata Corporation.

8. In a situation where there is a "consensual" acquisition of a simple charge statutory right of way, the answer is reasonably straightforward, if not always fast or simple – Section 80(2) of the Strata Property translates into a few more steps for the Strata Corporation and one more piece of paper to satisfy the Registrar of Land Titles. For the Strata Corporation the steps involve a general meeting, a resolution approving disposition and approval of the approving resolution by ¾ of the strata property owners present and in a position to vote. (The politics of convincing ¾ of the strata owners to vote in favour of the resolution is a different matter entirely.)

9. It is the politics of convincing strata property owners, who sometimes number in the hundreds that can force a statutory authority to opt for a formal acquisition, in which case convincing the owners to approve the acquisition is no longer an issue; the issue instead becomes one of logistics.

10. Despite argument that the Strata Property Act was clear in suggesting that the granting of a charge against the common property was a matter within the exclusive domain of the strata corporation (as a separate, legal entity who acts on behalf of all owners), the Land Title Office refused to be swayed by the elegant argument of the lawyers. To the Registrar, section 80(1) of the Strata Property Act makes the individual strata lot owner an "Owner" within the meaning of the Expropriation Act – as such, the Land Title Office required and still requires that, in addition to the Strata Corporation, each and every strata lot owner must be named in the Expropriation Notice. Worse (from the perspective of the expropriating authority, at least) the Land Title Office took the view that a charge-holder, having a mortgage registered against a strata lot by virtue of Section 80(1) of the Strata Property Act also had an interest in the common property that required it to be named in an Expropriation Notice – despite the fact that they don't have any real say in a consensual grant of a charge right of way over the common property.

11. The effect of this is that in preparing an expropriation notice, we have to search not only common property sheet in order to determine who has a registered charge directly against the common property which requires notice under the Expropriation Act, but, also every title to every strata lot in order to ascertain who is the registered owner of each strata lot and who has a mortgage registered against each strata lot.

12. The logistical nightmare should be obvious – earlier this year we expropriated part of the common property of a residential strata in False Creek. In addition to the strata corporation and the four parties having charges directly over the common property, we had to name the owners of 146 strata lots (some of which had multiple owners) and 17 financial institutions holding the mortgages over those of the 146 strata lots which weren't clear title.

13. Even worse, we are in the middle of a hot real estate market. The rate of property turnovers means that between the time the titles were searched and the Expropriation Notice prepared and signed, and the time that the Expropriation Notice was actually filed, title information invariably changed, and the Notice was bounced and had to be corrected. With a strata property of any significant size it is almost a guarantee that except with the grace of god, changing title information will mean your Notice is defected.

14. The next step, of course, is service. We've had to name them and as a result of the Expropriation Act, particularly section 6(a)(ii), we had to serve them. The 146 lot strata property that I noted before took three weeks to fully serve (using registered mail wherever possible). Service costs alone broke nine thousand dollars. (We got a volume discount and a hand written note on the invoice thanking us for the business.)

15. A relatively "minor" issue that we dutifully tried to ignore is the fact that turnover being what it was, some of the individual lots sold after we filed the Notice (there being no actual restriction on sales or notations on the individual properties) and service effectively went sideways. We tried to protect as much as possible against that by posting Notice on the front door and under the door of each strata unit and then searching out new owners where necessary and delivering copies to them as well.

16. There are two other property acquisitions that one can employ. The first is what we call by way of shorthand, an SRW in fee. A Plan is filed under Section 113 or 114 of the Land Title Act outlining part of an existing parcel. (Under a consensual or a Section 3 acquisition, the Owner then signs a Form A Transfer; title is raised and transferred into the name of the statutory authority.)

17. On an expropriation basis, the process for acquiring an SRW in fee is really no different than taking a charge right of way, except that the end result is slightly different – you get a fee simple title as opposed to a charge. We still have the same notice and service issues. In fact, it may be easier because you don't worry about drafting and then subsequently fighting about the meaning of specific charge SRW terms.

18. A consensual or Section 3 based acquisition of an SRW in fee of common property has never been done, at least according to the SRW. There is a 5 lot strata in the Bridge Project where such an acquisition is contemplated but it is new ground for the LTO and the logistics haven't been worked out. The problem stems from the fact that a Section 113 SRW in fee acquisition is a subdivision, and a whole new set of rules apply – Section 80(2) and Section 253(1) of the Strata Property Act require compliance with section 97 of the Land Title Act concerning subdivision plan signatures, which include signatures of the owners and charge-holders. The problem is that it a Section 113 plan isn't signed – you don't get municipal approval, generally speaking, and title isn't raised by the plan – it is raised by the Form A transfer. The possibility exists that the LTO would require every owner to sign the Form A. Our suggestion generally is to forget it, and do a Section 6 unless the Strata is 5 owners or less, and clear title all around.

19. The final type of acquisition is a Road dedication under Section 107. Where stratas are concerned, these are rare. A Section 6 acquisition of these interests are as straightforward as a Section 6 acquisition of an SRW in fee, provided that you deal with the plethora of service and notice issues. Consensual or Section 3 based Road dedications are more complicated; the same Section 80(2) and 253(1) of the Strata Property Act and Section 97 of the Land Title Act require that the plan (or a schedule to the Plan) be signed by ALL owners. Considering the potential nightmare of having to get several hundred signatures on a plan, and considering that all it takes is one individual to bugger up the entire process, our suggestion here again is forget it, and do a Section 6 unless the Strata is 5 owners or less, and clear title all around. (We recently did one where there were 6 lots, 3 owners, 2 banks plus Hydro, Terasen and the municipality. That was difficult and took a month longer than we would have liked.)

20. Moving beyond the problems in acquiring the property, the next we have is in arriving at compensation and dealing with owners. Where we have a Section 6 formal take, we have named several hundred people. We have to be clear in the Notice why people are named but at the end of the day, the individual owners potentially may have an ability to claim compensation. That is not to say that they would generally be successful, and in fact by and large I don't think they would be. But the sheer volume of potential claimants is a dark cloud that looms aver all Strata acquisitions. With a Section 3 we deal only with the Strata Corporation, on the basis that they dispose of the property in accordance with their own internal rules and they accept payment on behalf of all owners. That approach serves us well in a cooperative environment.

21. However, with both a Section 3 and a Section 6 we never reach a true "full and final" settlement except through the passage of time and the statute barring of claims. The Strata Corp. can dispose of the property but it can't settle an expropriation claim on behalf of the owners. Where there are several hundred owners, we can't practically go to them all to seek release after release – the economics generally suggest that we can't, and since we deal with the Strata Corp. on behalf of all owners we don't loose sleep (but the cloud still looms.)