

Publication Date: 20 October 2020
YSP Podcast Transcript: Episode 236. Jo Cooper and Sharon Levy on their Court of Appeal Win

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Intro: Welcome to Your Strata Property, the podcast for property owners looking for reliable, accurate and bite-sized information from an experienced and authoritative source. To access previous episodes and useful strata tips, go to www.yourstrataproperty.com.au.

Amanda Farmer: Hello, and welcome to this week's podcast episode. I am your Host, Amanda Farmer, helping you make sense of this often complex, confusing world of apartment living. This week, I'm bringing you the audio recording from my live video interview with Jo Cooper and Sharon Levy.

Now, Jo is the lot owner who recently won a court battle here in New South Wales, allowing her to keep her pet dog, Angus, even though her building has a by-law banning pets. Sharon Levy is her lawyer who led her case to success before the New South Wales Court of Appeal.

This interview happened over on Facebook last Friday the 16th of October. We streamed it to LinkedIn as well. The judgment itself was handed down earlier last week on a Monday. What you're about to hear is an edited version of that video interview. You can watch the full version over on Facebook. If you do that you can see Jo, Sharon, myself, as well as meet Angus. You'll hear him make a cameo here in the recording.

Just head over to Facebook, type Your Strata Property into the search bar, and you will see the video there on our Facebook page. Well over 2,000 of you have already watched that video, and as you'll hear in the audio here now we had many, many people tuning in live last Friday, commenting and asking questions, which we have done our best to answer as we go along.

Now, the link to our Facebook page as well as all the links that we mention in this chat, including the link to go and read a copy of the judgment, are in the show notes for this episode. You'll find them over where all of our podcast episodes are on yourstrataproperty.com.au/podcasts, and you can also get a copy of the transcript there as well.

Now, this is a longer episode than our usual, but this is such an important development in New South Wales strata law. I haven't wanted you to miss out on any of the discussion. The first half of my chat is with Jo Cooper, as she shares with us exactly why she decided to turn her life upside down these past few years, including what the future holds for her now.

The second half of my chat is with Sharon Levy, who walks us through the legal basis for the decision, and we debate between us what we each think the impact of this decision will be on the by-law making power for New South Wales strata schemes.

In particular, we answer questions about by-laws banning smoking, by-laws banning short-term letting, and by-laws that stipulate a dress code. For example, what you can and can't wear in the swimming pool, and that has been a topic here in the New South Wales Media recently.

Listen carefully for what Sharon and I have to say about those areas. Our view may be a little different to the views you've been hearing or reading elsewhere. You'll notice that I personally do not believe that this Cooper decision at all endangers our democratic rights in our apartment buildings, or improperly restricts our by-law making power.

I believe this is an excellent decision from the highest court in our state of New South Wales, and it is one that we have sorely needed for some time. I have welcomed it with open arms, almost, but not quite as much as Jo Cooper and Sharon Levy have. With that, let me take you straight on over to my very recent chat via Facebook Live with Jo Cooper and Sharon Levy.

Hello, and welcome everybody. We are here on the Your Strata Property Facebook page, and also heading out to LinkedIn. I am your Host today, Amanda Farmer. I am the founder of Your Strata Property. We are often live on a Friday afternoon chatting about our week in strata, and what a cracker of a week this one has been.

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On Monday this week, the New South Wales Court of Appeal handed down its decision in the case of Cooper and the Owners of Strata Plan 58068, and since then everyone who knows a little bit of anything, something about strata in this state has been talking about this case, about the outcome in particular, which is being reported in some circles as a surprise outcome, interesting. Perhaps not as much of a surprise for some.

In case you missed it, where have you been; under a rock, busy-busy? If you've missed it or you just want a quick summary, the Court of Appeal, the highest court in New South Wales, in a unanimous decision that is three judges, found that a by-law preventing an owner or occupier of a strata lot from keeping an animal on their lot or the common property was invalid, because it was considered to be harsh, unconscionable or oppressive, and under our New South Wales Strata Law we cannot have by-laws that are harsh, unconscionable or oppressive.

Now, I do have a link to the case for you, so that you can read it. I suggest you go and check it out. It is, at 102 paragraphs, it is not all that long for a decision of this importance, and it is fairly easy to read, unlike some of our judgments. Definitely check it out.

It has a full copy of the by-law that was under challenge. In this case, it's important that you have a look at it, you understand what that particular by-law said for that particular building. It will be a by-law that is familiar to many of you. Many of you will have just this by-law in your own buildings, so have a look at it.

I am seeing now, I'm just flicking back to my screen and seeing how many of you are here ready to learn more, ready to meet our special guests for today. I do have them waiting in the wings for you, and some of you are coming in and saying hi, which is awesome. I always like to see who is here joining me for our Friday Live chat. I'm saying hi to Sean, and Gary, and Michael. It is great to see you here. If you want to drop me a hello feel free. Go on ahead in that comment section. I know some of you will be joining me from LinkedIn as well.

I am very pleased to say that on Monday it was actually Cathy Sherry who alerted me to the fact that this decision had been handed down. Cathy has chatted to us live on this page previously. She has been a podcast guest a number of times. She takes a very clear view on pet bans and by-laws that unfairly regulate the keeping of animals in our strata schemes, and I've had a very happy note from her in my inbox.

I was in podcast interviews and member calls for most of the morning, and when I saw her note I was just thrilled to hear about this success. A lot of the legal principles that Cathy has been talking about, that she's been writing about for such a long time when it comes to regulating what people do in their own homes when it has absolutely no impact on anyone else.

Cathy has said for a long time that, that is not legal, and we needed some restraints on our by-law making power, and we have that now with this Court of Appeal decision. Cathy's book is also quoted in the judgment, so I think she was a little bit happy about that.

Now, today we're talking about this case, we're talking about the legal principles, we're talking about the fallout, the outcomes. We are answering your questions about how this may apply in your building and to your building situation when it comes to your own by-laws about pets, and I am thrilled to be able to take you behind the scenes.

I have two very special guests for you today. They are indeed Jo Cooper, our victorious lot owner, as well as Sharon Levy, the lawyer who led Jo's case to success, and I am bringing them on very, very soon.

I have already told you that this is a cause close to my heart. I bought into a strata building a couple of years ago, and I have a family. We have a little boy. He was about 5 years old when we bought in, and he was intent that, *"Mom and dad, I would like a puppy. We're going to have a puppy,"* and we bought into this building.

I looked at the by-laws, of course, as purchasers should always do, and I saw that there was a ban on pets, and my husband said to me, *"Amanda, not cool. We want to get a dog and there's a ban here,"* and at that time these cases were just starting to come out of the Tribunal, saying that these bans were harsh, unconscionable or oppressive.

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We'd had the Yardy case, little Baxter. That was our first case that said this ban is not legal, and these by-laws were starting to be questioned around the state, and I started to have this conversation with my committee, with the Strata Manager when I first took up ownership in the building. Great way to introduce yourself. Hi, I'm a Strata Lawyer and I'm about to challenge your pet ban, because I want a dog.

We had a meeting. I proposed, what I drafted was a new by-law changing what was the pet ban, and it was instead a by-law that pets were allowed on application to the committee. The application could not be unreasonably refused, and if the application was approved then these are all the conditions that apply to the keeping of the animal.

Very reasonable conditions, and I have to say at that point in time I was lucky that I had the support of other owners at the general meeting. The ban was changed to an application process. That was a couple of years ago. Soon after that, we got our little Louie. At the moment, we've got 2 or 3 dogs in our building. We're a 37 lot scheme, and over time I think the first year we had about 5 dogs in the building.

Tell you what, you wouldn't know they were there. My neighbour said that Louie's the most well-behaved resident in the block, so a cause close to my heart. I know what it is that you guys are going through, have gone through, what Jo has gone through, and part of the reason why I'm so pleased that we have this result this week.

It is time to welcome in our first guest of today, and she is indeed Jo Cooper. Born and raised in Sydney, and loving this town, Jo is a singer/songwriter. She gave up her job in the corporate world to follow her dream of singing. She said she always knew that she wanted to sing from a very young age, but her parents didn't agree to it being a real job.

She writes her own songs and has nearly finished her very first album. She says she talks a lot and loves her coffee. As the world now knows, she also loves her very cute miniature Schnauzer, Angus. Welcome in, Jo Cooper. Hey Jo.

Jo Cooper: How are you?

Amanda Farmer: I am doing very well. I've been going on and on about how happy I am this week. How happy are you, lady?

Jo Cooper: I'm happy. I'm really happy. It's a surreal feeling. A lot of people have asked am I jumping out of my skin? I'm not. I'm exhausted I think, first and foremost, so it hasn't really been, I haven't processed it very well yet. It's been a very intense week.

Amanda Farmer: I can only imagine. When did you ... How you feel. When did you start this process? I think we're talking years, aren't we?

Jo Cooper: Yes. 2015, unfortunately, so it's just been over 5 years. If you remember, I contacted you very early on with a little dispute, and that was difficult. Everything's been really difficult. I don't think it should have been that way. I think strata is a lot harder than what it should be, so it's been a long time. Too long.

Amanda Farmer: And where were you when you heard on Monday that you had won this case? What were you feeling? Walk us through it?

Jo Cooper: Okay, so I was at my local Café, Latteria. They have lived through this with me, so you go to your local café and you're blah-blah-blah, and they've seen the cries, they've seen the laughter, so I was there anticipating Sharon's call, because I did say to her, "Look, I can't look up the judgment. You need to call me," and just a minute or 2 after 10:00 she called and she said, "You won," and I cried hysterically. To the point that strangers were concerned for me.

Yes, it was quite, I wasn't embarrassed at the time, because I didn't really, I really thought I was in my own space, but I was on the street in a café. I felt relief, I know that much, because it was a shock cry, but I didn't stop crying for hours. I gave myself a migraine and it wasn't a good day. The outcome was great. I didn't feel great. It was just an outburst of emotions I guess.

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Amanda Farmer: Yes. You'd been holding and carrying so much for so long.

Jo Cooper: Yes, so it was intense. It was an intense, Monday was very intense. It's an odd feeling. I really struggle to articulate how I felt, but the crying was many hours.

Amanda Farmer: Yes, and what has happened since then? That was Monday. It is now Friday. Obviously, you live in this building that has challenged you and brought actions against you. What's been happening at home? How's this played out?

Jo Cooper: Not good. It's still intense. I've been verbally abused and a few physical encounters unfortunately, throughout the few years. Since Monday, it's escalated. It's intense, so I don't know how to describe it. It's not nice. It's more of the same, but worse, obviously, because of the decision on Monday. I'm trying to deal with that, so that hasn't made it easy either. I've been flooded with media calls. That's been intense also, and the best part is I have been inundated with messages, and flowers, and notes left at concierge of people telling me how I've changed their lives, so that's been emotional. Some stories are quite sad, but they make me feel really happy that I took this on, because although I knew it was really important, when you read some peoples' stories you go, *"Yes, this really needs to be addressed."*

Amanda Farmer: Yes, and it has been such a rollercoaster for you, because you were successful at first instance. That was then overturned by the NCAT Appeal Panel, and then you then decided to take it forward to the Court of Appeal. All these ups and downs. What was it that kept driving you? Was it just this sense of justice for other people?

Jo Cooper: It was a mix of a few things. A lot of people see this as just a fight about a dog. First of all, Angus, yes he is a dog, but he's my family member. He ironically, if it wasn't for him, I wouldn't have got through this, because there were some days I would literally lie on the floor, because I couldn't breathe, and he, you know dogs. They know, so he would crawl on top of me and sit here, and just be with me, and that really made a difference.

The second thing for me is I detest bullies more than you can imagine. I really detest bullies, and the reason I took it on is it wasn't a simple case of this building has a pet ban, and I lodged a motion to change it and I failed. It wasn't as simple as that. I knew there was an anti pet by-law in place, but I also knew the operation of the building and I knew people with pets in the building, so I honestly thought it was an outdated by-law and it was as simple as that.

So when I did ask the question, I moved in without Angus. I left him with my sister, because the thought process was, okay, I'll submit a motion for change. If I fail at that, not a problem. I've got the place that I want. Angus is a senior dog. We move somewhere else and wait it out.

It didn't happen that way. I request to submit a motion and my life has never been the same. I was told basically to leave the by-law alone, and the history of the Horizon is you sneak your pet in and all is fine. That just didn't sit right with me, because we have a lot of elderly in the building as well, and one woman said something to me that really has stuck with me throughout the whole thing.

She said, *"I'm a widow. I've lost the love of my life."* She met him later on in life, so she was only married for 7 years, and she said, *"I don't qualify for an assistant or therapy pet, but I want the company. I'm lonely and this by-law enforces solitude on me,"* and I thought this is not good, so it's a mix of things.

Amanda Farmer: Mostly, your keen sense of justice, Jo.

Jo Cooper: I have a huge sense of justice. Yes. That really drives me.

Amanda Farmer: I can see that, and there are so many comments coming in here. I just want to acknowledge some of them. You're getting lots of celebrating here, being told that you're a hero there from Amy. Carrie is saying, *"Woo-hoo Jo."* I'm scrolling back down here. Francine, *"Brilliant Jo."* Shauna's saying, *"The relief would have been so intense. I'm amazed you didn't pass out."* I can just see you crying on the street and people saying, *"Are you okay?"* And you say, *"I'm crying about my court judgment."*

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Jo Cooper: I couldn't tell them. I actually couldn't, and for such a talker I was really struggling to talk, but the boys that are in the café thank God jumped in for me and told people it's actually happy tears, because it didn't really look like happy tears.

Amanda Farmer: Amazing. Agnes is saying, "Yes, family, that's who Angus is. Absolutely," and Ro detests bullies as well. Yes. Nice one. Okay. Now, how's Angus going? Does he sense? I understand how sensitive dogs are and they pick up on that emotion. How's he been this week?

Jo Cooper: Well, he's sick of the photo shoots and the videos. He's like, "I'm done." Do you want me to grab him? He's sitting right here.

Amanda Farmer: Yes, please. Yes, we'd love to see him. The man of the moment. I keep calling Jo the woman of the week here, but we forget there's a... Oh my god.

Jo Cooper: Hey.

Amanda Farmer: He's so cute, everybody. Please. Tell you what you'd fight for him.

Jo Cooper: Yes. He's amazing.

Amanda Farmer: And he's little, isn't he? I haven't met him in IRL, but he's little.

Jo Cooper: He's 9 kilos.

Amanda Farmer: Big enough.

Jo Cooper: Say, "Hi everyone, thank you for the support."

Amanda Farmer: I love it.

Jo Cooper: Yes, I know. He's pretty, he's like, "I don't know that's going on. Humans are all crazy." I'll put him back down.

Amanda Farmer: Lovely to see him.

Jo Cooper: Thank you.

Amanda Farmer: Now, there is a note here from Billen Ben, and we're going to come back to this. I am bringing on very shortly Sharon Levy, who is the Lawyer who led your case to success Jo, and we're going to have a chat to her about the legal issues. Billen Ben is noting that there is an option here for the owners corporation to seek leave, special leave to appeal to the high court, so we will speak to Sharon in more detail about that. Just acknowledging you there, Billen Ben.

What's next for Jo Cooper? You have been so active in this space. You have been advocating for legislative reform. There is an amendment to our, of all things, sustainability bill before parliament at the moment, which would see a specific change to our legislation about this. Are you continuing on in that space?

Jo Cooper: Yes, so I approached Emma a while ago, when I found out about this bill, which I've been criticised quite heavily for, because Politicians are saying it doesn't belong in this bill. However, it just doesn't work that way. I've been watching and waiting for a bill to be put forward that has any connection with the strata legislation and this came up, and I took advantage of that. It's not-

Amanda Farmer: And there's a whole raft of things in that bill. There are things in that bill about enforcing tribunal orders, which

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we've been jumping up and down about for a few years now.

Jo Cooper: Yes, so that's ridiculous. Yes, we are pushing forward with that. It was meant to be discussed this week. They've pushed it to next week, but again no guarantee. They keep pushing it out, and we still have this petition that I really need to get the 20,000 signatures for, so I'm pushing with that. As you mentioned, the strata reform's in November and I believe it's getting pushed to December.

I've been invited to submit a submission and suggestions, and I think to speak at some event. I am going to do that. I feel really strongly about this. I've lived in strata I'd say for 20 years. I've never had an issue, until I moved into the Horizon unfortunately, and the flaws in strata law are ridiculous.

I'm not a Lawyer, but corporation law, if I was to go through this ordeal in a corporate environment there would be a huge investigation, but because this is happening in strata people like me have no protection. There's nowhere to go, so the Police won't help me. Politicians are like, "*You just deal with it.*" NCAT throwing at the book at me and nobody's really listening, so I think strata legislation needs to be ripped up, and somebody who actually lives in strata and is a Lawyer, and has some common sense and compassion needs to rewrite it.

Amanda Farmer: Stop looking at me. I'm just scrolling back to Tracy's comment here, because you mentioned the petition Jo, and Tracy had asked why do we need 20,000? Are you able to explain what happens when we get 20,000 signatures on the petition?

Jo Cooper: Yes, so the amendment's already in parliament. They're playing silly buggers with it. The petition, if we get 20,000, they have to discuss and debate it in parliament, so this excuse of this amendment came in the middle of the night with no, while no one was paying attention, that just throws that out the window and here you go. We've done the petition. You've got your 20,000 signatures. Please debate it, and yourself and Sharon will touch on this later, but although the hardest part was the court we still need the legislation to submit this decision, so people aren't stuck with strata saying, actually, it doesn't apply to our building. We need to make it clear in legislation and make it law, so that's why the 20,000 signatures.

Amanda Farmer: Yes, and we will put a link to that petition in the comments here. That may come after we finish up today, because I don't think I've prepped, and my helper in the background here with that link, but I'll absolutely put that into our comments, so anyone who wants to sign up and support that change can do it, and try and get that before parliament. I'm just seeing Francine is saying absolutely, rewrite it, and Agnes is saying, "*Can I in any way help you on this journey?*" I think signing that petition, and I did see a note, Agnes had said, "*I've already signed it,*" so great to see all of that support here for you.

Jo Cooper: Thank you.

Amanda Farmer: What would you say Jo, to people who are in your position, wanting to keep their family member in the face of a ban or wanting to move into an apartment with their furry friend, what would your advice be now?

Jo Cooper: That's a tough one. I think it's a matter of personality. If you don't have a stomach for controversial backlash, abuse, which I don't think anyone should have the stomach for that, to be honest, it can get very ugly. This has tested me like nothing else. It's a test. It breaks you. However, I would say if you feel strongly enough about it make notes, so I have documented every day and that's the best advice I can give you.

If you can find a property that fits the description and you don't have any challenges, that would be preferable, but that's not easy in Sydney, can I say? I've had a lot of backlash on why would this woman move into a building that has no pet by-law? It took me 10 months to find a place, and to be honest it's in Darlinghurst. I did make the error of assuming it was pet friendly, and I did admit that. However, like I said, I knew there was pets in there, so I thought it was just outdated.

Check the by-laws, although now I just don't believe a pet ban will fly. It's just been ruled that it's too much. Don't go in there with a fight, definitely, because I didn't. I didn't come in here with a fight, but yes. It really depends on personality, but if you feel like it's

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right and that's what's driven me, I knew I was in the right. I knew it. I knew that I was honest from the beginning and I was actually told to be dishonest, and that's the part that wasn't flying with me. Go with your gut.

Amanda Farmer: Yes, I like it, and I think Jo I smiled when you said, "*If you've got the stomach for it,*" because that is exactly what I tell my clients who come to me and say, "*Amanda, there's a ban and I have a pet,*" and certainly before this case. "*There's a ban and I have a pet,*" or, "*I want to change it,*" and I say, "*Look, this is a personal question. It's not a legal question. Do you have the stomach for this? Do you understand what's ahead of you?*"

I definitely think that path is much clearer now and easier, because of all of your hard work Jo, and we're going to get into that very soon now with Sharon, but there are just so many people here with so many grateful messages. You'll have to come back and read through all of those.

Jo Cooper: I will.

Amanda Farmer: And I'm actually-

Jo Cooper: Thanks for sharing the link.

Amanda Farmer: Here we go. Yes, Carrie has shared. Thank you Carrie. I should have put that shout out earlier. That is the link to sign the petition. Thank you so much for that Carrie, and yes I can see Richelle's put a link there as well. Awesome. "*How many signatures do we currently have?*" Says Amy.

Jo Cooper: Give me one second. I shall tell you.

Amanda Farmer: Find out. What I'm actually going to do, Jo has very kindly agreed to hang around in our virtual green room for a little while, while I bring Sharon on, so we will have Jo back towards the end of our chat, to do any wrap up questions, and you can let us know that number Jo, if you don't mind. 13,000?

Jo Cooper: 443.

Amanda Farmer: Okay. Still a way to go guys.

Jo Cooper: Yes.

Amanda Farmer: Alrighty. Thank you Jo. I will have you back on very soon, and I hope Angus is there, well-behaved for you. I know this time of the day is dinnertime for my dog. He's usually-

Jo Cooper: Oh, no. He's got hours.

Amanda Farmer: Good. All right. We will see you in a bit. Thanks Jo. A very happy Jo Cooper right there, and thank you everybody for all of your support there for Jo. We are now going to get into the nitty gritty, some hard legal issues here you are getting today. Two for the price of one. Two New South Wales Strata Lawyers here live for you. If you're coming and you didn't see me earlier, I did say on a Friday afternoon when we're doing these live chats we often call it happy hour and we do celebrate a little bit, so I'm not sure that you can count on me all that much while I have a glass of champagne in my hands. It is that kind of week.

I am welcoming in for us now Sharon Levy. Sharon is a Partner at Bartier Perry Lawyers in Sydney. Her expertise is strata and property disputes, as well as building and construction. She also has extensive experience in general commercial disputes. Through working in boutique and mid-tier firms for almost 20 years, Sharon has acted for a diverse range of clients, including owner's corporations and lot owners in both strata disputes and building defects claims.

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Amanda Farmer: In addition, Sharon is the Founding Chair of a domestic violent shelter, a role which gives her valuable training, insight, experience into the duties and the obligations, which govern many of her clients. She regularly appears in the district and supreme court, as well as the New South Wales Civil and Administrative Tribunal. She prides herself on providing clients with exceptional results, and an exceptional result she has achieved indeed for Jo Cooper. Welcome, Sharon Levy.

Sharon Levy: Thank you. Thank you for having me, Amanda.

Amanda Farmer: A pleasure to have you here with us today. What has your week looked like this week, Sharon?

Sharon Levy: It's been manic actually. It was such a nerve-wracking weekend. Lawyers always want to do good for their clients, but this one held a special place in my heart. I'm a dog lover and a cat lover, so this was a special one for me and certainly a career highlight.

Amanda Farmer: Yes, absolutely, and just so people understand, what happens when we're receiving a judgment is that we're often told by the court a few days before when the judgment is going to be handed down, and Sharon, you would have heard from the judge's associate that the judgment will be delivered at 10:00 on Monday. When did you hear that? Was that Friday, and you had to sit through the weekend?

Sharon Levy: It was the Friday, so I was pleased it wasn't earlier, but it certainly was a long wait, and then on the Monday morning, because it was delivered online, because of COVID, so Monday morning at 9:50 I'm on my refresh button and on my email, wondering whether it was going to come up on case office or be delivered in my inbox, so that's why I received the call at 10:01, because I'd been sitting here refreshing.

Amanda Farmer: Nice one. Now, tell us Sharon, why is this decision so significant for strata owners and residents in New South Wales?

Sharon Levy: Amanda, this is a huge decision, and in terms of where do I start? Certainly, it makes it clear that there's a limit on the power owners corporations have to govern apartment owners. It's clear now that the owners have a right to live in their apartment how they like, as long as it does not then adversely affect the common property or other lot owners.

It's also made it clear that in making the assessment on a by-law and its validity, and in determining whether it's harsh, unconscionable or oppressive, that it's an objective test. It's not a subjective test, so much was made about that in the NCAT Appeal Panel, about the fact that Jo knew what she was buying into. She knew that it was a blanket ban.

The Court of Appeal agreed with us that none of those factors should be taken into account, because it's an objective test. Similarly, the Court of Appeal made it clear that it does not matter that it was voted on by a majority. It could have been voted on unanimously and it would not matter, and that's because the by-law binds other owners who had not purchased in to the building, so they didn't get a chance to vote.

Also, and probably less of a big deal, but also it doesn't matter that a blanket ban would be more convenient to a strata committee. It doesn't make it any less oppressive. It just needs to be assessed as to whether it's harsh, unjust or unconscionable, so lots of lessons, lots of takeaways with this one.

Amanda Farmer: So much. I've read the judgment a few times now, and I keep getting more and more out of it. I just want to address the point about democracy and the democratic process, because it's the first thing that I hear and I'm sure you've been hearing Sharon, and that Jo's been hearing, and it's been in the media. What about democracy? What about the building's right to decide for its owners and for its community what it wants?

I had a meeting with a client of mine earlier this week, who I know has a pet ban, and I said, "Guys, just letting you know, as I'm letting all of my buildings know, that this decision has come out. This is what it means and you may want to have a look at that pet

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ban, at risk of there being a challenge," and of course the first thing the committee said was, "What about democracy?"

What I love about this judgment is that the Court of Appeal said a liberal democracy is not a majoritarian dictatorship. It's still we still have these democratic principles, but there are legal constraints, and this is something that Cathy Sherry has been saying for a really long time. We still need to protect and the law still does protect minorities from oppression. It doesn't mean it's undemocratic at all. We still have that process of going to a meeting and voting, but we have that protection built in for the minority.

Sharon Levy: That's right Amanda, and the Act has been designed with those protections in place, so the ability for an owner to make an application declaring a by-law invalid, to have it checked, so those, they're the checks and balances, so regardless of what the majority has voted on. There are still checks and balances in place, and that's not just the case with this strata legislation, but generally speaking for example, in companies there's such a thing, there's oppression in company, in voting and shareholders, and it's very similar.

Amanda Farmer: Yes. Now, the question that I have had a lot on this Facebook page, particularly since I said you're coming on Sharon, is this one. What does this decision mean for blanket bans? What is the status of a blanket ban now? A by-law for example, that might be identical to a by-law that the Horizon has? What's the status of those by-laws in other buildings?

Sharon Levy: Look, this decision will act as precedent. It binds everybody, and certainly will bind the tribunal in any application. A similar application to what Jo made for example, to have that by-law declared invalid, so while it may be at this point in time still a valid by-law, its days are limited, and if they were, any lot owners were receiving a breach notice for example, for having a pet in contravention of their blanket ban, that lot owner has a very good defense. So if an application were to be made by the owners to NCAT with respect to that contravention, or alternatively if the lot owner was to make an application to the Tribunal to have the by-law declared invalid, that Tribunal is bound by the Court of Appeal decision, so the days of blanket bans are limited.

Amanda Farmer: Yes, and I do caution buildings out there who hear that and say, *"Well, the by-law is still there and if anybody wants to come and bring their animal onto the lot in breach of the by-law, we'll just prosecute them and we'll let all of that play out."* Got to think about the costs involved in that, the emotional strain both on the committee and on the owners. I'm not sure that's the best option and I do encourage buildings to have a chat to, if they have a Lawyer who's helping them or find a Strata Lawyer who understands this stuff, and think about what the best reasonable approach might be for your building now, and planning that over the next 12 months to maybe do a review of the by-laws hand in hand with one of those people who knows their stuff.

Sharon Levy: I think certainly the recommendation by any Strata Lawyer at the moment would be for anyone who has a blanket ban to do an urgent review, and strongly suggest putting in place either one of the model by-laws or something similar, with respect to pets.

Amanda Farmer: Yes, for sure. What about by-laws that may be a little bit different to a blanket ban? For example, a by-law that says owners wanting to keep animals can apply to the committee and the committee has to consider that application, may not unreasonably refuse that application. That's quite common, and a by-law that may have some limits already around animals, so only one dog, or the dog has to be a particular size or particular weight. What are your views on those by-laws now?

Sharon Levy: While the decision only applies to blanket bans it is still a very good guide as to how the court will now consider and apply that test to other pet and any other by-law in fact, so really the question will be whether or not the prohibition or whatever is prohibited will adversely affect other lot owners in the common property, so in terms of, for example, whether or not someone can have a fish in a tank.

Under the Horizon by-law you actually could not have a fish in a tank, which was absurd, so if someone was to make an application to have a fish in a tank and that was refused, then arguably they've got a very strong position or application to take to the Tribunal and have that overturned, because it's been unreasonably withheld, that consent.

So really it depends on the circumstances, but the question will now be whether or not that application or that prohibition is going to

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adversely affect other lot owners. So if someone wanted to have 6 dogs in their apartments, maybe that noise or that disruption may adversely affect other lot owners. If it's 1 or 2 cats, for example, it might be a different story.

Amanda Farmer: Yes, so what we're really getting at here is having in place a process where the committee, if that's the level at which these applications are decided, can exercise their discretion on a case by case basis, and I agree completely Sharon. An application for 6 dogs, and a by-law that says that application must be considered and can't be unreasonably refused. If the committee was then to say, *"Well, we are refusing that for these reasons. We think that the impact on other residents is going to be too significant."* Then that could well be a proper and valid decision.

The Court of Appeal talked about the administrative exercise, and I understand it perhaps was a submission from the other side. The administrative burden of having to exercise that discretion is just too much for buildings and we shouldn't ask that of them, and the Court of Appeal basically said, *"Bad luck."*

Sharon Levy: That's right. They rejected that argument outright, so that was one of the arguments put in that hearing, but it was rejected outright, because it does not justify any administrative convenience by way of a ban, does not justify the subsequent oppression, and look, if you were to look through for example the model by-laws, there are examples after examples of circumstances where the committee is required to give that consent. So there's no reason to be just pulling out the pet by-law and saying we need a blanket ban on this one, because all through the model by-laws there are requirements for the committee to consider positions and applications to do certain things, so there's no reason to separate pets from that decision making process.

Amanda Farmer: Yes. Indeed, and the question that has been coming up in legal circles, Sharon, as you would have seen in peoples' blogs and what they're posting about, and what our colleagues are talking about, is how does the reasoning in this judgment impact perhaps other by-laws that don't deal with pets? I'm seeing some questions come in just in the comments here. I'm going to showcase a question. I know there's quite a few more up there too, which we'll get to. For example, how does this affect a short-term let ban or a no smoking ban? Are those kinds of bans affected by this decision? Now, I'm happy for you there, to jump in there if you like Sharon. I've got some thoughts on that one too.

Sharon Levy: Well, let's confer. My initial thought is that this judgment will absolutely apply to other by-laws. The court has made it clear that the test that has been applied is to the question of whether a by-law is harsh, unconscionable or oppressive. It does not mean that, that test is only confined to a blanket ban on pets, so for example the blanket smoking ban I think it was. Arguably, if a lot owner can contain their smoke to their lot such that the smoke does not intrude or affect other quiet enjoyment of lot owners, then that's going to be okay, so a blanket ban on smoking within a lot in my view is now prohibited.

Of course, that's different. A blanket ban on smoking on the balcony, arguably the smoke will travel on to the other balcony, so fair enough that's going to affect adversely someone's quiet enjoyment of their lot, so that's okay, but I think a blanket ban on smoking within their lot only is now invalid, or will be invalid if it's over at the Tribunal.

Amanda Farmer: I think the key here, Kay and others who are asking this question, and thinking about how this affects other by-laws, in my view is constantly asking yourself what job is my by-law doing? What job does this by-law do? How does it protect the enjoyment, and the Court of Appeal used the words the material enjoyment of other lot owners' property rights? Is it regulating something that if it was allowed, for example keeping the animal, if that activity was allowed does it affect the material enjoyment of other lot owners' property rights?

The Court of Appeal has said in the case of keeping pets if that activity is allowed it has no impact on other peoples' property rights. That's what you do in your own home. Smoking is an excellent example, because I think the argument then becomes does the smoke drift from somebody's internal apartment to the common property or other apartments, and therefore affect the material enjoyment of another lot owner's property rights?

If the answer is yes then a by-law can legally regulate that activity. If the answer is no, the smoke doesn't drift and it doesn't affect anybody else, then I agree the answer would be that's quite possibly a harsh, unconscionable or oppressive by-law, so I keep

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coming back to what job is your by-law doing? Is it protecting other owners that may be affected by this activity? If no one's affected by the activity why are we regulating it? That's the question.

Sharon Levy: That's the question, and I think to go alongside that Amanda, it's a by-law needs to benefit the lot owners, so if it is not benefiting the lot owners, so if the prohibition is making no difference, then it's fine.

Amanda Farmer: Yes, and short-term letting is another good example there that Kay has raised. I think absolutely we have quite a bit of evidence that activities from short-term letting have impact on other lot owners in the enjoyment of their properties, in the enjoyment of their property rights, and I'm quite comfortable that by-laws that regulate short-term letting are fine to the extent that they also comply with our New South Wales legislation.

We do have Section 137A, which tells us what we can and can't do with our short-term letting by-laws, but I think short-term letting is a good example of regulating something that does affect the way people use and enjoy their lots and common property.

Another example of a by-law that perhaps doesn't do any work to protect other peoples' property rights came up last week, and I posted about this on the page and it was in the media. Did you see, Sharon, the lady who was swimming in her apartment building in Zetland, in her bikini? And was told by a security guard that she needed to leave the pool, because they had rules about what could be worn in the apartment pool, and she was breaching those rules.

That is in the back of my mind this week as we read this decision and talk about by-laws that regulate behaviour, and things that may or may not adversely affect someone else's enjoyment. How do you think that fits in this week?

Sharon Levy: Look, that is going to be a tough one, because it's a matter of whether it's adversely affecting, as we've been saying, other peoples' enjoyment of the pool, for example. It is not though, the enjoyment of the particular lot owners of the strata scheme. It is the general community standard, so if the community standard was bikinis are fine then arguably she's fine, so in there in the bikini-

Amanda Farmer: Yes, that's such a good point.

Sharon Levy: Potentially, if she was in the nude swimming in the pool might be a different story, because that's probably not as accepted in the community, but certainly I would have thought a bikini would be okay. Notwithstanding, for example, if that particular strata scheme had an older population. It would not matter, so it's the community standard as opposed to strata standard.

Amanda Farmer: That is a very good point to remind ourselves, that the court of appeal did take a different view there from the NCAT Appeal Panel, and say that contemporary community standards of the wider community are indeed relevant, whereas ... And that was what the Tribunal member at first instance said, and the appeal panel had said no. The community standards are those of the strata building, so really big difference of opinion there.

Sharon Levy: And I think the Court of Appeal in the first instance decisions are correct in that regard, because the ownership will change over time, so to that extent a by-law that was considered now compared to a by-law considered in a year or two, if there's been quite a large turnover of strata owners, would be different, so compare that though, to comparing to community standards, which is much more stable in terms of the fluctuations and the changes.

Amanda Farmer: Yes. The other question that's coming up, and it came up earlier in these comments here Sharon, I mentioned it with Jo, is what's the potential next avenue for the owners corporation that hasn't been successful before the Court of Appeal? Is this over?

Sharon Levy: Look, they have a right to make an application for special leave to the high court. I don't know yet, whether that's going to happen. For the moment, I assume the owners corporation are considering their position, and we just need to wait and

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see as to whether this is the end for Angus and Jo, or whether there'll be another fight on their hands shortly.

Amanda Farmer: Yes, and indeed there is, as we were talking about with Jo, the opportunity and in my view the need for legislative intervention here to make very clear what it is that those who are running our government intend for us to do and not do in our strata schemes when it comes to pets, and the fact that we have so much litigation about this, that people like Jo have had to spend so much money on arguing these points tells us there's something wrong with the way that our legislation is either drafted or the way that it's operating in the community. That it's not matching the way that we're actually living our lives.

Sharon Levy: That's right. I think that's a good point. I think the legislation's a little bit clunky. It's difficult to interpret, which as you say is why we are seeing a lot of litigation in terms of the strata legislation, so hopefully the parliament can address that, particularly with Jo, in terms of trying to make a change.

Amanda Farmer: Yes. Absolutely. Thank you so much Sharon, for sharing those legal insights. We have lots and lots of questions coming in to the comments here, and I'm going to go and scan through some of those in the last 10 minutes or so that we have. I am also going to bring back on our victorious lady of the hour here, Jo Cooper. I think she's here, waiting for us. I'll bring you in now Jo. Hey Jo. Thank you for waiting on there.

Jo Cooper: I was reading the comments, so it was okay.

Amanda Farmer: Nice one. I have been grabbing them as I can. There's lots coming through thick and fast here. Jo, while we've got you together here with Sharon, from your perspective how is this experience of being before the Court of Appeal? Not too many strata owners get there. Can you share with those listening who may be interested in what that's like how it was for you?

Jo Cooper: It's nerve-wracking. You don't really know what to expect. I actually said to Sharon, if I'm forced to the Court of Appeal, Supreme Court, I would actually like to be in the Supreme Court, but because of COVID we weren't in the court. We were in chambers, so I think that made it a bit more comfortable, to be honest, so being in chambers, and Sharon and the two Roberts, the barristers, made it as comfortable as possible, so the experience wasn't horrible.

It was more nerve-wracking, but I ... Robert Newlinds, and Sharon would agree with this, as soon as he started talking he just really delivered the argument so professionally. There was no hyperbole. It was really professionally, sensibly delivered and that put me at ease, so yes, but overall the idea of going to the Supreme Court is not a comfortable decision. No.

Amanda Farmer: Yes, and it's not a place, Jo, you've been successful and the way that it works in our system is that costs follow the event, as we say. At least when you're before the court, not the tribunal, so assuming that this is the end then there is a cost order there in your favour, but you don't get it all back, do you?

Jo Cooper: No, and we've still got to fight for the NCAT hearings unfortunately, because I think you're aware that I got costs awarded against me 6 days after the court hearing, so that was a bit cheeky, so we've still got a bit to do unfortunately, and I'm still trying to put faith in this system to do the right thing at the end of the day.

Amanda Farmer: Yes. I just want to bring up here a comment from Phyllis, and this is one that was raised earlier on the page, that I want to make sure that we answer as best as we can. What happens in a building where they allow certain pets like cats, and then state a certain type of pet is banned, like a dog? His owners corporation has a blanket ban by-law on dogs.

Look, in my view, and Sharon can weigh in on this, is that we've just heard from the Court of Appeal that, well, a blanket ban is harsh, unconscionable or oppressive. I think you could extend that to a blanket ban on dogs. I know there's a further comment down about poisonous animals like snakes or crocodiles, or a miniature horse I think was mentioned, which has happened in the US.

Again, we come back to what's the impact? What's the impact on other owners and occupiers' use and enjoyment of common property? Poisonous animals, perhaps, risk of escape, perhaps, there's an impact there. Dogs, as we've been talking about, the

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Court of Appeal has said that they don't see that there's any impact, and so those kind of by-laws are invalid. Have you got a view on that, Sharon?

Sharon Levy: I agree. I think the issue will be, so in terms of whether they find it's harsh, unconscionable or oppressive, you take into account objective factors. The court has ruled that in terms of determining whether the strata committee would approve a particular application for a particular animal, then they would take into account subjective factors such as the size, the nature of the breed and that kind of thing, so subjective factors in terms of the particular application. I think those things would be considered with respect to those examples that you've given.

Amanda Farmer: I suppose it's too early Jo, to know or to hope if your building perhaps would consider a new by-law that has an application process where people can apply for approval and these subjective factors can be taken into account on a case by case basis.

Jo Cooper: We're definitely going to put it forward. A bunch of owners have already reached out and said we should be proactive in this space, which hasn't worked for us in the past, but we're hoping to try again, but yes it is too early. If you don't mind, can I address an issue that keeps coming up, and I can see it in the comments, and it really irritates me? It's a comment around allergies.

It is a really annoying argument for me, because it's been thrown at me, and I've been called selfish and a home wrecker, and all sorts of weird and wonderful names. There is no such thing as 100% pet free building. There never will be. There will always be assistant and therapy pets allowed in buildings, so for the comment, I think it's Denise. If you are severely allergic to pets I don't think strata is the place for you. I have done the research and tried to find out through Sydney University if anybody has died from a pet allergy in apartments, and they could not tell me of a case.

This allergy argument, where does it stop? I'm allergic to dust. I take Claritin or one of the hypoallergenic pills if I need to. People have allergies to peanuts. We're not going to ban our neighbours from having peanuts. Perfume is another one. Are we going to ban people from spraying perfume, because somebody that's allergic to perfume will get into the lift? It is an absolutely flawed argument and people really need to stop using it as an excuse.

A fear of pets, that's the other one. If you have a fear of pets, again it's really confusing. Do you not walk the streets? I don't mean to be insensitive at all, but it's one that comes at me with aggression and it comes at a lot of people that have pets as family. People have to remember that a lot of us are allergic to an array of things. You cannot go and blanket ban, but as for I bought into this building knowing it is pet free, that's a lie. You cannot ban a therapy or an assistance pet ever.

Amanda Farmer: I just want to acknowledge there on this issue of allergies, and thank you so much Jo for addressing that, because we do have quite a bit of chat about that in the comments. Sarah, I've got her comment on the screen there. I think she is a supporter of your view Jo, and she was asking for a rebuttal to be able to answer the same allegation that's being put against her in respect of allergies in her building, so thank you for asking those questions and for addressing that Jo.

When it comes to fear and allergies, and exactly what you're talking about, Cathy Sherry's taught me a very good answer to that as well, which is if you live in Inner Sydney and maybe you're in a semidetached property, or we're all living on top of each other, as we like to do in these popular areas, you are going to be, have the potential to be closer to an animal than you ever would be in a strata building, where the cat is on level 14 and you're on level 2. A cat that you'll never see, and of course we don't ban in freestanding, if you want to differentiate them that way, properties, what people can do when it comes to the keeping of animals there.

Excellent. All right. Now, there are so many comments here that I'm having trouble just flicking back and forth. Lots and lots of chat, questions and comments here. I am going to come back to those, and I welcome Jo and Sharon. I'm mindful that it's Friday night, and I maybe I'm the only one who doesn't have anything very exciting to do tonight, except go through Your Strata Property Facebook page comments. Is there anything that either one of you would like to add before we wrap up here tonight? I thank you

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so much for your time, sharing this important information.

Sharon Levy: Thanks Amanda, for having us. I'm still flicking through these comments. There's a lot of allergy comments. I think it's important to note, Jo, as you said, the Horizon's by-law, even though it was a blanket ban on pets, as Jo says, the exception to that, even the Horizon's by-law, was assistance animals. So even the Horizon, who had a blanket ban on pets, still had that exception, and I think that's important to note.

And they had to have that exception, because it's the law, so even in the Horizon without little Angus there was no guarantee that someone would not get into a lift with a pooch, so I think that's important. Someone also raised the issue of peanuts. There's no law against a child or an adult, or anything, eating a peanut in the lift in the common property, dropping it on the floor, dropping it in the lift, so I think in terms of the allergy argument Jo's put it very well.

Jo Cooper: Thank you Sharon. Yes, I've been regurgitating it for 5 years, so ...

Sharon Levy: And look, even we heard it a lot. That argument, as your Lawyer, Jo, that was one argument that I got a lot, but also she knew about it. That was the other one, so I was so pleased when the court in its judgment spent so much time making clear that Jo's knowledge did not matter, because the by-law binds everybody. It binds subsequent owners. It does not matter what you're buying into, it does not change the fact that, whether a by-law is harsh, unconscionable or oppressive, needs to be measured against the objective standard as opposed to anything to do with Jo or anything to do with Angus.

Jo Cooper: And we should still have a right to challenge things without being abused for it. We have that right. It is a legal right to challenge things, I believe.

Amanda Farmer: Yes, and nobody should suffer bullying and abuse full stop.

Jo Cooper: No.

Sharon Levy: For whatever reason.

Jo Cooper: For whatever reason, yes.

Amanda Farmer: Thank you so much for joining me, Sharon Levy, Jo Cooper and everybody, so I'm going to leave you here today. I wish you all a happy, safe weekend in your homes, with or without your furry friends, as it may be, and I hope Angus has some special treats for the weekend, Jo.

Jo Cooper: He does. He's very well looked after, don't worry.

Amanda Farmer: He is indeed.

Jo Cooper: I want to say a huge thank you to Sharon. She has been amazing through this, and my stress levels went through the roof through the roof. You were just above and beyond. You dealt with a lot, so thank you.

Sharon Levy: Thank you. Thanks. I must say, when Jo started crying, when I gave her the news on Monday, it made me tear up, so it was very emotional I think for both of us, just because I knew how much it meant to her, and certainly this was one that I just wanted to get across the line, and absolutely a career highlight for me Jo, and one that I will remember, so thank you for asking us to be on your legal team for the Court of Appeal.

Jo Cooper: Thank you for a brilliant job.

Amanda Farmer: And so many of us were so happy to receive that judgment, and not as personally and invested as both of you,

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but I know for sure when I read that I actually ran out, and I had both my husband and son were here at the time, and I said, "We won, we won." I'm not on the team guys. I'm not on the team.

Jo Cooper:

That's okay. It is a we. It impacts a lot of people, so yes.

Amanda Farmer: So many, yes. So thank you. Go and enjoy your weekend. Go buy some more tissues.

Jo Cooper: I will.

Amanda Farmer: Thanks so much ladies.

Sharon Levy: Thanks for having us Amanda.

Amanda Farmer: Thanks everyone. Bye.

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