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Canadian Condominium Institute

CCI REVIEW

Windsor-Essex County | Newsletter of the Canadian Condominium Institute

The Canadian Condominium Institute is the Voice of Condominium in Canada. It is a national, independent, non-profit organization dealing exclusively with condominium issues. Formed in 1982, CCI represents all participants in the condominium community. Interested groups are encouraged to work together toward one common goal -- creating a successful and viable condominium community.

- Is the only national association to serve as a clearing house and research centre on condominium issues and activities across the country.
- Assists its members through education, information dissemination, publications, workshops, conferences and technical assistance.
- Encourages and provides objective research or practitioners and government agencies regarding all aspects of condominium operations.
- Lobbies provincial and federal governments for improvements to legislation.
- Advocates for higher standards in all services to the condominium client.

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Financing Condominium Repair in Vacation Country

by Michael Hagarty

Assistant Vice President

VersaBank - formerly Pacific & Western Bank of Canada

Condominium boards are entrusted with the critical duty of ensuring financial resources are available to provide for the repair, ongoing maintenance and eventual replacement of their condominium's common elements and assets. This becomes an especially difficult task when large, unexpected expenses arise; such as a roof replacement or building envelope repair. Often, adequate reserve funds are not available to cover these unplanned costs and the board must determine how the corporation will pay for the work. Our corporation overcame a serious funding shortfall in the face of a critical infrastructure repair by obtaining a loan to finance a portion of the necessary work, completing the project while the resources were at hand, and with knowledgeable board and property management supervision.

I became board treasurer of a 60+ unit common element condominium in Ontario vacation country with some hesitation, however I felt confident that my experience earned in commercial finance would benefit our board. Fortunately, we did have a strong board and an excellent property manager (as we had been historically self-managed, the recommendation of a knowledgeable property manager was one of the best contributions I made as a new director). Personal expectations did not extend too far beyond auditing the monthly reporting, and the presentation of the financial statements at the annual AGM. Our condominium was created in the 1960's, and was built upon rolling terrain, connected by a network of underground sewer and water lines, and punctuated with dozens of remotely located manholes. Picturesque no doubt, but it also represented an engineering challenge at the time.

Our first test as a board arose with the review of the recently commissioned Class 1 reserve fund study, the first following the proclamation of the new Condo Act in 2001. The study concluded that the corporation reserves were substantially underfunded. Fortunately, as this had been a first reserve reporting of a condominium registered before the Act was proclaimed, we had ten years to bring reserves in line. A series of special assessments were budgeted to restore balance in the fund; not entirely popular, but absolutely necessary, and for the most part, understood by the unit owners.

The situation would change, as the water system mysteriously began to lose pressure in certain areas, and sewer issues arose affecting individual units that apparently had originated in the common infrastructure. Moreover, as these issues (and the excavating backhoes) were obvious to all, and becoming more frequent, those units listed for sale were subject to speculation about the integrity of the common water and sewer lines. Action was necessary, and after interviewing three firms, an engineering partner was retained, geo-technical analysis completed, and closed circuit video monitoring of the extensive water and sewer lines undertaken.

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Results confirmed that our dated system, installed some 45+ years earlier, needed to be significantly replaced, and that we would need reserve funding at an accelerated rate.

Proposed remediation was divided into two phases to be completed over consecutive seasons, using a variety of techniques ranging from trenching to directional drilling in order to allow for the unique terrain. The most urgent work would be addressed in Phase I of the project, with the second phase to be completed the following year. The overall budget was established at a level that could be largely funded through existing reserve contributions, with a manageable assessment for the following year. Accordingly, our engineering firm prepared the request for tenders.

Upon receipt, the tenders varied widely, but were uniformly in excess of the engineering estimates. The Board accepted the lowest of Phase I quotations at an amount 25% greater than anticipated. With Phase I well over budget, it became cost prohibitive to proceed with the necessary Phase II work scheduled for the following summer. It was also clear to the Board that there was special assessment fatigue among the unit holders, and a significant increase would not be greeted with enthusiasm.

> "Fortunately, there was a solution."

Still, the engineering reporting was on hand, and a knowledgeable contractor on site; failure to proceed would result in losing critical time, but also present the risk of more failures in the Phase II system. The Board was ready to proceed, and had the necessary tools, but it did not appear to be a feasible option without funding.

Fortunately, there was a solution. We learned from our property manager that the corporation could potentially finance the second phase of the work in its entirety, and arrange a floating rate loan throughout the construction period. The funds could be drawn as needed, and interest would only be payable on the amounts outstanding. When the project was substantially complete, the construction loan would be converted to a term loan, and amortized over a longer period of time, at a fixed rate of interest.

Better still, the loan would be advanced to the condominium corporation as a whole, and would not encumber the individual condominium units, so that any existing mortgages would not be disturbed. The unit owners would pay on a pro-rata basis as part of their common element fees. No personal information would have to be provided by the individual owners as the loan was granted to the condominium corporation as a whole.

An application was made with a local financial institution. The Lender reviewed the financial statements of the corporation, the recent reserve fund study, the reserve fund history and position, and the overall feasibility of the project. A preliminary offer of financing was provided, subject to formal approval. The proposal was put forward at a special meeting of the corporation with the lender in attendance to answer any questions, and a special borrowing bylaw was approved by the majority of unit owners, authorizing the proposed Phase II financing.

The financing was subsequently approved by the Lender, accepted by the Board, and the tender of the phase II works proceeded. There were legal and lender charges to consider, but the project was completed on schedule using the construction draw financing. Upon completion, each unit owner had an option to either pay their pro-rata share of the financing, or participate in the term financing and pay monthly over the seven year amortization of the loan.

Overall, with the guidance of our property manager and the assistance of Condominium Corporation financing, the project was judged a complete success, the common elements were restored, and future reserve requirements anticipated by the annual budget process. Perhaps most importantly, there was no further speculation regarding the integrity of the common services and the marketability of the units improved.

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A Landlords Responsibility for the Insurance Deductible in Fire Caused by Methamphetamine Lab: The Minimization of a Condominium Corporation's Liability

by Laura McKeen, *Lawyer*
Cohen Highley LLP

The case of *Louie v The Owners of Strata Plan VR*[1] should remind residential landlords of the importance of properly managing risks. The facts of *Louie* seem as if it has been pulled out of a television series; however, the consequences are not so glamorous. In Louie, a tenant used a residential unit to operate a methamphetamine laboratory. The unit was part of a Strata Housing program and bound by the bylaws enacted by the Strata Corporation. Due to the dangerous materials used, a fire erupted and the smoke/fume contaminants resulted in significant damage to the unit. Despite the quick devastating power of the fire, the ensuring court battle regarding responsibility for repairs stretched over seven years. In 2015, the Supreme Court of British Columbia made the following rulings:

- The landlord, the unit owner, was responsible for repairing or replacing the damage done to the limited common property and the unit in accordance with the enacted bylaws;
- The Strata Corporation had the right to demand that the landlord pay the insurance deductible according to provincial statute; and
- The landlord was required to pay the costs the Strata Corporation incurred in investigating and remediating the damage caused by the fire.

> "... a tenant is responsible for repairing undue damage to the rental unit or residential complex caused by the tenant's willful or negligent behaviour."

It is important to note that the above conclusions were based on the judicial interpretation of the relevant provincial statutes, and enacted by-laws.

In Ontario, section 34 of the *Residential Tenancies Act* states that a tenant is responsible for repairing undue damage to the rental unit or residential complex caused by the tenant's willful or negligent behaviour. Even though this section protects landlords, it is important to read the statute practically. Specifically, even if a tenant is held responsible for the damage caused, the tenant may not have the financial resources, or the insurance to repair the damaged. This would require the landlord to pay for the repairs or rely on his or her own insurance to cover the costs. Given the potential risks associated in leasing a unit, below is a list of important considerations for landlords:

- Avoid covenanting to obtain insurance for damage to the unit. The Ontario Court of Appeal recently reaffirmed the position that a landlord cannot sue a tenant for losses caused by the tenant's negligence when the landlord assumes responsibility for insurance.
- If the leased unit is part of a Condominium Corporation, review the provisions of the *Condominium Act*, and the bylaws and regulations of the Condominium Corporation. As seen in *Louise*, the landlord could be required to pay the insurance deductible. Under section 91 of the *Condominium Act*, a Condominium Corporation can declare which party is responsible for repair and maintenance.[2]
- Under the terms of the lease agreement, require the tenant to obtain proper insurance for the unit. A prudent landlord should remember that many insurance policies state that insurance coverage will not be provided when the damage is done due to illicit activity. Due to this exclusion, it is essential for landlords to conduct an appropriate background check before the tenant moves into the premises.

From the perspective of a Condominium Corporation, the case of *Louie* represents how to appropriately use bylaws, regulations, and provincial statutes to clearly establish liability for damages.

In Ontario, the *Condominium Act* requires a Condominium Corporation to obtain insurance on its own behalf and on behalf of the owners for damages to the units and common elements caused by major perils.

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1. 2015 BCSC 1832.
2. *D.L.G. & Associates Ltd. v. Minto Properties Inc.*, 2015 ONCA 705.

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However, similar to the facts in Louise, the Condominium Act also includes provisions related to insurance deductibles. Accordingly, if a unit owner, a tenant of a unit owner, or a person residing in the owner's unit with permission or knowledge of the owner causes damage to the owner's unit, the common elements or the assets of the Condominium Corporation, the deductible amount will be added to the common expenses of the owner's unit. As seen in Louie, even with clear legislation, a lengthy court battle can still ensure. In order to limit liability and avoid drawn out litigation, Condominium Corporations and Property Managers should be conscious of the following:

- Clearly inform unit owners of the insurance deductible. Indicate to the owner that either the lesser of the cost of repairing the damage and the deductible limit may be added to the owner's common expenses. Section 105.1, a recent amendment to the *Condominium Act*, will require the Condominium Corporation to disclose this information to unit owners when the amendment comes into force.
- The definition of "Owner" under the *Condominium Act* does not include tenants. Therefore, even if the unit owner attempts to transfer liability to the tenant, the Condominium Corporation can still add the deductible amount to the owner's common expenses. The unit owner would be required to independently recover the amount from the tenant.

Laura McKeen is a partner with Cohen Highley LLP in London. Cohen Highley has offices in London, Kitchener, Chatham and Sarnia. Laura provides risk management and regulatory compliance advice to Condominium Corporations and Property Management Companies. Laura can be reached at mckeen@cohenhighley.com or 519-672-9330 x 427.

CondoSTRENGTH

What is the CondoSTRENGTH Program?

It's a FREE program for CCI Condo Corporation Members in Toronto that is For Directors, By Directors.

The CondoSTRENGTH program helps condominium directors come together and share their condo experience during free networking events hosted by local condo communities.

The Program provides members with access to an online toolbox of resources which includes:

- Checklists
- Templates & Guides
- Success Stories
- A collection of helpful and informative Articles

Program members also have exclusive access to an online survey tool developed to help Boards identify areas to improve and gauge the impact of their efforts.

Overcoming Obstacles with Newsletter Consistency

Contributor: Marc Bhalla, Director of TSCC 1608

TSCC 1608 was 8 years old in 2012 and the Board had an ongoing issue in preparing and circulating a newsletter within the community. While directors very much wanted to keep residents and owners informed and felt that a newsletter would be a good way to communicate, the trouble was that the Board struggled to issue a newsletter with any consistency. By the spring of 2015, however, TSCC 1608 had proudly issued 12 consecutive quarterly newsletters. Here is how the Board was able to establish consistency in communicating with the community:

Establish a vision. In embarking on addressing its struggles with consistency, the Board considered what could reasonably be accomplished and set a goal of issuing a quarterly newsletter. The process it would go on to establish was developed with the view of issuing a newsletter each season.

Keep it simple. In the first 8 years of TSCC 1608's existence, newsletters came in all sorts of shapes and sizes. A motivated director once took the initiative of preparing an 8 page, double-sided newsletter for the small community; unfortunately, this lasted only one issue. To achieve consistency, the Board decided to use a simple template and format – a single, double-sided sheet.

Let the content write itself (where you can). While the front sheet of TSCC 1608's newsletter would update the community about occurrences within it, the back sheet's focus extended beyond the condominium and into the neighbourhood. Soon, the focus of the back sheet surrounded the schedule of different community events (such as the schedule for public skating at the local ice rink). With each seasonal newsletter, the Board can now simply update the schedule for the current year, allowing content of interest to be easily and promptly generated.

Short and positive messages. The front page of the newsletter usually contains a brief introduction and 3-4 boxes with simple reminders or updates. When reminders speak to various rules of the community, they are presented in a positive tone and with an explanation of why the rule exists (i.e. Help us keep everyone safe by disposing of your cigarettes in ashtrays. When cigarette butts are thrown from balconies, they can post a serious fire hazard to units below).

Speaks for and generated by the Board. While each director on the Board contributes differently to the newsletter – some are more hands on than others - the content of each issue is discussed at Board meetings and drafts are circulated amongst all directors to ensure that the newsletter speaks for the entire Board. The aim of the newsletter is not to share the views of any individual director but rather to speak from the Board as a whole.

While property management has the opportunity to suggest content for the newsletter, helps proofread it and arranges the circulation of the newsletter under each unit's door, it is the Board that prepares it. This process allowed TSCC 1608's newsletter to remain distributed consistently despite a change to the on-site manager servicing the community.

In the fall of 2012, the Board of TSCC 1608 established the goal of developing a newsletter that could be consistently circulated throughout the community. Through the mindset and strategies set out above, it has been able to achieve its goal.

Establishing Operating Protocols

Category: Finance - Operations and Practices
Contributor: Anonymous Date: 2016

Situation

The Board of Directors of a condominium community struggled to have a good handle on the financial and other operations of the community, as most board members did not have business backgrounds or prior board experience.

Areas of concern included:

1. Proper approvals at various levels not always being evident.
2. Budget process was not founded in proper financial practices.
3. Board given very short notice and incomplete and/or improper information to make financial decisions.
4. Reserve Fund Study not properly understood.
5. Petty cash fund was not properly monitored.

Establishing protocols surrounding a variety of items and ensuring that everyone involved in the operation of the condominium were on the same page with respect to them allowed the concerns to be addressed.

Protocols Developed and Implemented:

1. Agendas for Board Meetings circulated to the Board at least one week prior to the meeting with all supporting documentation is to be attached.
2. Determining appropriate lead-time for any considerations required of the Board in between board meetings.
3. Circulating draft minutes from each board meeting within two weeks of the meeting.
4. Establishing an action list of items and progress charts to track the status of each item from inception through to completion.
5. Requiring all cheques that are presented to the Board for signature have sup porting documentation attached.

An approval file folder with a legend showing the initials and/or signatures of the people involved in the approval process as well as what steps they would have taken in approving the disbursement was also established for greater transparency and accountability.

6. Requiring cheque requisitions for recurring costs to have the relevant pages of the "contract" in the approval file, which gets moved forward from month to month.
7. Determining "key" service providers and arranging for them to come in to speak directly with the Board to gain a greater appreciation of the nuances of the building and foster better long-term relationships (i.e. HVAC, reserve fund preparer, etc.).
8. Assigning specific areas of responsibility to each Board member and as well as on ad-hoc basis as projects arise.

Establishing these protocols and ensuring that everyone was working together from the same "playbook" served to put the board solidly in control and enhanced the operations of the condominium community.

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LAWYER'S CORNER

HODIS LAW

Sonja Hodis

Professional Qualifications

- B.A Honours (York)
- L.L.B. (Osgoode)

Brief Biography

Sonja is dedicated to helping her clients find the right solution for their specific situation. No two clients are alike and neither are any two cases. She knows that you need someone who not only understands the law but also understands your needs and how to make the law work for you.

In addition to her private practice, Sonja is also a Part-time Vice Chair for the Workplace Safety Insurance Appeals Tribunal (WSIAT) where she adjudicates appeals in worker's compensation claims.

Sonja is a frequent speaker for various organizations and writes articles for various industry publications.

When is it Okay to Play Pet Detective?

by Sonja Hodis

CCI National Executive and Chapter Liaison for Windsor/Essex County Chapter

The instances of condo residents improperly using "medical reasons" to escape the enforcement of pet restrictions found in condo declarations or rules is on the rise.

On one hand, many property managers and boards of directors are fearful of investigating and challenging these types of claims, even when they think the claim is illegitimate. On the other hand, they want to fulfill their statutory duties and consistently enforce condo rules to avoid setting unwanted precedents.

A recent case (in which the article author acted for the condo corporation) provided much-needed guidance for property managers and boards of directors who find themselves in these situations. It confirmed what a reasonable investigation looks like as well as the basis for denying an illegitimate request for accommodation.

In SCC 89 v. Dominelli et al., the condo corporation had a rule which restricted the size of dogs and cats permitted in the building to those weighing less than 25 pounds. The owner and his fiancé (hereafter also referred to as "residents") had a dog that weighed more than 25 pounds.

When asked to remove the dog, the owner advised that the dog was required for his fiancé's job, which involved working with children with autism. The board met with the residents to discuss the issue and the residents confirmed that the dog was required as a therapy dog for children with autism.

At that point, the owner properly requisitioned a meeting to try to amend the rule, but the motion to amend the rule was defeated. Afterwards, the board advised the owner that the dog had to be removed as it did not service someone who resided at the condo.

The residents then said, for the first time, that the dog was a therapy dog required for the fiancé's own medical issues. The board asked the residents for medical documentation to support their new claim and requested a second meeting with them to discuss the request for accommodation.

The residents refused to meet with the board, but the fiancé provided several letters from a doctor advising that the fiancé had a "medical condition" and required the dog for her own well-being.

However, the letters failed to provide any objective medical evidence of a disability recognized under the Human Rights Code, the fiancé's disability-related needs and how a dog weighing more than 25 pounds was required to address those needs. Nor did the medical reports provide any clear diagnosis, citing only symptoms the fiancé was experiencing.

The board denied the request for accommodation and provided the residents with detailed reasons for its decision. On this basis, the board advised the residents that if the dog was not removed by a certain date, it would commence a compliance application.

The residents failed to remove the dog, so the condo commenced a court application for compliance. Following this, the fiancé filed a Human Rights Tribunal application, which was stayed pending the outcome of the court action.

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The court agreed with the board's decision that there was insufficient evidence to establish that the fiancé had a diagnosed mental disability under the Human Rights Code or to suggest that a dog weighing more than 25 pounds was required to meet a disability-related need.

The court granted a compliance order under section 134 of the Condominium Act and ordered the dog removed. The court also held that the condo had not breached any provision of the Human Rights Code. Plus, the court ordered the residents to pay $45,750 in costs.

Ultimately, in SCC 89 v. Dominelli et al., Justice Quinlan confirmed the quality and type of medical evidence that residents must produce in cases where they are claiming that they should be exempted from their condo's pet rules for mental disability reasons. Justice Quinlan also confirmed that unless a resident provides the necessary evidence and cooperates in the accommodation process, the condo corporation has satisfied its duty to accommodate under the Human Rights Code.

Boards and property managers must deal with accommodation requests promptly to meet their procedural duties under the Human Rights Code. However, this doesn't preclude them from questioning the information they are being provided and investigating further – especially if they have concerns.

SCC 89 v. Dominelli et al. reassures boards and property managers that they are allowed to request proper medical documentation before they decide whether to allow an exception to the rules. The decision also gives condo boards the confidence that in cases of insufficient evidence of a disability, or a disability-related need for an exception to the rules, they can deny the request for accommodation and proceed with a court application for compliance.

Dealing with issues of compliance in the face of requests for accommodation is not easy. Boards and property managers are wise to obtain legal advice early on in the process.

SCC 89 v. Dominelli et al. teaches residents who are making requests for accommodation that they must be prepared to provide objective medical evidence that diagnoses the disability and outlines the disability-related need and how an exception to a rule is required to address the disability-related need. A doctor's letter that states someone has a "medical condition" without a clear diagnosis and a listing of disability-related needs isn't enough.

Residents must also be prepared to cooperate in the process and respond to reasonable requests for information or attend meetings. Otherwise, the courts may find that the condo corporation has fulfilled any duty to accommodate by attempting to discuss and investigate the request for accommodation with the resident.

Lastly – and especially with cases of illegitimate accommodation claims aimed at averting pet rules on the rise – residents should be aware that they face significant cost orders if a condo corporation gets a compliance order after denying a request for accommodation.

NOTE: This article is provided as an information service and is not intended to be a legal opinion. Readers are cautioned to not act on the information provided without seeking legal advice with respect to their specific unique circumstances. Sonja Hodis, 2015 All Rights Reserved.
The preceding article originally appeared in the September 2015 issue of CondoBusiness.

SAVE THE DATE

ANNUAL GENERAL MEETING & ASK THE EXPERTS PANEL
Wednesday September 14th, 2016
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WFCU Centre - Ontario Room
8787 McHugh Street

Come on out to meet your fellow condominium directors and network with some local professionals too. Be sure to bring your condo questions to challenge our expert panel! We will have experts from all areas of condo operations - property management, insurance, accounting, law, and engineering.

COST: $15 for members and **$25** for non-members

Looks are not everything: common elements and the new Act to *Protect Condominium Owners*

by Andrea Thielk, *BA, LLB, JD, ACCI (Law)*
Lawyer

You find yourself as dutiful board members itching to update the lobby of your aged condominium building. The existing wallpaper, baseboards, and concierge desk show the years and require a much-needed face-lift, changing the aesthetic-style of the space. This might seem like a significant alteration, but if the quality of materials used are reasonably close to the original, then the work will likely not mandate giving notice to, or requiring a vote from, unit owners. Oh, if modifications to the common elements were only this simple, this article would end here.

The ability of a condominium corporation to make changes to common elements has long been an area of confusion, dispute, and even litigation. Whether you are a unit owner, board member, or both, the considerations in determining whether a corporation can make a change to the common elements leaves room for interpretation.

On December 2nd, 2015, Bill 106 - Protecting Condominium Owners Act passed its third and final reading in the Ontario legislature. The Act, originally titled "An Act to amend the Condominium Act, 1998, to enact the Condominium Management Services Act, 2015 and to amend other Acts with respect to condominiums" aims to do just that! Unfortunately, the newly enacted legislation, which has yet to come into force, fails to clarify all of the ambiguity of its predecessor in regard to changes made to common elements.

The new Act will still require condominium corporations to consider all of the traditional requirements: if work to be done will be an "addition, alteration, improvement or change to the common elements, assets or services;" if notice to owners is required; if a meeting and vote is needed; if the modification is considered a "substantial change;" and whether a two-thirds vote of owners in favour of the change is mandated. The amendments, however, do not provide any guidelines regarding stylistic or aesthetic factors of common element changes, continuing to focus on comparable quality of materials used. Further, the "costs more than 10% of the annual budget" rule will still constitute a "substantial change."

The Act does, however, make a few significant amendments. For example, notice to the unit owners is not required where the estimated total cost of the changes to the common elements is no more than the lesser of 3 percent of the annual budgeted common expenses for the current fiscal year and $30,000. Moreover, even if the condominium does not surpass the cost threshold of the modification, notice to the unit owners may still be required, if the modification would be considered on an objective basis to cause a material reduction or elimination of owners' use or enjoyment of their units, the common elements, or the assets of the corporation. This amendment provides more clarity than the current requirement that notice to owners is not required if the estimated cost of the modification in any given month is no more than the greater of $1,000 and 1% of the annual budgeted common expenses for the current fiscal year. And as the name of the new Act suggests, this amendment also provides for more protection to the unit owner than its predecessor.

Critics of the new Act, however, have expressed disappointment, having hoped that the Ontario legislature would have defined "substantial change" in qualitative terms. And the introduction of the concept of an objective standard for "a material reduction or elimination of owners' use or enjoyment," will surely become a new source of debate. The lesson here, before embarking on a large-scale modification of any nature, consult with a condominium lawyer who can guide you through the process. And when in doubt, err on the side of caution and provide as much communication to the owners as possible.

So a dated lobby might transform from a relic of 1970's architecture into a futuristic expanse, more reflective of a galactic space station than an earthy suburban environment, but the new Act may still consider the makeover to be within the corporation's maintenance and repair obligations, suggesting that looks really are not everything.

Andrea Thielk practices condominium law, personal injury law and human rights and advocacy in Windsor, Ontario. *This article has been written for informational purposes only, and is not considered legal advice. Please consult with the appropriate professionals for all your condominium needs.*

Investing in Resolution

by Marc Bhalla, *Hons. B.A., C. Med*

One of my primary concerns surrounding the implementation of the province's new condominium legislation and proposed efforts to address conflicts that arise in condominium communities surrounds the notion of having dispute resolution services available for little to no cost. Many have cited the high cost of mediation and arbitration as a challenge of the existing system. I do not disagree and have been flabbergasted to see mediators and arbitrators routinely charging 2 or 3 times my rates or, at times, even more.

Something needs to be done to make mediation and arbitration more accessible; in part, this is why I support the notion of introducing mediation in the early stages of condominium disputes and online initiatives, such as those recently launched in British Columbia with the Civil Resolution Tribunal – the nation`s first online tribunal. However, in addition to balancing accessibility against concerns of system backlog and abuse, there must be an appreciation of what happens when conflict resolution services are offered for little to no cost - when parties invest too little into the dispute resolution process.

A key part of the mediation process surrounds the generation and examination of options. Parties brainstorm and aim to draw out a series of possible ways to address the issues – many of which could not have been anticipated without the exchanges and collaborative approach that are incorporated into mediation. In determining whether to pursue any of the options generated, parties in conflict assess such settlement options against the other options available to them to otherwise address the dispute. What is referred to as one's Best Alternative to a Negotiated Agreement - or BATNA – is to be considered against the settlement options presented and the most appealing choice selected. If it is more appealing to otherwise address the conflict, settlement is not appropriate.

Unfortunately, when parties have invested little into conflict resolution, they risk not having a genuine understanding of what their options are or may fail to approach the process in good faith. In such circumstances, parties risk overselling or underselling themselves on the reality of their next course of action if the conflict continues unresolved. On one hand, they may risk assuming that proceeding to court will be easier than it really will be; while, on the other hand, they may risk being oblivious to certain legal rights or obligations that leave them better situated than they had thought. While the mediator helps generate options, he/she does not provide legal advice and cannot truly assess how appealing each option may be.

For this reason, parties in conflict are wise to conduct some due diligence and educate themselves, even just initially, into their options outside of settlement before proceeding to mediate. This can be done by reflecting on and investigating the following questions:

- What will I do to address the dispute if mediation does not result in settlement?
    - How will I do this?
    - How much will it cost?
    - How long will it take?
    - What are my chances of obtaining my desired result through this course of action?
    - Who should I speak with to be sure my answers are correct?
- What is the other party likely to consider doing to address the issue?
    - What might I need to better understand to be sure of my answer?
- How would I feel if the status quo continues and nothing is done to address the issue?
    - What am I prepared to do about it?
- What elements of this matter are within my control?
    - How will the choices I make impact things?
- How will I feel if this conflict escalates?
- What is my worst case scenario?
- What is my best case scenario?
- Am I being realistic? How can I be sure?

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When parties do not invest much into their dispute or into understanding their options, they can miss the reality of the situation. This risks leaving them ill-equipped to make the choice that is best and escalating the conflict, and related costs, as a result of unrealistic expectations or beliefs.

When parties have a good sense of their options going into mediation, they can be comforted by their knowledge and better equipped to determine which settlement options warrant further consideration. They are empowered to make the choice that is best for them with a clearer understanding of what they face moving forward.

The purpose of mediation is not to force compromise. The purpose is for all parties to better understand one another's interests, consider what may be plausible ways to address the conflict and proceed with the course of action that suits their best interests.

The adage "you get what you pay for" rings true on many occasions and the high cost of conflict, including many highly publicized cases in recent years, provides good cause for concern for those involved in disputes; however, the cost of conflict is not an all or nothing proposition. Taking the time and making an initial investment to ensure that you understand the reality of your options can ensure that you make the right decision. This is why mediating early on can be worthwhile.

Marc Bhalla is a mediator who focuses his practice on condominium conflict management. He holds the Chartered Mediator (C.Med) designation of the ADR Institute of Canada – the most senior designation available to practising mediators in the nation – and draws upon personal experience as a condominium director, owner, resident and law clerk to understand the unique dynamics of condominium disputes and empathize with the people involved in them. Marc can be reached at mbhalla@elia.org.

CCI WINDSOR - UPCOMING EVENTS

DIRECTOR/OWNER RESPONSIBILITY AND FINANCIAL MANAGEMENT FOR CONDOS

WHEN: November 16, 2016
TIME: 7:00 pm to 9:00 pm

DIRECTOR 101 SUMMARY SEMINAR

WHEN: February 15, 2017
TIME: 7:00 pm to 9:00 pm

ENERGY/WATER ISSUES AND HI/LOW-RISE AND TOWNHOME MAINTENANCE

WHEN: February 15, 2017
TIME: 7:00 pm to 9:00 pm

ALL EVENTS:

PLACE: WFCU CENTRE, ONTARIO ROOM
8787 McHugh Street, Windsor, Ontario

COST: $15 for members and **$25** for non-members

PROFESSIONAL DIRECTORY

ACCOUNTING SERVICES

Anita M. Bois Bookkeeping
Bookkeeping Services
921 Laporte Avenue
Windsor, Ontario N85 3R3

P: 519-948-6250

Collins Barrow Windsor LLP
Chartered Accountants
3260 Devon Drive
Windsor, Ontario N8X 4L4

P: 519-258-5800
W: www.collinsbarrow.com

Gordon B. Lee Accountants
Chartered Accountants
5886 Wyandotte Street East
Windsor, Ontario N8S 1M8

P: 519-977-711
W: www.gordonbleeca.com

Kevin J. Hague
Chartered Accountant
1880 Gangier Lane
Stoney Point, Ontario N0R 1N0

P: 519-798-3753
E: kevinjhagueca@gmail.com

CONSTRUCTION & RESTORATION

Air Busters
Air Duct Cleaning Services
1655 Normandy Street
Windsor, Ontario N9J 1X9

P: 519-969-2222
W: www.airbusters.ca

Alpine Construction (Windsor) Inc.
Restoring Peace of Mind
2645 North Talbot Road
Tecumseh, ON N0R 1L0
P: 519-737-0500
W: www.alpineconstruction.ca
E: lsavoni@alpineconstruction.-ca

Canadian Carpet Centre
Carpeting Services
7135 Wyandotte Street East
Windsor, Ontario N8S 1R2

P: 519-944-4488
W: www.canadiancarpetcentre.com

Encore Mechanical
Plumbing, HVAC, Electrical Services
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Windsor, Ontario N8R 1A8

P: 519-979-3572
W: www.encoremechancial.ca

Parker DKI
Disaster Restoration Services
2910 Jefferson Blvd
Windsor, Ontario N8T 3J2

P: 519-944-9015
W: www.parkerdki.ca

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Roofing and Siding Services
4088 Sandwich Street
Windsor, Ontario N9C 1C4

P: 519-254-4377
W: www.suresealroofing.com

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Windsor, Ontario N8N 4R8

P: 519-979-7333
W: www.cec14.com
E: thumber@cec14.com

Edison Engineers
Engineers specializing in Condos
694 Scofield Avenue
Windsor, Ontario N9G 1L3

P: 226-315-1782
W: www.edisonengineers.ca
E: snespoli@edisonengineers.ca

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Engineering Services
2199 Blackacre Drive, Suite 600
Oldcastle, Ontario N0R 1L0

P: 519-737-0588
W: www.exp.com

PROFESSIONAL DIRECTORY

WSP Canada Inc.
Engineering Services
1821 Provincial Road
Windsor, Ontario N8W 5V7

P: 519-974-5887
W: www.wspgroup.com

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Insurance Brokers
347 Maidstone Avenue East
Essex, Ontario
N8M 2Y4

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PBL Insurance Limited
Insurance Services
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Windsor, Ontario N8X 1L9

P: 519-254-0955 x241
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LEGAL SERVICES

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P: 519-821-6054
W: www.smithvaleriote.com

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Cardinal Property Management
Property Management Services
213 King Street West, Suite 202
Chatham, Ontario N7M 1E6

P: 519-436-9639
W: www.cardinalproperty.ca

Danbury Property Management
Property Management Services
5795 Tecumseh Road East
Windsor, Ontario N8T 1E1

P: 519-974-3003

GNI Management Group
Property Management Services
935 Keyes Drive
Woodstock, Ontario N4V 1C3

P: 519-537-5873
W: www.gni.ca

PROFESSIONAL DIRECTORY

Huron Shores Property Management Inc. *Property Management Company* 2679 Howard Avenue Windsor, Ontario N8X 3X2 P: 519-916-1113 E: bnorris@hspm.ca	**Parkside Property Management** *Property Management Services* 3392 Wonderland Road S, Bldg 2, Unit 4 London, Ontario N6L 1A8 P: 519-652-6122 W: www.parksideproperty.ca	**SPN Property Management Ltd.** *Property Management Services* P.O. Box 3280 Tecumseh Postal Station Windsor, Ontario N8N 2M4 P: 519-966-5386
The Pivotal Key *Property Management Services* 600 - 6505 Tecumseh Road East Windsor, Ontario N8T 1E7 P: 519-945-4545	**Today Management (Windsor) Inc** *Property Management Services* 300 Giles Blvd. East, Suite B Windsor, Ontario N9A 4C4 P: 519-254-5195 W: www.todaymanagement.ca	**M.F. Arnsby Property Management Ltd.** *Property Management Services* 924 Oxford Street London, Ontario N5Y P: 519-562-2318

Question & Answer Contest

* Do you have any questions related to Condominiums?
* Would you like to get opinions from experts?
* Do you like winning prizes?

SUBMIT QUESTIONS TO CCIWINDSORESSEX@GMAIL.COM FOR A CHANCE TO WIN A DRAW FOR A GIFT CARD TO A LOCAL BUSINESS!

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CCI Events Around the Country *

CCI Huronia

- *CCI Huronia's Annual Conference*
  - September 16, 2016
  - Annual General Meeting will also be taking place
  - $75 for members / $130 for non-members

CCI London

- *5th Annual CCI London Golf Tournament*
  - September 9, 2016
  - $125 per player (no HST required)
- *High Rise Central*
  - September 24, 2016
  - $35.00

CCI Manitoba

- *Condo Speed Dating: Discussion with the Pros*
  - February 18, 2016 at 11:30 am
  - $25 for members / $50 for non-members
- *2016 President's Forum*
  - March 17, 2016 at 11:30 am
  - $0 for members / $20 for non-members

CCI New Brunswick

- *President's Forum*
  - September 20, 2016
- *Insurance Seminar*
  - September 27, 2016
- *President's Forum*
  - October 4, 2016

CCI North Alberta

- *Annual General Meeting*
  - October 4, 2016
- *CCI Luncheon Presentation*
  - September 29, 2016
  - $35.00

CCI North Saskatchewan

- *Town Hall Meeting with Mayoral Candidates for the City of Saskatoon*
  - September 14, 2016 at 7:00 pm

CCI South Alberta

- *Annual General Meeting*
  - September 22, 2016

CCI Toronto

- *Twitter Chats*
  - Security in Condos - October 20, 2016
  - Condo Vacation Disasters - Feb. 2, 2017
  - 420 Chat: Marijuana & Condos - April 20, 2017
  - Participate via Twitter with #CondoChat

** Please note this list is not exhaustive. For more events, greater detail, and registration methods please contact your local chapter. All CCI chapter information is listed in the Professional Directory.*

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PLEASE NOTE