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CCI REVIEW

Windsor-Essex County | Newsletter of the Canadian Condominium Institute



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Working on behalf of the condominium industry and its residents. CCI's objectives are:

- To Educate
- To Offer Professional Assistance
- To Improve Legislation Affecting Condominiums
- To Develop Standards





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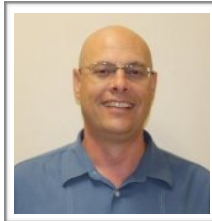
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A Note from your President

by Troy Humber, *B.Tech*

CCI Windsor-Essex County President

Hello, please allow me to introduce myself, I am Troy Humber. As of this past November, I am your new Windsor Chapter Condominium President. My background is Architecture, in which I have obtained a degree and diploma and have specialized in Building Science. I have worked with a few Engineering Firms within the Windsor and Essex area over the last 16 years, and have been servicing condominiums and other building owners in Ontario since 1997. I reside in Belle River, with my wife and two children, since arriving to this area 6 years ago.

I would like to start by thanking Bill Norris for his contribution as President over the last 4 years as our fearless leader, and hope that the next few years will be as interesting and exciting. We have a new board as of this fall, which will bring some new enthusiasm to our chapter. My hope is that this will translate into some new exciting educational and networking opportunities for the coming years for you, your Boards, and your condominium neighbours.

There is rumoured to be some new legislation coming down from our Provincial Government that will amend the Condominium Act and affect the way that we live, work and play in our condominiums. This new Act will also set a standard for condominium managers and condominium Board members that service you, and your condominium neighbours, and help you manage your properties. CCI National representatives have been lobbying on your behalf to ensure that Condominium Corporation interests are protected throughout the development of the new Act.

This brings up another topic of "Communication" and "Team Work". As professionals providing services to condominiums, communication is very important to the day to day running of your Condominium.

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Time and time again, we run into situations where individuals on a Board or individuals managing have private agendas and are operating as islands. While most often well meaning, it is important to remember that we must be unbiased and communicate effectively to your members. It is your board's responsibility to manage your collective interest, and without prejudice, keep things running like a well oiled machine. Your new CCI Chapter Board will strive to keep the local chapter running, keeping the principals of "Team Work" and "Communication" in mind, so that you can get the most out of your membership, and help you manage your most important asset, your home.

On this note. I hope to be of continued service to you, and the Windsor- Essex Condominium community for this year, and many years to come, and live up to the example set by those whom have served as President before me.

Feel free to contact me or any one of our Board members if you have any items of interest or concern. We are always looking for volunteers to assist with running projects and events. We would be pleased to have some additional assistance.

Bye for Now!

Yours truly,
Troy Humber, B.Tech

Past President's Report

by William C. (Bill) Norris, BPA, AMCT, RCM
CCI Windsor-Essex County Past President & National Representative

As I look back over the past 5 years or so as President I can truly say that it has been everything and more than I could have expected.

I continue to value the advice and leadership of every member of our Board, both present and past. In particular Andrea Thielk provided invaluable assistance and continues to both in my role as President and in my everyday work as a Property Manager. I can't help but gaze teary eyed at all the activities that we created and championed on behalf of CCI.

I remember in particular my own trepidation in taking on the role of President and asking myself questions of whether or not I was up to the challenge. As it turned out I realized that President is only but one role to make an organization and it actually takes the collaborative effort of the entire Board to make success of it all!

I am so very proud that I have been able to weather 5 plus years as the President and help steer the many achievements accomplished by the CCI Chapter over that time period. We may be actually the smallest Chapter in the Country in terms of statistics and numbers but we certainly have made a positive impact to those wise enough to take advantage of the educational and networking opportunities provided here in Windsor and Essex County.

As President and the Representative of our Chapter to the National Condominium Association I have been able to see that we really are not all that different than the other 15 Chapters across the Country. Each and every Chapter has its challenges and opportunities. Each possess the same questions to answer the same human challenges that face the Condominium Communities be them in a 7 unit multi-use commercial - residential complex to an 80 story high rise. Simply put we try and educate people how to deal with people who live in close quarters - those that have issues, be they with pets, personality disorders, or issues involving where to park your car.

We have a terrific Board today with many new faces and a ton of energy and ideas to move the Chapter forward. I am so very excited to be able to have a different perspective of the Chapter being able to watch Troy Humber, our new President and the team of volunteers that are at his disposal, I also look forward to my new role as the Chapters voice at the National Council.

Forever and always, looking forward positively, educating, learning and growing.

Controlling Excessive Condensation on Windows

by Stefan Nespoli, P.Eng.
CCI Windsor-Essex County Board Member

The beautiful months of winter are upon us! Of course, with all that fluffy white snow comes colder outdoor temperatures, warmer beds, and more comfortable couches. Just because we'll all be inside for a few months doesn't mean we shouldn't be able to look out our windows though! Yes, it's time to talk about ways of controlling excessive condensation on windows.

What is Condensation?

Condensation is the process where moisture that is present in the air turns into water when it contacts a cold surface. Since window glass and frames are typically the coldest surfaces in your home, this is where condensation forms. If the glass is cold enough, this water can freeze. While it is normal for some condensation to form on windows during cold weather, excessive moisture can result in damage to paint and plaster at the window sill and jambs. Further, an excessive amount of condensation can result in mould growth, damage to the exterior walls and windows or, for those living in large buildings, the condensation can even appear as a leak and cause damage to suites below.

When condensation occurs, water should be mopped up as soon as possible to minimize the damage. Relative humidity (RH) is a measure of the moisture in the air. The higher the RH, the more moisture in the air and the greater likelihood that condensation will form on the windows. As a resident, you should try to keep the RH at levels which will not cause excessive condensation - this may require some changes to lifestyle. Let's take a look at a few ways to minimize risk of condensation forming.

What Can Be Done to Minimize Condensation?

The following measures can help minimize condensation:

1. Use of humidifiers should be restricted to provide comfort while minimizing condensation on windows. The maximum humidity in the winter should be about 35%. This should be reduced as the exterior temperature decreases (see table below).
2. Exhaust fans should be operated continuously during and after cooking or bathing. It can take several hours of running an exhaust fan after showering to reduce humidity levels to levels that existed before showering.
3. If condensation starts to form on the windows, exhaust fans should be operated until the condensation clears.
4. Exhaust fans and the exhaust system for dryers should be maintained regularly. This maintenance includes removing lint from fan blades, grilles and ductwork traps. The suite occupants should check with Property Management if they are unsure of how to perform appropriate maintenance.
5. Suite entrance doors should not be weather-stripped. Gaps around these doors are provided to allow fresh air that is supplied to the corridors to enter your suite. In the winter, this fresh air is dry and helps remove moisture from the air in the suite.
6. Excessive numbers of plants contribute significantly to moisture in the air. Avoid placing plants on window sills because they increase the humidity immediately in front of windows.

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7. Where possible, turn air grilles to direct warm air flow downwards and across the window surfaces. This helps to keep the windows warm and to evaporate condensation that does form (in the summer, reverse this flow to point upwards to distribute cool air throughout the room).
8. Blinds or curtains should not be installed tight to windows or kept continuously closed, and furniture should not be placed tight to the windows. These conditions prevent circulation of air over the window surfaces making the window colder and increasing condensation problems. Coverings should be kept fully opened during the day to allow condensation that formed at night to evaporate.
9. Condensation forming on the inner surface of exterior sliding windows is a normal occurrence. Drain holes are provided at the bottom of these windows to remove the water.
10. For horizontal sliding windows, make sure both interior and exterior sliders are fully closed - this allows the window to function as intended and reduce risk of condensation forming.

The following table provides a guideline for maximum humidity levels to prevent condensation for typical residential aluminum framed windows (present in most high-rise buildings):

EXTERIOR TEMPERATURE	INTERIOR HUMIDITY REQUIRED TO PREVENT CONDENSATION*
0°C	~ 35%
-10°C	~ 25 – 35%
-20°C	~ 10 – 20%
-30°C	Less than ~ 10%

**Assumes 20°C interior temperature. For higher interior temperatures, the maximum humidity levels become lower.*

This means that on those cold winter days, your interior humidity levels will need to be almost uncomfortably low in order to prevent condensation from forming. Condensation then becomes an is-

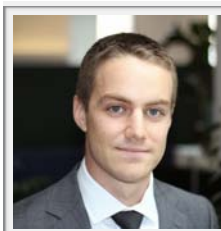
sue to control and manage, rather than one to try to prevent outright.

The Cold, Hard (and Wet!) Truth

The fact is, condensation isn't entirely the fault of the windows and can even form on brand new windows if the conditions allow. By following the guidelines above your corporation can improve the comfort level of your owners, reduce complaints, and ultimately extend the life of your windows.

When it does come time to repair or replace your windows, be sure to hire an experienced professional to assist in decision making with regard to air leakage resistance ratings, condensation resistance ratings, types of weather-stripping, quality of coatings, types and locations of low-e coatings, and a number of other factors to ensure that the windows you purchase align with the objectives and financial constraints of your corporation. New windows and sliding doors are a considerable investment, and not all new windows and doors are created equally. An experienced professional can help your Board navigate this important process.

In the meantime, follow our guidelines above and enjoy the great indoors!



Stefan Nespoli, P.Eng., is a Professional Engineer and Project Manager with Edison Engineers Inc, a professional engineering and project management firm specializing in the repair and restoration of existing buildings. Approximately three quarters of our services are for Condominiums. We specialize in Restoration work and leverage that knowledge and experience to help our clients develop repair plans and Reserve Fund Studies aligned to their objectives and financial constraints. Stefan works out of Edison's Southwestern Ontario Office, and can be reached at snespoli@edisonengineers.ca, or at 226-315-1782. www.edisonengineers.ca.

How to Make your Auditor Happy

by Julia A. Lee, CPA, CA

CCI Windsor-Essex County Board Member

As auditors, we appreciate it when all the required documentation and information is ready for us on the day of the audit and organized in a logical order. It is best when source documents, such as bank statements, and cancelled cheques, deposit books, paid invoices and monthly financial statement packages can be in file folders and put in an audit box. There is list of information and documentation that is required to perform an audit of a condominium corporation which is usually provided to the property manager or the president of Board of Directors.

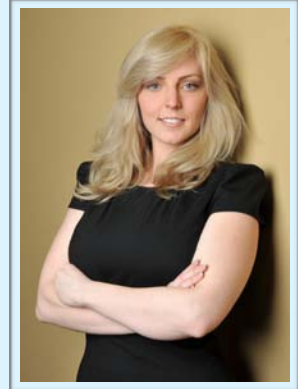
Below are further details of some of the required items and reasons why the auditors need these to complete the audit:

All of the minutes from the Board of Directors meetings held during the fiscal year and up to the audit date should be provided to the auditor. Review of the minutes is one of the first procedures that is done during the audit. As the minutes are read, the auditor gets an overall idea of how the corporation is making decisions. The auditor looks for approval of reserve fund expenditures during the year, so they can ensure they are recorded in the reserve fund. The auditor will look for any approved transfers from the bank accounts into investments, either operating or reserve banks and review if they have been done. The auditor will review if these have been recorded in the records correctly and ensure they are included in the bank confirmation request. The auditor reviews for the proper review of quotes for major expenditures and approval for contracts. Another major item the auditor looks for is disclosure of any legal issues that have begun or ended during the year, this way they can follow up with Board and see if a contingency needs to be recorded or disclosed or if a legal letter is required to be forwarded to the lawyer for confirmation of the legal issue.

The auditor requires a copy of the annual budget approved by the Board of Directors. This is used to confirm that the complete and appropriate common fees have been charged to owners. The budget would also indicate any other revenue expected, such as laundry, storage or parking fees. The auditor will also use the budget to compare budgeted to actual expenditures and investigate reasons for material differences. The auditor will require all paid invoices be provided and be filed in a logical order for efficient review in order to complete testing of internal control as well as review of unusual expenses. As well, the auditor requires all bank statements and cancelled cheques, both operating and reserve to ensure payment was made appropriately and

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Julia A. Lee



Professional Qualifications

- Honours B. Comm. (University of Windsor)
- Chartered Professional Accountant, Chartered Accountant of Ontario

Business Experience

- Partner at Gordon B. Lee Chartered Accountants 2010
- Manager at Gordon B. Lee Chartered Accountants 2008
- Staff Accountant 2006

Community Involvement

- Past President of Essex Kent Chartered Professional Accountants Association
- Board Member CCI
- Member of Rotary Club of Windsor (1918)
- Young Professional of the Year 2015
- Past Treasurer of Windsor Endowment for the Arts

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cheques are signed by authorized signing authorities, again for testing of internal control. The bank statements and cancelled cheques for the one or two months immediately following the year end are requested so the auditor can ensure inclusion of all expenses in the proper period and ensure complete and appropriate cut off procedures.

A year-end financial package is very useful to the auditor. This package would be similar to the package that should be provided to the Board of Directors on a monthly basis and include internal financial statements, bank reconciliations and bank statements, list of accounts receivable and payable at year end. As well, it should include details of any prepaid expenses and accrued liabilities. A summary of the replacement reserve fund should be prepared showing revenue going into the fund and expenditures being paid out during the year, along with a summary of the cash and investments held in the reserve fund at year end. The auditor will require access to the complete general ledger for the fiscal year either electronically or a paper copy.

The auditor requires a list of outstanding common fees and any other account receivables at the year-end for many reasons. First, the auditor

makes sure it agrees with the general ledger account.

Sometimes as a result of computer or human error a difference can occur and this is an efficient way to ensure data integrity. Secondly, the auditor will look to see if any of the owners are in arrears over 90 days, if so inquire if a lien has been registered against the unit, which is the proper procedure under the Condominium Act.



"The auditor will require copies of all current contracts"

The auditor requires a copy of any bylaws that the Board or Directors, with the Owners approval passed during the year, especially if a borrowing by law was passed. This will provide evidence of the liability that will be recorded and a bank confirmation can be requested to confirm the amount of the loan, interest rate and payment schedule. This is all evidence and information that the auditor reports on and includes in the notes of the financial statements.

A copy of the most recent Reserve Fund Study and a copy of the signed Form 15 must be provided to the auditor. This allows the auditor to be able to disclose that the corporation is in compliance with the

Condominium Act by having a study prepared every three years and providing the owners with the Form 15 in the required time.

The auditor will require copies of all current contracts, including management, landscaping and snow removal, custodial or any other service. As well the auditor will require a copy of the current insurance policy in effect.

The auditor will want to meet with the Board of Directors to review the draft financial statements and discuss any issues that arose from the audit. This meeting will be done at the Board's convenience and is usually during a regularly scheduled monthly meeting. It is very efficient if the Board of Directors have a chance to review these draft financial statements prior to this meeting so any questions or concerns of the Board can be prepared in advance. This will allow the financial statements to be completed in order to meet the timing requirements for holding the Annual General meeting of owners.

Finally, if an owner or board member has any concerns relating to the finances of the corporation, please contact the President. As part of the audit planning procedures the auditor communicates with the President before the audit commences to inquire if there are any arrears of concern which the auditor should be aware of.

Why an Audit?

by Paul Kale, CA

Chartered Accountant at Collins Barrow Windsor LLP

This question comes up periodically at condominium board of directors meetings and annual general meetings.

Why do we need it?

The simple answer is the Act requires all condominiums with 25 or more units to be audited annually, condominiums with less than 25 units can be exempt if all unit owners agree in writing every year.

Unit owners contribute monthly fees to the condominium to fund annual costs related to common areas and to the reserve account to fund major repairs and replacement of the common areas. This creates a fiduciary relationship between the board and the unit owners.

Accordingly the board has a fiduciary duty to all the unit holders.

- Persons in a fiduciary position are expected to be extremely loyal to the person(s) to whom they owe the duty; they must not put their personal interests before the duty, and must not profit from their position as a fiduciary, unless the principal consents.

The completion of an independent audit with a "clean opinion" adds credence to the fact that the board has discharged its fiduciary duty to the other unit holders. It should be noted that a "clean opinion" indicates that the auditor is of the opinion that the financial statement "present fairly" the assets, liabilities, equity, income and expenses of the corporation. The audit does not guarantee that the statements are without error.

What do they do?

The auditor, using his professional judgment, knowledge of the condominium industry and of the specific corporation, will assess the risk of a material error occurring within the accounting records and design and carryout various procedures to satisfy themselves that the chance of undetected errors are low.

It costs too much!

The cost of an audit depends primarily on the volume of transactions, the nature of unusual transactions and the accuracy of the accounting records. The fewer adjustments required to the accounting records the lower the cost of the audit and the more reliable the interim financial statements are to the board. It is imperative then that the corporation maintains accurate and timely accounting records.



Financing a Cash Shortfall an Attractive Option!

by Pierre Sauvé, MBA

Director of Originations, Maxium Condo Finance Group



Condominium Boards are continually faced with the competing objectives of keeping common expense fees low and properly maintaining and repairing common elements. This dilemma invariably leads to situations where there is shortfall between the reserve fund and the cost of repairs and replacements. These deficiencies may occur for a number of reasons that are often beyond the control of the Board and in many cases, the Board inherits a shortfall that has compounded over time and needs to be addressed sooner than later.

Reserve Fund studies are valuable tools to plan for substantial future common expenditures but they do have limitations that may contribute to shortfalls. The accuracy of the forecast is based largely on the reasonableness of the assumptions made and the expertise of the company engaged to do the study and the cost of replacing a certain common elements may be higher and/or the life expectancy may be shorter than originally assumed. Also, unexpected damage may be found when undertaking certain common element projects as costs are often unpredictable until the work is assessed.

Faced with a cash shortfall, there are realistically three options available; namely, defer, assess or borrow. Deferral is effectively delaying dealing with the issue until the common element absolutely has to be replaced. The delay will not avoid having to deal with the cash shortfall at some point. It may in fact increase the risk of further damage and expose the condominium corporation to escalating costs. In addition, buildings with unaddressed common element issues will be less desirable in the marketplace.

A second option is a one-time special assessment. In this case, current owners are paying the full cost of repairs with future owners benefitting from the new components. Owners may have been faced with this situation for a previous shortfall hence increasing the anger and resentment of facing another assessment. This is also a difficult situation for owners with small savings or weaker credit. If they are able to secure the financing it may be at a high cost and the additional debt may affect their ability to borrow in the future for other personal requirements. Owners who cannot pay on time or at all are faced with expensive lien claims against them and the real possibility of losing their home. The special assessment presents a real risk of dividing the owners and affecting the spirit and cohesiveness of the community.

The third option is to borrow to cover the cash shortfall and make payments over time. The condominium corporation borrows the funds via a loan agreement as opposed to the individual unit owners forced to come up with the funds under the previously described special assessment option. Funds are available immediately or in the case of a longer term project, funds are drawn to pay for work as it is performed, incurring interest only as funds are extended. Loan financing can also be a viable option for Boards when considering substantial additions/improvements to enhance quality of life and market value yet are restricted from using the reserve fund by the Condominium Act.

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Loan payments are included in the annual budget forming a part of regular monthly maintenance fees. Amortizations periods from 5 to 20 years are available and typically match the estimated useful life of the repair or replacement. Payments are fixed for the term of the loan (typically 3 to 10 years) and, with interest rates at historically low levels, it is a great opportunity to lock in long-term financing at very attractive rates. Condominium Boards can obtain non-binding term sheets from lenders that outline interest rates and financing terms.

Another situation where financing should be considered is in the area of energy retrofits where projected energy savings combined with government rebates can offset some or all of the costs of borrowing. With energy prices continuing to increase, looking at saving energy through higher efficiency boilers, building automation, and efficient lighting and paying for the capital investment over time by way of a loan may be a sound

strategy for a Condominium Board to consider.

In summary, using the financing option to overcome a cash shortage provides a number of benefits. Owners have the ability to pay for capital expenditures over the useful life of the asset with a fairer distribution of costs over time. Owners are not required to individually seek financing on their own and will benefit from the condominium corporation's ability to secure financing at attractive long-term market rates. In addition, the financing does not affect the owners' access to future credit or result in a charge against their condo unit. Financing may also be a great solution to facilitate taking advantage of energy saving initiatives that provide relatively short payback periods but require a substantial up front investment. Finally, the timing for considering a loan financing alternative has never been better as interest rates are currently at historically low levels.

SAVE THE DATE

Educational Seminar February 17th, 2016
7:00 pm to 9:00 pm
WFCU Centre - Ontario Room
8787 McHugh Street

The New Fire Code Compendium

What changes affect your buildings under the fire code? FCS will be presenting the changes that will affect your buildings currently and over time whether you represent townhomes or towers. Their presentation will detail technical issues and include discussion to help you manage fire code change.

Presented by FCS Fire Consulting Services Ltd.

Restoration Engineering

What To Expect During Construction Projects. This presentation will answer some of your questions on what you, as an Owner or Property Manager, should expect during a construction project. We will guide you through the step by step process from initial specification design to project close-out.

Presented by Dustin Ducharme, P.Eng., WSP

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Brian Horlick



Professional Qualifications

- B. Comm (McGill)
- B.C.L (McGill)
- L.L.B. (McGill)
- LSUC Admission - 1984
- Associate of CCI (ACCI)
- Fellow of CCI (FCCI)

Relevant Experience

- Lawyer for over 30 years
- Lecturer for CCI Condo Course
- Guest lecturer at Humber College

Committees & Boards

- CCI-Toronto Past President
- CCI-Toronto Board
- CCI Government Relations Committee
- ACMO/CCI Conference Committee
- ACMO Associates Executive Committee
- ACMO Certification and Standards Committee

Condominium Reform at a Glance

by Brian Horlick, *B.Comm., B.C.L., LL.B., ACCI, FCCI*
CCI Toronto Past President & Board Member

On May 27, 2015 the Ontario Government set out to dramatically reform the *Condominium Act, 1998* for the first time since it came into effect on May 5, 2001 by introducing the *Protecting Condominium Owners Act, 2015*.

Horlick Levitt Di Lella LLP has reviewed the proposed legislation and has developed a list of noteworthy amendments to keep you informed of the potential changes to the legal landscape. Please note that the amending statute has only passed second reading, so the below is subject to change and is not a complete list of proposed amendments.

Below is the reform at a glance in a 19-point list of what we consider to be the most noteworthy amendments:

- | | |
|--|---|
| <ul style="list-style-type: none"> • Establishment of a Condominium Authority and a Condominium Authority Tribunal. • Establishment of a Condominium Registrar. • Restrictions on amounts to be added to common expenses. • Mandatory shared facilities agreements in certain circumstances. • No restriction on a corporation's right to sue a declarant by by-law, etc. • Ability to hold board meetings by teleconference without a by-law. • Prescribed standard unit definition. • Expanded framework and procedure for requisitions for owners' meetings, and a mandatory prescribed form of requisition. • Reduced quorum requirement of 15% for turnover meetings and AGMs if two previous attempts to hold the meeting have failed to obtain quorum. | <ul style="list-style-type: none"> • Mandatory education for directors. • Elimination of the owner-occupied position for most corporation. • Mandatory prescribed form of proxy. • Dispute resolution mechanism with respect to the addition of amounts to the common expenses. • Change to the 'without notice' threshold for modifications to the common elements. • Elimination of the need for a s. 105(3) by-law. • Expanded rights to terminate pre-turnover agreements. • General prohibition on nuisance activity in units or on common elements. • Prescribed mediation/arbitration procedure. • Reciprocal actual additional costs provision in favour of a unit owner who is successful on a s. 134 application against a corporation. |
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Condo Lien Enforcement Hits the Highway

by Christopher J. Jaglowitz, B.A., J.D., ACCI
Partner at Gardiner Miller Arnold LLP

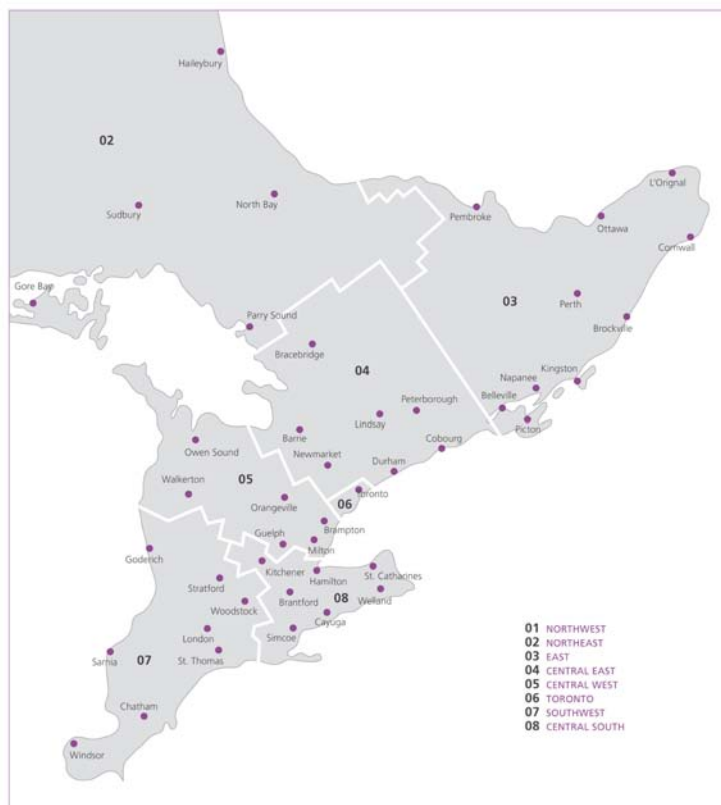
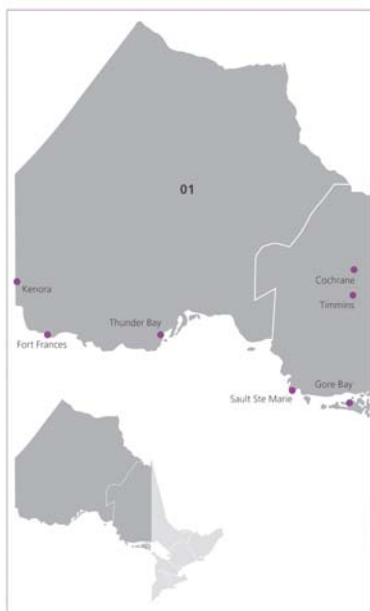
Until now, mortgagees could bring enforcement lawsuits anywhere in Ontario they pleased, regardless of where the mortgaged property was located. That option is now gone. On March 31, 2015, the *Rules of Civil Procedure* changed to add a subrule requiring mortgage enforcement actions to be brought at one of the designated court locations in the judicial region where the property is located. The eight judicial regions of the Superior Court are illustrated on the map, below, along with the various court locations within each region. In some regions, all of the court locations are designated to deal with mortgage enforcement. In others, only one or two court locations are designated.

Condo liens are likely captured by this new subrule because s.85(6) of the *Condominium Act*, 1998 provides that a condominium lien "may be enforced in the same manner as a mortgage." Our lawsuits to enforce condo liens include a claim for possession of the lien unit and where the unit owners or their mortgagees refuse to pay the debt after we obtain judgment, we often require a sheriff's eviction to remove the occupants and take physical custody of the unit to prepare and sell it.

Our office always started these actions in Toronto because it's convenient and early hearing dates are available as backlog clears. We must now take our show on the road, to the region where the property is located.

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REGIONS AND COURT LOCATIONS OF THE
SUPERIOR COURT OF JUSTICE OF ONTARIO



- 01 NORTHWEST
- 02 NORTHEAST
- 03 EAST
- 04 CENTRAL EAST
- 05 CENTRAL WEST
- 06 TORONTO
- 07 SOUTHWEST
- 08 CENTRAL SOUTH

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The only potential benefit this change brings to defaulting unit owners or mortgagors is that they can now count on lawsuits enforcing their mortgage or condo lien being brought in the judicial region where their property is located. While seemingly helpful, this requirement is of no benefit to someone who owns a Muskoka recreational condo unit but lives in Toronto, for example. Further, the subrule does not require these actions to be commenced at the court location nearest to the subject property. This bodes poorly for the owner of property in the East judicial region but outside the City of Ottawa (which is the sole designated court location in that region), or where the plaintiff sues in Woodstock in respect of a property in Windsor. The proximity of the court location to the property at issue is now of slightly greater impor-

tance but still not paramount importance, and the added benefit to the defendant is small.

The change is likely intended to benefit the court administration. But will there actually be a net benefit? The impact of the new subrule on the workload and wait times of the various designated court locations remains to be seen but is potentially massive. Lawyers for many major lenders traditionally file their lawsuits at one or two select court offices outside Toronto. Now there will be a flood of new cases at other courts, most notably in Toronto, that have processed relatively low volumes of mortgage cases.

The tremendous progress in reducing court delays in Toronto may be wiped away in short order and we may be on the cusp of a bureaucratic boondoggle of epic proportion. Time will tell. Meanwhile, our firm's condo lien enforcement road-show is about to kick off and may soon visit a town near you.

Smoke Migration: What is a Condominium to do?

by Erica Gerstheimer, B.A. (Hons.), J.D.
CCI Windsor-Essex County Board Member

Recurring issues within condominiums are generally described by the industry with three words—"people, pets, and parking". However, recently it appears that a new recurring issue must be added to that description. The issue is smoke migration between units. Complaints regarding smoking and smoke migration appear to be popping up in more condominiums than ever before. When a condominium receives a complaint regarding smoke migration, the source of the problem and who bears the costs of fixing the problem, are often unknown at the outset. The answers to those questions often extend beyond reviewing the maintenance and repair obligations set out in a condominium's declaration. So when smoke migration leaves some owners smoldering, what is a condominium to do?

A recent case, *MacKay v. Metropolitan Toronto Condominium Corp. No. 985* [2014 ONSC 2863], offers some guidance on how a condominium may fulfill its maintenance and repair obligations pursuant to the Condominium Act, 1998 (the "Act"), when a smoke migration complaint is received. In this case, unit owners became aware of a strong cigar odour within their unit and immediately reported the issue to the condominium. The underlying cause of the migration issue was unknown. However, it was suspected that the smoke was migrating from another unit. The Condominium took the initiative to address the owner where the smoke was suspected to have been migrating from, and the owner agreed to stop smoking within the unit. However, it does not appear that the Condominium immediately took any further steps to investigate the source of the problem at that time.

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The smoke odour within the unit continued without final resolution. Eventually, the unit owners commenced a court application seeking an Order that the condominium had breached its maintenance and repair obligations pursuant to sections 89 and 90 of the Act.



In determining whether the condominium had breached its maintenance and repair obligations pursuant to the Act, the court analyzed whether the Condominium's response to the initial complaint was adequate. In this regard, a great deal of emphasis was placed on the engineer reports obtained by the Condominium and unit owners. Engineering reports often identify common element deficiencies or unit components which may require maintenance or repair. Once any deficient components have been identified, the respective maintenance and repair obligations of the unit owner and condominium can be determined. Upon review of the engineering reports in this case, it was determined that the Condominium was maintaining the common elements in accordance with the Act and declaration. As a result, the Condominium was found not to have breached its maintenance and repair obligations pursuant to sections 89 and 90 of the Act. However, the Court did note that had it not been for the

intervention and report from a particular consultant retained by the Condominium, the Court likely would have found the Condominium to be in breach of its duties. Despite finding that the Condominium did not breach its duties, the Court indicated that costs may be awarded against the Condominium after the appropriate cost submissions had been made by the parties.

“However, it was suspected that the smoke was migrating from another unit. The Condominium took the initiative to address the owner where the smoke was suspected to have been migrating from, and the owner agreed to stop smoking within the unit.”

In summary, when a condominium is faced with a smoke migration issue, the source of the problem should be investigated vigorously and in a timely manner. The investigation, which often involves retaining a professional engineer or consulting company, will assist in determining the source of the problem, whether that problem stems from a common element deficiency, and whether any components require maintenance or repair. Once these matters have been determined by the appropriate professionals, a condominium can take the necessary actions to maintain or repair any deficient areas that it may be responsible for. Responding appropriately to a complaint by following the previously noted suggestions may assist a condominium in meeting its maintenance and repair obligations pursuant to the Act, particularly when a smoke migration issue arises.

Erica Gerstheimer, BA (Hons.), J.D. is a lawyer at Smith Valeriotte Law Firm LLP in Guelph. Erica practices exclusively in the area of condominium law, assisting property managers, directors, developers and unit owners with a variety of condominium matters. She can be reached at egerstheimer@smithvaleriotte.com.

Do you have a Policy and Complaint Mechanism for Addressing Unit Owner Allegations of Harassment and Discrimination?

by Kristin Ley

Partner at Cohen Higley LLP

The Human Rights Tribunal has recently reaffirmed the 3-part test for assessing whether or not an employer has met its obligation to take reasonable steps to respond to and address complaints of harassment or discrimination. The decision in *Zambito v. LIUNA Local 183*, 2015 HRT0 605 (CanLII) emphasizes in Step 1 of the test the need for employers to have a policy and complaint mechanism to address alleged violations of the Human Rights Code (the 'Code'):

1. Awareness of issues of discrimination/harassment, Policy, Complaint Mechanism and Training: Was there an awareness of issues of discrimination and harassment in the workplace at the time of the incident? Was there a suitable anti-discrimination/harassment policy? Was there a proper complaint mechanism in place? Was adequate training given to management and employee?
2. Post-Complaint: Seriousness, Promptness, Taking Care of its Employee [unit owner or occupant], Investigation and Action: Once an internal complaint was made, did the employer [property manager or condominium corporation] treat it seriously? Did it deal with the matter promptly and sensitively? Did it reasonably investigate and act?
3. Resolution of the Complaint (including providing the Complainant with a Healthy Work [living] Environment) and Communication: Did the employer [property manager or condominium corporation] provide a reasonable resolution in the circumstances? If the complainant chose to return to work [stay in the unit], could the employer [property manager or condominium corporation] provide him/her with a healthy, discrimination-free work [living] environment? Did it communicate its findings and actions to the complainant?

Many professional property management companies will have such policies and processes for their employees since other provincial legislation, like the Occupational Health and Safety Act (the "OHSA"), mandates a written policy for addressing workplace harassment and bullying. What most property managers and condominium corporations don't have, however, are policies and processes for unit owners and/or their occupants to raise concerns about the alleged infringement of their Code rights.

While the test above arises from an employment context, the Code imposes the same obligations on condominium corporations (including property management companies who manage condominium properties) with respect to ensuring a housing environment that is free from harassment and discrimination.

When a condominium board or property management company is the subject of a complaint to the Human Rights Tribunal, the 'Response to an Application' form that must be completed contains the following questions:

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- A. Do you have a policy related to the type of discrimination alleged in the Application?
- B. Do you have a complaint process to deal with discrimination and harassment?
- C. Did the applicant make a complaint under the internal complaint process about the facts in this Application?
- D. Describe how the organization responded and what was the outcome of the complaint process?

Usually, condominium corporations and property managers will have to answer "no" to the first two questions and "not applicable" to the last two. On this basis alone, the risk of liability of the property management company and/or condominium corporation to the complainant increases dramatically.

Property managers and condominium corporations are vulnerable to human rights complaints and there are legal obligations imposed on them under the Code to take reasonable steps to respond to and address complaints of harassment and/or discrimination. In view of the Tribunal's continued application of the 3- part test identified above in assessing an organization's response to complaints, it is prudent for a property management company to ensure that there are formal policies in place in their operations by which unit owners and occupants can raise concerns of Code violations. Condominium corporations who develop such policies and procedures would be well-advised to amend their rules and regulations to reference same to ensure all unit owners are aware of the policy and to give the condominium corporation more leverage against unit owners who may be in violation of the policy.

"Where property managers are named in a complaint, the existence of the policy (and compliance with it) will reduce liability exposure."

At a minimum, the policy should contain the following:

- Identify the policy objectives (i.e. commitment to providing an environment free of harassment and discrimination).
- Identify who the policy applies to
- Set out a complaint resolution process (i.e. the requirement for a written complaint to be delivered to an identified person); and
- Set out the investigation process

If a unit owner or occupant alleges discrimination or harassment, property management staff should be trained to recognize the types of complaints

that trigger the application of the Code and the policy. Staff should know to provide a copy of the policy to the unit owner or occupant and request a written complaint containing details of his/her allegations. As can be seen from the criteria set out by the Tribunal, it is important that the entire process, from the receipt of the complaint to the outcome of same, be thorough and complete.

Not only will taking these steps ensure that onsite staff are equipped to address complaints in a prompt and efficient manner, it may also enable a condominium board and/or property manager to resolve complaints before they become the subject of applications to the Human Rights Tribunal or the Court. Where property managers are named in a complaint, the existence of the policy (and compliance with it) will reduce liability exposure.

If you have questions about your policies or would like assistance in preparing a policy that will apply to unit owner or occupant complaints of harassment or discrimination, please contact Kristin Ley at Cohen Highley LLP to discuss same. She can be reached by phone at: (519) 672-9333 x 316 or by e-mail at: ley@cohenhighley.com

When opposition becomes oppression:

Director's Duties *by Christina Bell, Paralegal Student at Gardiner Miller Arnold LLP*

Carleton Condominium Corporation 111 was created in 1977. Its declaration had a single family residence provision and prohibited rooming/boarding houses. This provision required a unit to "be occupied and used only as a single family residence and for no other purpose". The problem was that the condo's documents did not define what a "single family residence" was.

What should have been a simple clarification to the already existing restriction in the declaration was thrown into contention because a single director vied to subvert compliance while other owners fought for it. The board sought legal opinions, tried to incorporate a definition of "single family residence" into a rule. The vocal, opposing director set on a campaign against the recommended interpretation and its confirmation in a rule.

The opposing director's campaign began with a strongly worded memorandum to the board and quickly escalated. Newsletters were sent to owners by the opposing director (identifying himself as an owners and director) where he outlined his objections, accused the board of acting in bad faith and urged owners not to support the board. When he was denied access to records relating to individual owners, the opposing director accessed files via the manager's computer. He was asked to stop and refused to return his key to the manager's office.

Both the president and the opposing director sent out letters to the owners regarding an upcoming AGM "where the single family definition rule was to be considered. The president explained why the rule was important. The opposing director urged owners to vote down the rule. Both, inappropriately, endorsed candidates who were running for the board who shared their views on the rule. The rule was voted down at the AGM.

A new board was elected at the AGM, including the opposing director. The new board sent out a newsletter that the wording in the declaration would be enforced. They also sought advice from counsel on whether they should refer to the single family re-

striction in the status certificate. The opposing director posted his position on the legal advice given to the board on his personal website and accused the board of acting in bad faith and going against what the majority of owners wanted. After two board members resigned, a new board was elected. The new board, now led by the opposing director, took no steps to enforce the single family restriction.

The unit owners (and former board members) went to court seeking compliance with the declaration, by-laws, and rules and an oppression remedy against the corporation and the new president (the opposing director) and a declaration that the opposing director breached his duties under the Condominium Act, 1998.

The court sided with the unit owners, finding that the opposing director made no effort to care for the legitimate interest of all unit owners as he single-mindedly pursued his goal. He did not exercise the care, skill and diligence that a reasonably prudent director on a condominium board would display. He thought nothing of accusing fellow board members of dishonesty and bad faith. He thought of himself as more knowledgeable in the law than anyone at the corporation, including their lawyer. His emails to other board members were aggressive highly critical and at times threatening. His letters and postings to his website showed the same level of disrespect to the board, and his disdain for the steps they were taking to deal with the single family residence restriction. The court commented that a reasonably prudent director of a condominium would not threaten other board members, undermine board decisions, mislead owners as to the board's responsibilities and efforts to meet those responsibilities, encourage unit owners to distrust the board, undermine legal advice from counsel or provide his own legal advice to owners. He would also not put his own interests ahead of the interests of the owners.

Directors must avoid conflicts of interest and must not abuse their position in the corporation for their own personal motivations.

Garage Ramp Replacements: Short Term Pain, Long Term Gain

by David Heska, *P.Eng., LEED GA* and Chris Moning, *B.A.Sc.*

Accelerated deterioration – two words a property manager never wants to hear in reference to their parking garage ramp. A recent ramp replacement project by WSP demonstrates the importance of paying attention to the early warning signs of deterioration and calling in a team of experts to properly diagnose and resolve the problem. If left unaddressed, a deteriorating garage ramp can pose real safety risks to occupants and lead to even more severe property damage.

Diagnosing the Problem: Concrete Deterioration

In April 2014, WSP was called in to investigate leakage on the underside of the parking garage ramp at a seven-storey, mixed-use building with 49 residential units and seven commercial units in the Golden Horseshoe area of Ontario. It was built around 1976 and was converted to a condominium in 2000.

The results of WSP's initial review were discouraging: not only was water leaking into the parking garage below, there was also severe concrete deterioration of the ramp slab. The absence of a waterproofing membrane beneath the ramp topping had allowed salt to contaminate the embedded reinforcing steel, initiating corrosion. The embedded electrical snow melting heating cables had also failed.

While the heating cables were budgeted for replacement, it was clear that the accelerated deterioration necessitated a bigger and more immediate undertaking: a full ramp replacement. Specifications included a new concrete slab with reinforcing steel additions, slab waterproofing, and new asphalt topping with embedded electrical snow melting heating cables.

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Left: Picture of the full building



Above: View at the end of the project

Right: Ramp beam cracking, signs of leakage, and concrete deterioration



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Implementing the Solution: Full Ramp Replacement

The condominium's single-level garage is located below the building and provides parking for 48 cars. Since the ramp is the only vehicular entrance to the garage, all cars had to be removed for one month during demolition. Complementary parking was provided at a hockey arena across the street.

Upon removal of the ramp, WSP discovered that the existing reinforcing steel was inadequate, so new bars were added and concrete was poured. After receiving successful concrete strength test results the garage was temporarily reopened for three weeks while the concrete continued to cure. The final stage of construction involved closing the ramp a second time for one week while the heating cables, waterproofing and asphalt were installed. Unlike concrete, asphalt does not require curing time, so residents were able to access the ramp the day after the asphalt was installed.

Lessons Learned: 3 Tips for Property Managers and Board Members

When dealing with a ramp replacement, Property Managers and Board Members can play a pivotal role in ensuring the process goes smoothly.

- **Do your research:** If owners choose to close the ramp entirely, they will need to coordinate parking offsite or provide tenants with parking passes. The other option is to complete the ramp replacement in halves, keeping one side open while the other is replaced. Although this may seem like a viable solution on the surface, it will prolong construction, increase the project cost, and may also cause traffic-flow issues.
- **Think big picture:** While the ramp may be of immediate concern, simultaneously tackling associated projects, such as trench drain and expansion joint replacement, will save time

and, potentially, higher capital costs in the future.

- **Keep the lines of communication open:** The Property Manager will need to be in regular communication with several stakeholders - the consultant to specify the work, the city for parking arrangements, the contractor for access and day-to-day needs, and, of course, residents and other occupants to keep them informed about the project.

Results: Peace of Mind for the Next 20 Years

Embarking on a ramp replacement can be intimidating due to the anticipated inconveniences, including ramp closure, noisy demolition and the cost (approximately \$150,000 in this case). However, these are small prices to pay when faced with the threat of compromised resident safety.

Left in place, the structurally unsound garage ramp would have continued to deteriorate as more water leaked in. The water damage may have caused the concrete to "spall" or crumble, risking injury to occupants and damage to their vehicles. Instead, the condominium now has a new and improved garage ramp with a snow melting system that should last for up to 20 years with proper maintenance. That's a very worthwhile investment in the future of the building.

David Heska, P.Eng., LEED GA

David Heska, P.Eng. is a Professional Engineer and Project Manager with WSP's Building Sciences team. A member of the International Concrete Repair Institute, he has been involved in the evaluation, design and repair of condominiums for the past seven years. David is based in Burlington and can be reached at david.heska@wspgroup.com.

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- * Do you like winning prizes?

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<p>CCI South Alberta P.O. Box 38107 Calgary, AB T3K 4Y0</p> <p>P: 403-253-9082 W: www.ccisouthalberta.com E: administrator@ccisouthalberta.com</p>	<p>CCI South Saskatchewan P.O. Box 3784 Regina, SK S4P 3N8</p> <p>W: www.cci.ca/SSC E: cci-ssk@cci.ca</p>	<p>CCI Toronto and Area 2800 - 14th Ave., Suite 210 Markham, ON L3R 0E4</p> <p>P: 416-491-6216 W: www.ccitoronto.org E: info@ccitoronto.org</p>
<p>CCI Vancouver PO Box 17577, RPO The Ritz Vancouver, BC V6E 0B2</p> <p>P: 1-866-491-6216 W: www.ccivancouver.ca E: contact@ccivancouver.ca</p>	<p>CCI Windsor-Essex County P.O. Box 693, Station A Windsor, ON N9A 6N4</p> <p>P: 519-978-3237 W: www.cci-windsor.ca E: cciwindsor@essex@gmail.com</p>	<p>CCI National 2800 - 14th Avenue, Suite 210 Markham, ON L3R 0E4</p> <p>P: 416-491-6216 W: www.cci.ca E: cci.national@associationconcepts.ca</p>

CCI Events Around the Country *

CCI Huronia

- *Condominium Director's Course*
 - April 9 -10, 2016
 - An intensive two-day (April 9 & 10) Condominium Director's course that addresses important issues that Condominium Directors face.
 - \$230 for members / \$330 for non-members

CCI London

- *Trees, Turf & All Things Green*
 - March 22nd, 2016 at 7:00 pm
 - \$15 for members / \$30 for non-members

CCI Manitoba

- *Conventional & Bare Land Condos: Let's Discuss the Difference*
 - February 18, 2016 at 11:30 am
 - \$25 for members / \$50 for non-members
- *Self-Managed Boards: The DIY Approach*
 - March 17, 2016 at 11:30 am
 - \$25 for members / \$50 for non-members

CCI New Brunswick

- *Seminar in Moncton: Making your Declaration, By-Laws and Rules work for you*
 - April 30, 2016 at 7:00 pm
 - \$10 for members / \$20 for non-members

CCI North Alberta

- *Condo 101 - An Introductory Course for Condo Boards*
 - February 6, 2016 at 9:30 am
 - \$0 for members / \$50 for non-members

CCI North Alberta continued....

- *Fall Protection & Other OH&S Necessities - CCI Luncheon*
 - February 11, 2016 at 11:30 am
 - \$30 for members / \$30 for non-members

CCI North Saskatchewan

- *CCI President's Club*
 - February 10, 2016 at 7:00 pm
 - Price TBD

CCI South Alberta

- *Condominium Management 101 Course*
 - February 18, 2016 at 6:00 am
 - \$195 for members / \$295 for non-members

CCI Toronto

- *Twitter Chat - Bill 106*
 - February 11, 2016 at 12:00 pm
 - Participate via Twitter with #CondoChat

CCI Windsor

- *Educational Seminar: The New Fire Code Compendium & Restoration Engineering*
 - February 17, 2016 at 7:00 am
 - \$15 for members / \$25 for non-members
 - Email cciwindsor@essex.ca to reserve your spot.

* 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.



Message from the President

BY BILL THOMPSON, BA, RCM, ACCI, FCCI
CCI NATIONAL PRESIDENT

As I listen to the latest news about all of the hungry people in the world, I am reminded of a childhood memory that I have never been able to shake.

When I was in grade three, a new boy came into our class, and I almost immediately became friends with him. I will call him Jim. We were about the same height, both had four sisters, and we were the only boys in our households. We were brothers in no time. We played at recess together, and became unbeatable in team handball. We were inseparable!

Inevitably, there came a time when our friendship expanded beyond the school grounds. I asked my mom whether I could have Jim come over for lunch, since our condominium townhouse that we lived in was only a block from school. Our family was "tight" in those days with five children under 10 and only one income, so my Mom had to think about it a while, and I offered to only eat half of my lunch that day, and share the other half with Jim. I remember my Mom's face, which was weird, and her eyes filled up with water. She made up her mind and said that Jim was welcome at our house any time.

Jim came home for lunch with me the very next day. Could he ever eat! He ate like he hadn't ever tasted a peanut butter and jelly sandwich before. In those days, peanut butter was a staple of all families, and nobody would have even thought to ask

about allergies. How the world changes. But I digress. We went back to school with full bellies and a great smile.

The next day, Jim asked me if I would come over to his house for dinner. I ran home and asked my Mom, and she agreed, but I had to be home before the streetlights came on. Street lights were the very thing that every child was measured by back then. So that day after school I went to Jim's house. When we went in, there was nobody home yet. He was the youngest in his family as all his sisters were older, and his Mom was at work. We went into the living room, and it was really cool. There were wide open spaces to play, and just a simple mattress to jump on and wrestle on! This place was designed for 8 year old boys. When his sisters got home, I

got some strange looks and they took Jim aside and whispered to him. When his mom got home, she did the same. After she whispered with Jim, she came over to me, and her eyes were wet just like my Mom's were. She shook my hand and welcomed me to their home. Then she told Jim and I to go play until dinner was ready.

Soon after Jim and I were called for dinner. The whole family sat on the stairs, because they didn't have a kitchen table or chairs. They passed a pot of kraft dinner from the bottom of the stairs to the top, and each person took a small scoop out and put it into their bowl. By the time the pot got to the sister on the top stair, it was virtually empty. Jim's mom handed her bowl to Jim's sister and said

continued...



Season's Greetings

The CCI Executive Board, National Council, and staff wish to extend warm
Holiday Wishes to all CCI members, Associates and Friends.

Kindly note that the CCI National Office will be closed for the Holidays,
from 5:00 pm on December 23rd and will re-open on January 4th at 9:00 am.

Message from the President Cont'd.

that she wasn't hungry right now anyway. I sat there not knowing how to react. I was eight, and I was devastated. I didn't eat my dinner. I asked to be excused, and I ran home crying. It was impossible for my young mind to fathom that reality.

When I got home, my face was a mess and my mom asked what happened. I couldn't tell her. I didn't know how to express the feelings that were overwhelming me. I went straight to bed, and did not eat dinner at all.

I decided to do what I could, within my limited sphere of influence, and I brought lunch to school every day after that, and shared it with my friend Jim. I noticed his winter coat was torn and tattered, and I brought him my "old" coat so he could keep warm during recess. A short time after that Jim just stopped coming to school, and the teacher said that his family had moved. I now understand that they had been evicted for rent arrears. I never saw Jim again. I could have done more.

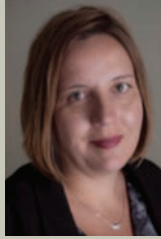
This memory reminds me, many, many times throughout my life, that there is no chance to do things over. Humanity needs people who act when the opportunity shows itself. Nobody is going to ask you to do it, because the opportunity is yours, and yours alone. Every small act of kindness changes the world. This year, my family bought gifts for a financially challenged family to give to their young children, instead of my family buying for each other. There will be more joy in that family, and mine, for the simple act, and my family will learn the gift of caring and charity.

As volunteers in the CCI world, I know that you understand this basic principal of action, because you give freely of yourself all year long. At this time of year, especially, let's give thanks for the people in our lives who care enough to make a difference.

Thank you for everything that you do.



EXECUTIVE PROFILE



Sonja Hodis, B.A. (Hons.), LLB

Hodis Law

National Executive Member-at-Large

Sonja has been involved with condominiums for over 10 years as a condominium lawyer and has been a member of CCI for just as long. Although for most of those years Sonja has focused her involvement in CCI at the chapter level as a board member and more recently as President of CCI Huronia she has also been involved in the education, communication and special events committees. Sonja expanded her involvement with CCI to the National level in the last 4 years. Prior to being elected to the Executive, she held the position of National Membership Chair and Council representative for CCI Huronia.

As one of CCI's mandates is education, CCI was a great match for Sonja. Coming from an educational background, Sonja has always been passionate about educating directors and owners about condominiums and has been a frequent speaker and writer on condominium issues for CCI and other organizations. Sonja also enjoys organizing seminar events and conferences for CCI Huronia. This year, Sonja is excited about helping organize the Fall 2016 Leader's Forum which will be hosted by CCI Huronia and promises to be an entertaining and educational event.

Professionally, Sonja advises boards and owners of condominiums on their rights and responsibilities as well as assists boards in enforcing their governing documents. Sonja has developed a specialty in dealing with human rights issues in the condominium context and as represented condominiums in leading human rights cases.

For fun, Sonja loves to cook, entertain and play with her one year old son Sebastian. 🍁

Congratulations to the following 2015 CCI National Award Recipients



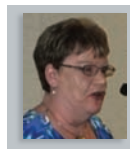
Ron Danks National Volunteer Leadership Award

Patrick Cassidy, Q.C., B.COMM, LLB, M.T.S., ACCI, FCCI



Hall of Fame

John D. Peart, LL.B, ACCI, FCCI



Distinguished Service Award
Doreen Kerr, Manitoba Chapter



Distinguished Service Award
Carol Conrad, Nova Scotia Chapter

Condo Cases Across Canada

BY JAMES DAVIDSON, LL.B., ACCI, FCCI
NELLIGAN O'BRIEN PAYNE, OTTAWA



It is my pleasure to provide these brief summaries of recent condominium Court decisions across Canada. I don't provide summaries of every decision rendered. I select a handful of decisions that I hope readers will find interesting. I hope readers enjoy this regular column of the CCI Review.

Note to readers: In B.C., condominium corporations are "strata corporations" and in Quebec, condominium corporations are "syndicates".

Note: This publication contains only a handful of this quarter's summaries. CCI members who would like to see the rest of this quarter's summaries can find them at the Condo Cases Across Canada website: www.condocases.ca The current pass-word is "condocases".

James Davidson LLB, ACCI, FCCI, Nelligan O'Brien Payne, Ottawa

THE HOT TOPIC – Procedures When Owner Responsible for Deductible

A recent B.C. decision provides a nice description of the procedures that may apply in a case where an owner is responsible for loss falling within the deductible on the corporation's insurance policy. Here's my summary of the case:

Louie v. The Owners of Strata Plan VR-1323 (B.C. Supreme Court) October 8, 2015

Owner responsible for damage due to fire caused by owner's tenant

The plaintiff owned a unit in the strata corporation. Damage was caused from a fire in the unit. The fire resulted from an illegal drug laboratory, operated by the owner's tenant.

The strata corporation's insurance covered damage to the unit and common property, but subject to a \$50,000 deductible. The Court held that the damage fell within the deductible, and that the owner was responsible for the deductible loss under the corporation's by-laws. The Court also said that the corporation was not obligated to carry out the necessary repairs and to then seek recovery of the deductible portion of the loss from the owner. The Court said that it was reasonable for the corporation to insist that the owner pay the \$50,000 deductible in advance, before

undertaking any repairs, or otherwise to leave the repairs up to the owner. The Court said:

In my view, s. 158 does not require the Strata to pay the amount of the deductible.

...

In this case the damage clearly was caused by Ms. Louie's tenant and occurred to her Unit. I find that the Strata did not breach the SPA (Strata Property Act) by not paying the deductible and by not commencing work on the unit in this case.

I conclude the Strata had the right to insist Ms. Louie pay for remediation up to the amount of the deductible and that given what was known at the time about the cost of remediation the demand for payment of the full \$50,000 was a reasonable one.

The Court also held that the owner had no claim for lost rent, because the failure to reinstate the unit was the owner's fault. The Court said: "The plaintiff has had years to mitigate her loss but has chosen to leave the Unit in a damaged condition. In my view this conduct falls well short of her legal obligation to take reasonable steps to avoid her losses."

Finally, the Court granted the strata corporation's claim for \$4,292.79 (claimed against the owner) for costs incurred by the corporation for investigation of the fire and for remediation of some of the damage.

BC Case – Mathews v. The Owners, Strata Plan VR 90 (B.C. Supreme Court) October 5, 2015

Strata corporation entitled to refuse rental request

The petitioners had made a request to the strata corporation to rent their unit, on the basis of hardship. Pursuant to the corporation's by-laws, the strata counsel refused the request on the basis that there was no disclosed hardship. The petitioners then challenged the by-laws, arguing that the by-laws improperly restricted owners' rental rights.

The petition was dismissed. The Court said:

In all the circumstances, I find that the Bylaws of the Strata Corporation in the present case comply with the requirements of s. 141 of the (Strata Property Act), in that they contain a sufficiently clear and detailed procedure for administering the rental limit.

continued...

Condo Cases Across Canada Cont'd.

Alberta Case – *Ho v. Security National Insurance Company* (Alberta Small Claims Court) September 23, 2015

Owner not responsible for deductible portion of loss under corporation's insurance

Water leaked from the owner's refrigerator, causing damage to the owner's unit and to an adjacent unit. There was no evidence of negligence. The damage to the owner's unit was estimated at \$5,846.62, but had not been carried out. The condominium corporation repaired the adjacent unit, at a cost of \$19,642.62, and demanded that the owner reimburse the corporation in that amount. The owner paid, but then sued the condominium corporation.

The damage in question was insured damage under the corporation's insurance policy, but fell within the \$35,000 deductible on the policy. The condominium corporation claimed that the owner was responsible for that deductible loss.

The Court held that the owner had no duty to indemnify the corporation or to pay the deductible under the corporation's by-laws. The Court said:

As stated, (the condominium corporation's) by-laws are silent relating to insurance deductibles. As (the condominium corporation) had a contractual and legislative obligation to insure, the owners have impliedly accepted a mode of "self-insurance" for expenses incurred to the deductible level to be shared by all owners and not the sole responsibility of a unit owner.

The Court also held that the deductible was unreasonably high, in the particular circumstances.

The Court accordingly held that the condominium corporation was obligated to pay the amounts of \$19,642.62 (which had been paid by the owner) and \$5,846.62 (estimated for repairs to the owner's unit); and granted judgment in favour of the owner in the amount of \$25,000, being the monetary limit of the Small Claims Court.

Saskatchewan Case – *Hallmark Place Condominium Corporation v. McKenzie* (Saskatchewan Court of Queen's Bench) August 31, 2015

Court determines cost award in relation to condominium arrears

The condominium corporation was granted judgment for arrears of common expenses. The dispute was protracted because the owner had claimed set-off for alleged damages due to a water seepage issue.

The Court said:

The CPA (Condominium Property Act) is clear that owners may not withhold condominium fees even if they are engaged in litigation with the condominium corporation.

...

In my view, in the face of an owner defaulting on a CPA statutory duty or a bylaw obligation in a condominium corporation context, the condominium corporation should, prima facie, be entitled to a complete indemnity. Of course, that is a rebuttable presumption which will turn on the facts in each case.

Given the particular facts of this case, the Court reduced the cost award (in favour of the condominium corporation) to 80% of the corporation's actual costs. In doing so, the Court made reference to the principle of "proportionality" (ie. the idea that the costs should be reasonable in light of the amount of the arrears).

Ontario Case – *Metropolitan Toronto Condominium Corp. No. 659 v. Truman* (Ontario Small Claims Court) August 28, 2015

Owner responsible for excessive water consumption

The owner used his unit for a legal marijuana grow operation (for medical purposes). This use resulted in an excessive consumption of water. The condominium corporation billed the owner for this excessive water consumption, calculated with the assistance of a meter installed to help determine the extra water consumed in the unit. The Court said:

I accept, without hesitation, that Mr. Truman's use of water was disproportionate to the allotted 5.13% share of common expenses and in the result, inequitable and unfair, not only to the plaintiff, but to the other nineteen unit owners. In effect his cultivation of medical marihuana was being subsidized.

Therefore, the Court granted judgement in favour of the condominium corporation for the cost of the excessive water consumed by the owner. 🍁



CCI Fall Leaders' Forum, Annual General Meeting and Awards

Over 75 CCI Chapter leaders joined us in Toronto from October 22-23, 2015 to learn, share and have fun, celebrating CCI. Topics included marketing, media, and webinars. The Round Tables and Solutions Session returned and as always, the ideas generated was inspiring. All in all, chapter leaders left refreshed and recharged with new ideas to kick start the New Year in your chapter!

We also celebrated CCI at our annual Awards Dinner. Chapter of the Year and Newsletter of the Year awards were given out, as were Distinguished Service Awards. Lastly, we honoured two long-time contributors to CCI: Pat Cassidy (Nova Scotia) was honoured with the Ron Danks Volunteer Leadership Award, and John Peart (Eastern Ontario) was inducted into the CCI Hall of Fame. Congratulations to All!



A full Session Room



Ideas flowing at the tables!



Enjoying the Banquet



Peter Harris receiving his Service Award for 15 years tenure on the CCI National Council.

CCI Fall 2015 Leaders' Forum, AGM and Awards Banquet Cont'd.



Guest speaker Terry Scott and Sonja Harris



Jazz trio at the Banquet



Ideas Board

Congratulations to H. Penman Smith Chapter Newsletter of the Year Winners



Tier 1 – CCI Nova Scotia Chapter



Tier 2 – CCI Toronto & Area Chapter

Congratulations to This Year's Lorne Young Chapter of the Year Winners



Tier 1 – CCI South Saskatchewan Chapter



Tier 2 – CCI Eastern Ontario Chapter

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CHAPTER CHATTER



London & Area Chapter – Every day is one of learning in the condominium community. The London & Area Chapter and its members have been in learning mode since we kick started in full gear in September with our AGM when our special presentation on London's "Growing Condo Market" by Anthony Passarelli, Senior Market Analyst at the Canada Mortgage and Housing Corporation (CMHC) was of great interest.

Immediately following the AGM, attention was put into the organization and commencement of our 2-day Condominium Course that took place on November 7th and 14th. The course was well attended by 58 registrants eager to learn and take back a wealth of information to share and to assist them in their respective condominium communities.

We thank each of our speakers for their expertise and support to the chapter and to education in condominiums. Donations to charities of their choice were made in their honour for their generosity and commitment.

We thank all who have provided suggestions toward that end. Learning never stops! Our next seminar is scheduled for January 19th, 2016 and will address an increasing cause for concern in condominiums, both of the high rise and town-house variety of condominiums which encouraged us to present a seminar on "The burning issue: smoking in Condominiums – What should boards do? What can they do?" And even though we are still some months away from spring – the seminar on maintenance will take place in the evening on March 22nd, 2016, the focus of it to be announced shortly.

The London & Area Chapter Board of Directors wish you, one and all, a very joyous season and only the very best of health and all things good in 2016. Be safe in your travels!

*Trish Kaplan, Administrative Coordinator
CCI London and Area Chapter*



Nova Scotia Chapter – CCI Nova Scotia began Fall of 2015 by welcoming two new Directors to the Board and saying goodbye to two long-term members. Rod MacDougall and Stephen Beaufoy were elected as Directors at our AGM in September. Both are first time Directors and new to CCI as well. We look forward to the new ideas they will bring to the table. Carol Conrad and Jim Fletcher both stepped down from the Board this year. They are missed but as often happens in CCI Nova Scotia, only an email or phone call away when we require their help and knowledge.

In keeping with the mandate of CCI to provide education to our members, we began our 2015/2016 education programme by having a representative from Smoke Free Nova Scotia attending our AGM. Our members were presented about the risks associated with tobacco use in a residential condominium as well as the steps which a Board can take should there be an interest among owners to move towards a smoke free building.

In October we held the CM 200 session and were very pleased with the turn out as well as the level of engagement among our members with the Lecturers and each other.

As a Board of Directors we are extremely pleased and excited to have launched our new website this fall. The new website was the product of almost a year of work by our Communications Committee and Board. We hope the new look and functionality is of benefit to our members and serves to attract new members to CCI Nova Scotia.

At the CCI National Conference two of our CCI Nova Scotia past Presidents were honored. Carol Conrad was the recipient of the Distinguished Service Award in recognition of her many years of work with CCI Nova Scotia and CCI National. Patrick Cassidy, QC, our only life time member, received the Ron Danks National Volunteer Leadership Award in recognition of his excellence in volunteer leadership. Our Newsletter was also recognized and awarded the H. Penman Smith Award. We were very excited and proud to see CCI Nova Scotia and the work our Board, both past and present, do for the Condominium Industry in Nova Scotia, recognized at the National level.

As we look towards 2016 our chapter is looking towards continuing our work appealing to our Municipal Government to review the tax structure to reflect fairer taxation for Condominiums, looking towards the possibility of a new construction insurance product similar to Tarion and continuing to bring interesting, informative and topical education to our members.

As we wait for the snow to hit our Eastern coast, we want to wish everyone a very Happy Holiday and an exciting New Year

*Devon Cassidy, President
CCI Nova Scotia Chapter*

continued...

Chapter Chatter Cont'd.

South Alberta Chapter – It's beginning to look a lot like Christmas here in Calgary. As I type this, snow is falling in droves outside. It will hopefully be a white Christmas here!

At the South Alberta Chapter things have been quite busy! Our new President, Andrew Fulcher is keeping us all very motivated. We have some very exciting initiatives on the go including expanding our course offerings to more of South Alberta including Banff, Canmore, Lethbridge and Medicine Hat. Seeing as we are the South Alberta Chapter, we are more than just Calgary and expanding our geological offerings is necessary. We are hoping these initiatives will increase our membership and help to fulfil our mandate to educate more of our region.



Andrew Fulcher and Cheryl Bernard

Back in October we held our 3rd Annual Joint Conference with ACMA (Association of Condominium Managers of Alberta) and REIC (Real Estate Council of Canada – South Alberta Chapter).

We are very proud to report this was our best conference yet! Some absolutely fantastic presenters and breakout sessions filled the day and the attendees were very impressed. Cheryl Bernard was the Keynote Speaker and brought most of the room to tears with her emotional and motivating speech.

We continue to bring in engaging and energetic speakers for our monthly luncheons. In November, Murray Johnson made the trek to Calgary and delighted us with his fantastic presentation on Board Governance for our membership. We are very much looking forward to welcoming Paul Saum from the South Saskatchewan Chapter in January who will speak on Volunteerism in Condominiums.

From all of us at the South Alberta Chapter, we wish you a wonderful Holiday Season and the best of New Years.

*Melanie Bennet, Administrator
CCI South Alberta Chapter*

UPCOMING EVENTS

Golden Horseshoe Chapter

January 16, 2016 – Level 300: Mediation and Dispute Resolution - Milton

February 26, 2016 – Lunch Seminar: From the Bedroom to the War Room – Stoney Creek

Manitoba Chapter

January 21, 2016 – Seminar: Reserve Funds: Fail to Plan, Plan to Fail – Winnipeg

February 18, 2016 – Seminar: Bare Land Condos: What's the Difference? – Winnipeg

March 17 – Seminar: Self Managed Boards: The DIY Approach - Winnipeg

North Alberta Chapter

January 16, 2016 – CM100 Course – Lloydminster

January 20, 2016 – Seminar: Improving Condominium Communication (Edmonton)

February 20/21, 2016 – CM100 Course – Edmonton

March 19/20, 2016 – CM200 Course - Edmonton

North Saskatchewan Chapter

February 10, 2016 – President's Club – Saskatoon

South Alberta Chapter

January 23, 2016 – CM100 Course - Calgary

February 6 & 22 – CM200 Course – Calgary

March 24 – Lunch N Learn - Calgary

Toronto & Area Chapter

January 12 & 19, 2016 – Level 101 Course – Webinar

January 20, 2016 – CondoSTRENGTH Networking Event – Toronto

March 31, 2016 – Seminar: Smoking in Condos - Toronto

Vancouver & Area Chapter

January 21, 2016 – Seminar: Who Does What? Responsibilities and the Strata Council's Role – Vancouver

February 20, 2016 – Seminar – Financial Management for Strata Councils – Vancouver

March 10, 2016 – Nomination and Elections in Strata Corporations - Vancouver

Chapters are adding new events all the time, check back with your local chapter to get an updated list of events in your area!

www.cci.ca

MARK YOUR CALENDARS!

The Spring 2016 Leaders Forum will be held May 25-28, 2016 in Vancouver, BC. If you are a chapter Board member, you'll want to make sure you attend this conference. More information to follow in the new year, but rest assured...you'll want to be there!

Contact Us:

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cciwindsorsex@gmail.com

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