



Message from the President

BY GEOFF PENNEY, BA, LLB, ACCI
CCI NATIONAL PRESIDENT

No matter where we live in the country, I think one word can effectively sum up our collective experience over the last several months – “Cold”. It has certainly been a hard Canadian winter for most of us caught in the grips of the Polar Vortex. I, for one, have had enough of it and hope that now that “Spring” has officially arrived we will see a transition to warmer weather. However, as I write this, the forecast is calling for a major winter storm to hit the Atlantic coast by week’s end. We are apparently not out of the woods yet.

Despite the weather, our CCI team continues its work. The Executive held its annual Retreat in January, where we reviewed and evaluated the activities of the Association and particularly, the Executive Board to determine whether our current level of involvement in those activities is effective. As you might expect, in some cases our current involvement and desired involvement were closely matched. In other cases we felt that certain responsibilities were best handled by our Council, the various committees or our National Office staff. The goal of the entire discussion was to ensure that we are operating as efficiently as possible.

The Executive also reviewed its current level of communication and support with our staff at Taylor Enterprises. After some analysis, the Executive,

Diane and Alison felt that our current processes work quite fine and only some minor tweaking was needed.

We also spent time reviewing considerations for our long term financial stability and growth, the work of the Council and Executive communication with Council. LS Graphics introduced its work to date on CCI’s new National Database. I think all of the Executive were impressed by the quality and level of functionality of the database. It was evident that it will have a number of applications which will improve how we collect, maintain and use information concerning our members. It is still, however, a work in progress and there are still some issues to address so stay tuned for further updates down the road.

We also reviewed the nominations process for Executive positions which were passed with our By-law amendment at our last AGM. The new process will be implemented this November. There will be changes in the slate process, the nominations form and the work of the Nominations Committee. All of this will be further explained as we approach our next AGM.

Additionally, the work of our National committees continues as well on a number of important fronts. We thank all of our committee members

for their ongoing support and dedication to CCI. We look forward to further updates from the committees in the future.

Finally, I hope you are all ready to visit Winnipeg in June. This beautiful city and CCI’s Manitoba Chapter are hosting this year’s semi annual meetings. There are some great events planned. The schedule will include a chapter problem solving session where chapters will have the opportunity to present an issue/problem and then call upon the assistance of the rest of the room to find a solution. We are also looking forward to the social events that the Chapter’s planning committee has been organizing.

See you all in Winnipeg!

A handwritten signature in black ink, appearing to read 'G Penney', written in a cursive style.

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 password is "condocases".

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

THE HOT TOPIC – Condominium Corporation's obligation to investigate

A recent Alberta decision expresses the obligation of a condominium corporation to investigate potential problems. Here's my summary of the case:

Hnatiuk v. Condominium Corp. No. 032 2411 (Alberta Queen's Bench)
January 10, 2014

Condominium corporation had a duty to investigate potential risks to health and safety

The owner of a unit complained of second-hand smoke entering the unit from the unit below. The condominium corporation investigated, by opening up a bulkhead over the furnace room in the lower unit. This revealed that the fire separation between the units had not been installed in the vicinity of that bulkhead. The corporation arranged for installation of the necessary fire separation and attended to other remedial work in the bulkhead. This work substantially reduced the odour of smoke (in the unit above) but did not eliminate it. There was cause to suspect that the necessary fire separation had not been installed in a second bulkhead in the unit below.

The question for the Court was whether or not the condominium corporation was obligated to inspect the second bulkhead.

The Court said that the existence of a deficiency (in the second bulkhead)

had not been proven. However, the Court said that there was a "prima facie case for investigation". Therefore, the condominium corporation was obligated to carry out the investigation at its cost. And the condominium corporation could not hold the complaining owner responsible for the cost, even if no deficiency was revealed in the second bulkhead.

The Court said:

It may well be that the investigation shows the second bulkhead to have adequate and proper fire separation and be within the permissible limits for air infiltration. But where there is smoke, there may be fire. In my view, the corporation has a duty to find out.

...

Furthermore, if the fire separation is deficient in this area as well, the Board should consider whether more extensive investigations are required in other areas of the building.

Yukon Territory Case – **Whitehorse Condominium Corp. No. 95 v. 37724 Yukon Inc. (Yukon Territory Supreme Court) January 13, 2014**

Court orders amendment to condominium declaration and plan

The condominium had been declared in 2005. The condominium corporation had previously obtained an injunction preventing the developer from continuing with construction of a 24-unit apartment building on neighbouring lands. [See Condo Cases Across Canada, Part 41, February 2013]

The condominium corporation now applied for an order to amend the condominium declaration and plan. Part of the condominium corporation's proposal was that the neighbouring parcel (containing the partially-built apartment building) would be added to the condominium as a unit of bare land ("Bare Land Unit A").

The developer opposed the condominium corporation's application. The developer had spent approximately \$1 million carrying out the partial construction of the developer's desired 24-unit apartment building on Bare Land Unit A. The developer now proposed a modified amendment in which Bare Land Unit A would have an 18-unit apartment building and five single family homes.

The Court said that some sort of development, on Bare Land Unit A, would be "just and equitable", but held that the developer's proposed 18-unit apartment building would significantly change the character of the condominium from its present composition of single-family units.

The Court granted the condominium corporation's application, and thereby amended the declaration and plan with Bare Land Unit A as a unit of bare land.

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Condo Cases Across Canada Cont'd.

However, the Court ordered that the developer could submit development plans (with a specific number and configuration of four-plex units) within 90 days. Failing such, the condominium corporation would be at liberty to apply for removal of the partially-constructed building on Bare Land Unit A.

The Court said:

The only solution that I find to be both just and equitable and to end the confusion and uncertainty is to permit the Condo Developer to proceed with the construction of four-plex units or a combination of four-plex and single-family units on Bare Land Unit A. On the record before me, there is insufficient information to order the Condo Developer to proceed with a specific number or configuration of four-plex units. If the Condo Developer wishes to proceed with the development of four-plex units on Bare Land Unit A, I order that the Condo Developer submit the plans required by s.6(1), (2) and (3) of the (Condominium Act) for additional condominium units on Bare Land Unit A within 90 days to this Court for approval. The Condo Corp. is at liberty to make submissions on the Condo Developer's proposed plans.

B.C. Case – Strata Plan VR 390 v. Harvey (B.C. Supreme Court) December 12, 2013

Court finds residents in breach, but declines to order sale of unit. Instead, Court issues compliance order

The respondents were the owner and co-occupant of a strata unit. The Court found that the respondents were in breach of the Strata Property Act, the strata corporation's by-laws and previous Court orders. The key breaches were as follows:

- Altering common property without permission or authority;
- Interfering with the strata corporation's efforts to maintain or repair the common property;
- Refusing to allow the strata corporation to access their unit in order to inspect, maintain or repair the common property.

The strata corporation sought an order for sale of the unit on the grounds that the "respondents were unwilling or unable to comply". The respondents in turn alleged that the strata corporation had acted in bad faith. The Court held that the strata corporation had not acted in bad faith.

The Court also held as follows:

I am not prepared to make an order for forced sale of the Townhouse at the present time. The court should first have the opportunity to punish the (respondents) for contempt. If the (respondents) persist in breaching any court order, following such punishment, it may be appropriate for the court to order the forced sale of the Townhouse.

The Court therefore granted various orders against the respondents, restraining them from the breaches noted above.

Ontario – Toronto Standard Condominium Corp. No. 1908 v. Stefco Plumbing and Mechanical Contracting Inc. (Ontario Superior Court) December 13, 2013

Condominium corporation not entitled to lien for "old" arrears

The owner (who owned 2 units) had failed to pay common expenses since January 2009. The condominium corporation did not register a lien against the units. On May 30, 2012, the condominium corporation applied, under s.134 of the Condominium Act, 1998, for an order for payment of the arrears, interest and costs. The corporation also sought an order that the condominium corporation be permitted to register a lien against the owner's units, for recovery of those amounts, under s.134(5) of the Act. The unit mortgagee (holding a first mortgage against the two units) opposed the application.

The Court said:

- "Having failed to preserve its lien rights under s. 85(2) (of the Condominium Act, 1998), TSCC 1908 seeks to employ s.134 of the Act, to 'revive' the lien rights."*
- "If TSCC 1908's position is accepted, a condominium corporation can 'revive' an expired lien by characterizing it as damages for failure to pay common expenses, obtaining an award therefore, and adding those damages to the common expenses for the unit. In this case, when Stefco fails to pay this amount, TSCC 1908 will register a new lien, capturing all of the common expense arrears dating back to 2009."*
- The Court considered the case of York Region Condominium Corporation No. 633 v. 1262018 Ontario Inc. (summarized in Condo Cases Across Canada, Part 26, May 2009). The Court noted that, in that case, there was no mortgagee named as a party and said that the decision in the York Region Condominium Corporation No. 633 case "cannot be relied upon for any precedential value".*
- "The lien registration scheme in s.86 balances the rights of condominium corporations to collect common expenses with the rights of mortgagees to limit their exposure to priority claims. Section 86 of the Act sets out the scheme underlying the priority regime. A central feature of the priority regime is that the lien loses priority if notice is not given."*

The Court held that the condominium corporation was entitled to an order that the owner, Stefco, pay the common expense arrears commencing January 1, 2009, with interest. However, the condominium corporation was not entitled to any lien against the unit to recover those amounts.

[Editorial Note: I note that the decision contains no discussion of the 2-year basic limitation period which generally applies to unsecured claims.] ❁

CHAPTER CHATTER



North Alberta Chapter – Our Annual CCI North Alberta Conference and Trade Show is scheduled for May 9th and 10th, 2014 at the Chateau Louis Conference and Hotel in Edmonton. Sharon Bigelow, our 1st Vice President, is the primary organizer for the conference this year, and she has promised it will be bigger and even better as it has been every time.

This year, there will 16 seminars offered in 4 concurrent sessions. We will also be adding new topics, and new twists to older topics.

CCI North Alberta has engaged in a new membership pilot project to increase our membership in new condominium development areas. We offer a free information session to any member of the public at facilities located in close proximity to their neighborhood. We outline what CCI North Alberta offers as it relates to education and advocacy as well as offer an abbreviated educational seminar. Our first event held on March 24, 2014 in the far southwest of Edmonton drew in 105 individuals. The pilot project is called “Ignorance is Not Bliss” and based on its early success, we have scheduled two more sessions to be held in Northeast Edmonton, and Grande Prairie. Many thanks to Helena Smith for taking the lead on this project.

Anand Sharma
President, CCI North Alberta Chapter



Toronto Chapter – Like most of Canada, Toronto experienced an exceptionally harsh winter, but our chapter did anything but hibernate! Our committees are extremely busy and we have had one of our busiest seasons ever.

Under the leadership of Bill Thompson, a Bylaw Review Committee was established to review our current bylaws and bring them in line with the new CCI National bylaws. This committee has worked quickly and thoroughly and the Chapter expects to be able to bring forth new bylaws for approval by members at our 2014 AGM.

Our Communications Committee has also been busy – updating and revamping our website. Chapters are invited to have a look at our new site at www.cci-toronto.org – we hope you like the new look! A communications sub-committee has been formed to oversee our social media presence. CCI Toronto is now present and active on Twitter, Linked In and Facebook. If you are not following us yet – we invite you to join in and view our daily updates. The chapter also hosted our first ever Twitter Chat session on March 11th – on the topic of Dispute Resolution. The session was hugely successful and a second Chat session is already planned for June 11th; this time on the topic of Communications.

Our Volunteer Resource Committee is busy developing new resources for our volunteers. A Volunteer Handbook and a Committee Chair Toolkit are both nearing completion and will be used as part of new volunteer orientation. A volunteer mentorship program will also be made available, as

needed. Volunteers form the backbone of our chapter and investing time and resources to make their job easier is a priority.

The Toronto Chapter is looking forward to the spring CCI-N meetings and hope to see many of you in Winnipeg in June!

Lynn Morrovat
CCI Toronto & Area Chapter Operations Manager



Windsor-Essex County Chapter – Hello everyone! 2014 looks like a positive year for the Canadian Condominium Institute Windsor - Essex Chapter.

We ended 2013 presenting the update to the Condominium Act with Armand Conant and Dean McCabe presenting to over 70 attendees. We held a very successful Maintenance Seminar in February utilizing the expertise of our own Cheryl Valley Property Manager and a crew from Encore Mechanical. We are holding second version of Dealing with Unreasonable People a drama written by our own Lise Allaire with reenactments of actual legal cases and analysis from our Solicitor Andrea Thielk.

Our Membership Committee has been able to steadily increase our membership numbers and by the end of this fiscal year we should have record numbers for the Chapter. The Education Committee is also working hard on preparing the Educational presentations for the Chapter for the next year.

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CHAPTER CHATTER

We have also welcomed Lynn Mclean from ECC # 97 to our Board of Directors. We are very pleased to have another Condominium Board member on our Board.

The Planning Committee for the 2015 National Spring Meetings have the ground work completed with the selection of the Windsor Casino as the preferred location for the meetings. They also have whittled down the social events to three or four possibilities with very exciting options.

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

*William C. (Bill) Norris, BPA, AMCT, RCM
President, CCI Windsor-Essex County Chapter*



Newfoundland and Labrador Chapter — We are shivering here in Newfoundland and Labrador, along with the rest of Canada during what surely must be the coldest and longest winter since the last Ice Age. Our Chapter, however, is warming up with lots of activity. We closed out 2013 with a very successful AGM in late November, followed by a seminar on City Services for Condominiums. We emerged from that meeting with a firm commitment from the two City Councilors present, to take several of our issues back to the City of St. John's for discussion and follow up.

We are in the process of giving our website a much needed face lift, and we are introducing our Chapter and website to Social Media. We are confident this will help to open our Chapter to a whole new audience of followers and to the younger generation of condominium owners that we know are out there.

We created a Strategic Plan for our Chapter last fall and to date we are on target with most of our short term objectives for this year. We have planned and published Notices of two spring seminars and our first newsletter for the year is very close to publication. We have placed our Strategic Plan on the Agenda of all of our Chapter meetings. We are concentrating sternly on our short term goals, but also with an eye to the future, we are so far meeting the projected deadlines of our Strategic Plan.

Our advances this year can be attributed to the strength of our Board of Directors, as well as the continuing support of our membership, and to the helpful hands at National.

*Carol Burke, President
CCI Newfoundland and Labrador Chapter* 🍁



The ACCI Program Continues to grow!

The ACCI exams are now available for three professions across the country!

If you are a **Lawyer, Property Manager**, and now **Realtor**, the new, updated and online exams are now available for you!! More professions will be added as exams are updated.

The **ACCI designation** is the only National accreditation program that will set you apart from all the other professionals in your area and demonstrate your expertise and knowledge in the area of condominiums.

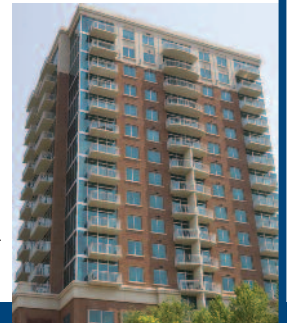
Promote the ACCI to all your chapter's Professional Members. Having more ACCIs will raise the bar for the Condominium Industry in your area!

*For more information and to apply for the ACCI,
please go to www.cci.ca/acci or contact the
CCI National Office at 416-491-6216 / 1-866-491-6216*



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UPCOMING EVENTS

Thursdays in May and June – Vancouver Chapter: Strata 101 Course

May 13 – Ottawa & Area Chapter: Living Well in a Condo Seminar

May 15 – Manitoba Chapter: Water Issues: One Drop at a Time Lunch n' Learn

May 20 – London & Area Chapter: There Are No Stupid Questions Seminar

May 24/25 – North Alberta Chapter: CM 300 Course

May 27 – South Alberta Chapter: Lunch n' Learn

May 31 – Golden Horseshoe Chapter: Level 100 Course

June 4-7 - CCI National Leaders Forum, Winnipeg, MB

June 6 – South Saskatchewan Chapter: hoarding and Fire Codes Seminar

June 11 – Toronto & Area Chapter: Twitter Chat: Condo Communication

June 14 – Nova Scotia Chapter: Conference & Trade Show

This is just a snapshot of all the great events being held across the country... to register for any of these or see more fabulous educational offerings, please contact your local chapter.

For more information on more upcoming events in your area, please visit the chapter website:

Vancouver Chapter - <http://www.ccivancouver.ca/>

South Alberta Chapter - <http://ccisouthalberta.com/>

North Alberta Chapter - <http://www.ccinorthalberta.com>

South Saskatchewan Chapter - <http://www.cci.ca/ssc/>

North Saskatchewan Chapter - <http://www.cci.ca/NorthSaskatchewan/>

Manitoba Chapter - <http://www.cci.ca/Manitoba/>

Northwestern Ontario Chapter - <http://www.cci.ca/NWOntario/>

Windsor-Essex County Chapter - <http://www.cci.ca/Windsor/>

London & Area Chapter - <http://www.cci-sw.on.ca/>

Golden Horseshoe Chapter - <http://www.ghccci.org/>

Toronto & Area Chapter - <http://www.cci-toronto.org/>

Huron Chapter - <http://www.cci-huron.com/>

Ottawa & Area Chapter - <http://www.cci.ca/ottawa/>

New Brunswick Chapter - <http://www.cci.ca/NewBrunswick/>

Nova Scotia Chapter - <http://www.ccinovascotia.ca/>

Newfoundland & Labrador Chapter - <http://www.cci.ca/Newfoundland/>

WE'RE MOVING...



CCI National Office is moving to new office space. Effective July 14th we will be at:

**2800 14th Avenue, Suite 210
Markham, Ontario
L3R 0E4**

Our phone number and all other contact information will remain the same.

CCI National Database Update

You may have heard rumours of a new database, that is being rolled out early in the 2014-15 Membership Year. It's actually true! We are excited about this new system, that will be web-based and easy-to-use by ALL CCI Chapters.

A system like this will help support the standardized forms and track the same information for members, no matter what chapter they are a part of, as well as track education attendance and chapter participation/ awards.

Look for more information to come as the roll-out begins, but for now, we wanted to let you know that CCI is moving forward and utilizing the best tools available in order to support all of our chapters, no matter their size.

This will truly make us...*your condo connection!*